

Master Thesis

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Natural Rights

vs.

Human Rights

-A Philosophical Investigation of
the Concept of Human Rights

By Louise Tuxen Romsdal

Abstract

This thesis is a philosophical survey of the universality of Human Rights and of the foundation of the rights. I will start by outlining the philosophical problems Jack Donnelly runs into when he writes about the philosophical foundations of Human Rights. It turns out that Donnelly uses a different definition of ‘universality’ and ‘right’ than is normally used.

I will therefore turn to Locke, who explains about natural rights, which are innate and inalienable for people, inside and outside of society.

Lockean libertarianism builds on Locke’s theory about negative freedom as an innate right. I will explain this theory and what kind of society it leads to. The theory is philosophically founded in natural rights as being universal. It therefore lives up to my criteria for a philosophical theory. At the same time though it differs in its fundamental principles from Donnelly’s theory of Human Rights, which I find intuitively appealing. I therefore turn to other defenders for Human Rights to see if their arguments are stronger than Donnelly’s. Here I find that if Human Rights are argued for politically instead of philosophically they can be defended. Therefore my conclusion is that Human Rights do not need the philosophical veil Donnelly gives them. Human Rights have good political consequences. This should be stressed instead of turning them into a weak philosophical theory.

My methodology throughout my thesis is philosophical analysis.

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Introduction

In this thesis I will investigate the philosophical foundations of the Universal Declaration of Human Rights. This means that I will concentrate on the postulated universality of Human Rights and of the foundations of the rights it postulates that human beings have. I will from now on write Human Rights as HR.

Jack Donnelly's book '*Universal Human Rights*' is a much used standard textbook about HR. I will therefore start by investigating how Donnelly, in this book, explains the origin of HR. I will conclude that Donnelly has problems explaining the foundations of HR and that his understanding of universality does not match the widely shared understanding among philosophers of what universality means, namely that in order for a right to be universal it must be able to claim it anywhere at any time by anyone. Since Donnelly does not give me the answers I want I will look elsewhere for the answers to my questions. This will be the start of my philosophical survey.

My investigation brings me to Lockean libertarianism. This theory builds, as the name indicates, on Locke's theory about human nature and natural rights. Before I start investigating libertarianism I will therefore explain Locke's theory thereabout. In order for the reader to fully understand why libertarianism is a strong counter argument to the theory of HR I will explain it in length. In order to show how it is logically consistent with its Lockean foundations I will have to explain how society should be built up. In order to show that it is totally incompatible with the theory of HR I need to explain its opinion on taxes, property right and voluntariness.

Lockean libertarianism is a strong philosophical theory with roots in another strong philosophical theory, but it comes to a very different conclusion of the structure of society than the theory of HR as well as a very different conception of a right, both in definition and content. This makes libertarianism both interesting and dangerous to HR defenders.

After explaining the Lockean libertarian theory I will turn to three HR defenders, namely Charles Beitz, Thomas Pogge and Simon Caney. These three theorists explain Human Rights differently than Donnelly. I will investigate if they can avoid running into the same problems as Donnelly and thereby make the arguments for HR stronger. I

will not go into depth about investigating the different HR defenses, their internal arguments and their development through the years. I will only touch upon those three defenders to show that arguments for HR can be given.

I will conclude that philosophically the theories of HR that I have shown in this thesis are weak, but that it is not a problem for the defense of HR. If it is argued for politically and not philosophically it does not need to be able to explain its moral foundations and its universality, -the areas where I find the arguments weak.

Therefore my conclusion of this thesis will be that the theory of HR is a political theory and should be defended as such, in its own right.

Chapter I: Jack Donnelly's Conception of Universal Human Rights: Exposition and Critique

To understand how human rights (by human rights I mean the universal declaration of Human Rights from 1948¹, which I will write as HR) defenders understand the concept of HR and its foundations I will, in this chapter, shortly explain Jack Donnelly's interpretation of HR and their origin. I am aware of the fact that Donnelly's interpretation is not the only one, and I will explain other interpretations in the fourth chapter of this thesis. I have chosen to touch upon Donnelly's interpretation here because of his influence on the understanding of HR. He is quoted in fields from international law² to religion³, philosophy⁴, anthropology⁵, sociology⁶ and foreign politics⁷, to mention just some of his influence on the understanding of HR. In the following chapters I will write about libertarianism and natural rights. Donnelly's interpretation of the origin of rights, the universality of rights and of human dignity contradicts the arguments of the following chapters, therefore I find these elements of his theory important to outline. This section is meant as an appetizer. The questions I put forth here are the motivation for writing the rest of the thesis.

1.1 Donnelly's Definition of a Right

Jack Donnelly explains that to have a right to x means that the person A is entitled to x. Moreover, if x is threatened or denied, A can claim from the duty-bearer B that she takes measures to give x to A.⁸ The important thing here is that B should give x to A, not because it is pleasurable, nice or utilizing, but because A is entitled to x. Already here I will put in my first question. Jack Donnelly speaks of B's obligation to A, but in what does that obligation consist? Who puts that obligation on B and is it fair according

¹ Universal Declaration of Human Rights (UDHR) 10 December 1948.

² See for example Carozza, 2003.

³ See for example Ilesanmi, 2004.

⁴ See for example Dalmayr, 2002.

⁵ See for example Speed, 2006.

⁶ See for example Cole, 2005.

⁷ See for example Falk, 2004.

⁸ Donnelly, 2003, p. 8.

to B's right? The answer depends on the context. If for example B promises A something then B has an obligation of giving A the promised thing because a promise globally means that. In other words, we have agreed to define a promise as something binding. It is in the definition of the promise that B will give x to A. But in this example B was an active player to begin with. B started the situation by promising A x. What if B did not begin by doing anything except for just having what A felt entitled to? Does B have an obligation to give it to A then, just because A sees it as her right to have what B has? To take an extreme example for the sake of clarification, B has water, perhaps even more than she needs. A has no water, in fact she will die if she does not get water very soon. Is A entitled to B's water? Does B have an obligation towards A? Intuitively most people would say yes to this question, but not everyone thinks this. After all it is not B's fault that A has no water so why is it exactly that B has an obligation towards A? Who has the authority to claim that A is entitled to anything B has? Or to anything in general, regardless if B has it or not? In the next chapters I will show that due to the negative concept of freedom B does not have any obligations towards A. According to the libertarian view there exist no positive rights A can claim from B without violating B's right to her negative freedom. For the libertarian dignity is respected when one is free to choose one's plans and values in life. Taxes are an interference with this freedom and therefore an interference with one's dignity. But taxes are needed to protect HR; for example does A's right to free education, free health care, food, etc. put a duty on B to help paying for the fulfillment of these rights. This is not necessarily what B wanted to spend her money on. When Donnelly defends HR he therefore puts a value on free agents which they might not have chosen themselves.

1.2 Rights and their Foundations

The view that rights must be natural and must be innate in order for them to be real rights is a view that is rejected by Donnelly. He claims that theorists through the centuries have given objective reasons for human rights; earlier God was a popular objective justification. But according to Donnelly divine foundations do not make the argument for human rights stronger, because one can always question the evidence for God's revelations, and question God himself. Moreover it makes activists too dangerous

if they believe in their cause too strongly. Many wars have been fought in the name of God as a justification for anything. Nowadays natural law theories do not use God as much as human nature. Donnelly does not find the arguments they use convincing though, since appealing to something abstract will not make the skeptic change her mind.⁹ On these grounds Donnelly refuses to give us an objective and metaphysical foundation for HR. He claims that human nature is not something natural, “but rather a social project, consisting of “natural”, social, historical, and moral elements, conditioned, but not simply determined, by objective historical processes [...]”¹⁰ Later he claims that “Human rights ultimately rest on a social decision to act as though such “things” existed”.¹¹ By “things” I interpret that he means rights. What does this mean? Without a foundation for HR can we claim that we have rights at all? We are to act as though rights existed. This sentence implicitly claims that rights do not exist. But why should we act as though something existed? Is that a convincing argument for HR? I do not think so. Donnelly, on the other hand, does not seem to mind the lack of foundation. He explains that it is a common complaint that nonfoundational theories leave HR vulnerable. He admits that the critique is true but in the same sentence he claims that it is irrelevant.¹² In my opinion though, it is not irrelevant. Without a foundation or a fundamental reason why HR should be protected it leaves the possibility of not protecting them too open. If there is no logically clear answer to give the skeptic she might just as well be justified in not protecting HR. Moreover if HR are not defined from a logical starting point, for example human nature, anybody could claim anything to be her right. If there is no logical line of arguments why person A has certain rights then partly she would be able to claim anything as her right and partly person B could remain indifferent.

Instead of building his theory on natural foundations Donnelly rests on the internationally political overlapping consensus of HR.¹³ All the states which have ratified the HR charters have agreed to the inherent dignity of every person and have

⁹ *Id.*, 2003, pp. 18-9.

¹⁰ *Id.*, p. 16, ll. 6-8.

¹¹ *Id.*, p. 21, ll. 3-4.

¹² *Id.*, p. 20.

¹³ *Id.*, p. 40.

thereby accepted moral equality of every person. This leads to a more or less universal understanding of human rights. Donnelly does admit though that it is a matter of philosophy to investigate which rights are needed to live a life of dignity. The source of the philosophical investigation should be man's moral nature, which I will touch upon below. According to Michael Freeman Donnelly does not make that investigation himself, but makes do with the international consensus on the given list of HR.¹⁴ Freeman calls Donnelly's theory weak because it does not include a philosophical investigation, but merely analyses the given HR that are already claimed. Therefore Donnelly's theory, according to Freeman, lacks a normative element, but is purely descriptive. This is a problem because Donnelly, according to Freeman, builds it on the normative conception of man's moral nature and the normative claim that human beings should live a life in Donnelly's understanding of dignity. Freeman concludes that Donnelly must choose between a purely descriptive theory, which does not justify HR but only describes them, and a normative theory which lacks to argue for what human dignity and human nature is.¹⁵

1.3 Rights and Dignity

Donnelly explains that because we are human beings we have HR. These rights are inalienable since no one can just stop being human. Since every human being is a human being HR are equal for all. They are universal, meaning that they apply to all humans¹⁶. I am tempted to read this claim the way that Donnelly claims that HR supervenes on the human being. Or put in another way, HR are natural rights. This is not Donnelly's view though. Donnelly links HR with the dignity of the individual and not the individual herself. In order to live a life in dignity we need HR. This links HR somewhat more to the political priorities in society. Whatever is not offered to us, but would be dignifying to have, we have a right to claim. Donnelly is not speaking of love, charity or friendship but of political matters. But what is human dignity and why are we entitled to have it? Donnelly explains human dignity in the way that it corresponds with our moral nature. This means that those capable of enjoying HR live a more dignified

¹⁴ Freeman, 1994, p. 503.

¹⁵ *Id.*, p. 503-4.

¹⁶ Donnelly, 2003, p. 10.

life, which again means that they live in accordance with their moral nature. This explanation leads back to the political dimension of HR; namely that it is up to society to pave the way for moral nature to develop. Humans can be both good and bad, it is up to society to pave the way for the good potential we all have. This means that the society must provide us with the instruments that develop our human dignity.¹⁷ I will criticize this statement because it is not as innocent as it may sound. In fact it is quite controversial. That we have a moral nature and the implicit claim that that moral nature corresponds to the given set of HR is controversial in the way that if that is true then why do we not agree on a number of moral dilemmas? Why do we need at all the legal framework for protecting HR if they are so inalienable for all of us? Why do we not intuitively act according to HR by ourselves? And of course the more fundamental question, how does Donnelly know what our, apparently common, morals say?

Donnelly does not explain any of these questions, but refers to the fact that there is more or less international consensus on many of the core rights¹⁸. Moreover, when Donnelly claims that society helps us realize our dignity only if HR in the society are protected, he is advocating one way of structuring the society. In practice this is not a problem in most states since most states have signed their agreement to the UDHR. According to Michael Freeman, Donnelly does himself acknowledge though that in traditional societies, who never saw the shadow of the UDHR, human dignity can be protected. He even admits that the introduction of HR could lead to a violation of their dignity.¹⁹ In an article from 1984 '*Cultural Relativism and Universal Human Rights*' Donnelly even claims that human dignity is largely culturally determined.²⁰ This fits with his view that human nature is partly a cultural project, as shown above, but how does it fit with the universality of HR? Are we to force every culture to adopt the HR model then, just because the international majority has agreed on its moral value? In an article from 1987 Donnelly, together with Rhoda E. Howard, admits that he finds the liberal-social-democratic welfare society best suited for HR²¹. This makes Neil Mitchell, in the same

¹⁷ *Id.*, pp. 14-5.

¹⁸ *Id.*, p. 40.

¹⁹ Freeman, 1994, p. 511.

²⁰ Donnelly, 1984.

²¹ Mitchell, Howard, Donnelly, 1987, p. 925.

article, accuse Donnelly and his co-writer for ethnocentrism. To this Donnelly and Howard reply that they do not demand liberal regimes worldwide. What they argue for are universal HR, and claim that they are best protected in liberal regimes, but if states want to protect the same rights in a different structured society they are free to do so.²² As we shall see in chapter III of this thesis the libertarians claim that this HR oriented way of structuring the society is actually violating more rights than it is protecting. It is a matter of defining rights in different ways, and of defining dignity in different ways.

1.4 The Universality of Human Rights

*“It is not necessarily illogical to claim that some members of the species Homo sapiens are born to be slaves or untouchables or subordinated to men. It is not necessarily incoherent to claim that members of one racial or ethnic group ought to be subordinated to another. It is, however, almost by definition morally unreasonable in the contemporary world.”*²³

Here Donnelly is returning to a point I made earlier about not having a foundation for HR. If he could explain why we have HR in a logical and coherent way he could have claimed that the quoted examples of wrongness really are wrongs. Instead he claims that they are morally unreasonable in the contemporary world. This suggests that Donnelly has a time-relative approach to HR and morals in general. Is x only wrong because there, for the time being, is international consensus about x being wrong? Something could have been morally right hundred years ago but is morally wrong today. Or right yesterday but wrong today. The obvious question is: is it then really right or wrong or is it just the wrong time at the wrong moment? He claims that it is morally unreasonable to claim one race superior to another today. Was it right to do it in the 1940's? Would it have been right two hundred years ago? Does our contemporary world have only one set of morals so that Donnelly can claim that something is unreasonable worldwide or is the contemporary world he is speaking of only those who ratified the HR covenants? Would it then be right or reasonable to claim for example racial superiority in China? This questions the universality of HR. According to Freeman this acceptance of the

²² *Id.*, p. 927.

²³ Freeman, 1994, p. 52, ll. 9-13.

contingency of HR seems like a gift to tyrants.²⁴ Moreover it turns into a circular argument that runs: In our contemporary world we have decided x to be wrong, therefore x is wrong in our contemporary world. With a moral or logical foundation for HR Donnelly would not run into this critique. He refuses to claim a universal set of morals though. He claims that HR are needed to protect human dignity, but admits that this concept changes over time and therefore HR will develop over time.²⁵

1.5 ESCR and CPR

In discussing the difference between civil and political rights (CPR) on the one hand and economic, social and cultural rights (ESCR) on the other Donnelly does a good job in explaining how they are not so different from each other. He argues against Maurice Cranston, who argues that the only human rights we have are the rights to life, liberty and property (like Locke does, as we shall see in the next chapter of this thesis). In other words Cranston argues that only CPR are real rights.²⁶ Donnelly counter argues by using the example with the interrelatedness of the civil and political right to life and the economic, social and cultural right to food and health care. According to Donnelly Cranston argues that CPR are much cheaper to establish and maintain than ESCR, which for their part are impossible for many states to establish. Donnelly handles this argument in two ways. First he admits the old maxim saying that ought implies can, but stating that the ‘can’ in this maxim refers to physically possible and not just expensive. Therefore the costs are no excuse for not trying to take measures towards the ESCR standard. The other counter argument Donnelly uses is the one that just because it is not easy does not mean that it should not be sought.²⁷ I agree with Donnelly in this discussion, but I still miss an answer to the question why. Donnelly explains the ‘can’ of the maxim but he leaves out the ‘ought’. Why ought we to act towards HR standards? He has answered with the ‘human dignity’ argument, as shown above. But what if the state or society is not able to get the good potential out, are you then justified in not acting towards the HR standards?

²⁴ *Id.*, p 497.

²⁵ Donnelly, 2003, p. 57.

²⁶ *Id.*, p. 28.

²⁷ *Id.*, pp. 29-30.

This shows how the lack of foundation for HR leaves them fragile and also why it is not irrelevant, but rather very important to be able to answer the question.

1.6 Concluding Summary

In this chapter I have tried to deconstruct Jack Donnelly's foundation of HR by asking fundamental questions about the underlying morals and logic of HR. My critique builds mainly on three questions: what does it mean to have a right, including the question what does it mean to have an obligation; which rights do we have; and how to define human dignity. I did not get any logical or coherent answers from Donnelly, which makes me conclude that HR is something some people invented and tried to make worldwide by claiming universality, but without being able to explain its morality. This makes HR so fragile that I fear they can be taken away from people as soon as some other people invent something new. Fortunately there are interpretations of HR which are justified logically and coherent. In the next two chapters I will show a different interpretation on rights. The interpretation on rights, as I will show, operates with rights as innate. It does come to a very different conclusion on which rights people have than the UDHR though. The theory is logically coherent, which makes it dangerous to Donnelly's more practical interpretation.

Chapter II: Locke on Natural Rights

In the last chapter I showed some weaknesses in Donnelly's argument for the reason we had to submit to the UDHR. In this chapter I will discover what kind of natural rights the great Enlightenment philosopher John Locke thinks we have. I will show that because these rights are innate they seem both logical and intuitive to follow. I will begin my survey by explaining what Locke means by the state of nature. I will find out which rights we have there and which of those rights we take with us into society. After that section I will describe and discuss Locke's civil society. I will argue that it is a capitalistic society. This is important for my next chapter, which theory builds on the free market. The rights we have in the state of nature are purely negative in the way that we are free to live as we please, that means that we have a right over our life, liberty and estate, property right in short, and we are free to punish whoever interferes with that right. Entering into society we give up the right to punish by handing it over to the state. This means that we are left with the negative property right only. Locke introduces several rights in the society, for example the right to revolution and majority rule, but I will argue that these rights are subordinate to the property right and therefore only measures to protect the property right.

2.1 John Locke's State of Nature

The state of nature is a condition where there are no institutions, no rules given from a leader and no common interests, besides the very fundamental ones, which are absolute freedom to decide ones actions, values and life in general. Moreover it is a condition where everyone owns herself and is free to own her property, without having anybody interfering and without having to interfere in other peoples' lives. These things are exactly what Locke finds attractive about the state of nature. He gives an example where one man rules the state; this man is free to do whatever he likes against all his people, without having anyone interfering or controlling him. In such a situation there would be nothing to do for the people in the civil society; they would have to put up with him. But if someone behaved like that in the state of nature one could just decide to leave or fight him back. Or one would have to accept someone taking away their

freedom.²⁸

In the state of nature everybody is equal. No one has any more rights or more power than the rest.²⁹ This should result in complete freedom, but it does not, since Locke mentions that there is such a thing as the law of nature. This law liberates everyone to do whatever they want, except in terms of killing. It is forbidden to kill one self and others, unless it serves a higher purpose.³⁰ The only higher purpose that allows a person to kill another is when it comes to punishment. In the state of nature there are no institutions and therefore no court to take a violator to, therefore one is allowed to take the situation in one's own hands and punish a criminal whenever he threatens one's life or property. Locke explains this by claiming that the criminal has put himself out of the law of nature, he so to say lives by another rule than rationality. By doing this he threatens the peace and comfort of the entire species, moreover he violates humankind by not living by rationality, and it is therefore allowed to punish him, even to kill him.³¹ In claiming this Locke at the same time claims that man is rational and is able to judge good from bad, where good is freedom to be able to live as one wishes without that interfering with other peoples' freedom to live as they wish. Bad would be the opposite. We see here a completely negative concept of freedom. Nobody is by the law of nature forced to interfere with other peoples' lives in order for them to be able to gain some freedoms that they would not be able to gain without help. Locke explicitly claims on the very first page of the chapter that deals with the state of nature that: "A State of perfect Freedom *to order their Actions and dispose of their Possessions, and Persons as they think fit, within their bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man*"³². This kind of freedom is opposite to what Locke calls license, which is a condition of complete freedom, without any rules. This kind of freedom though leads to eternal insecurity and fear because when everyone is free to do whatever and there are no rules to regulate behavior every ones lives are

²⁸ Locke, 1988, paragraph 13.

²⁹ *Id.*, paragraph 4 .

³⁰ *Id.*, paragraph 6.

³¹ *Id.*, paragraph 8.

³² *Id.*, paragraph 4.

constantly in danger.³³ Therefore Locke introduces the negative concept of freedom, where everyone can only be free to do whatever she wants as long as it does not interfere with other people's freedom to do whatever they want. Thereby Locke secures every one's lives, liberty and estate. Locke synthesizes those three concepts into the concept of property. This is as far as he goes in terms of obligations towards each other in the state of nature.

The property right is crucial to Locke. He underlines that no one but the owner of the property has a right to that property. He claims that God and nature gives to mankind plenty of commodities. These commodities belong to everyone and are free for everyone to use. But as soon as person A does something with the commodities they turn into being her property. Because person A worked with the thing it becomes her property -that is by working with it. The work that she put in it makes it her property and no one else's.³⁴ Locke restricts the right with the negative concept of freedom though. He stresses that a person can only take so much of the commodities that there is still enough and as good for everyone else to do the same. Moreover the commodities are given for a purpose, therefore one cannot take more than what she needs. If she takes more and it is rotting because she did not use it the teleological purpose or function of the commodities will be unfulfilled. I find this premise important because I later in this thesis will discuss the negative concept of freedom towards others needs for food. The premise goes against Nozick's libertarian view, that one has the right to keep whatever one finds first, even if one finds the only well in a desert with hundreds of thirsty people. But according to Locke taking more than is needed is stealing³⁵, and stealing is putting oneself out of the law of nature and that means that everyone can punish the person. With the introduction of money things look different though. Money is not so easily spoiled with age. Does that not contradict the line of reasoning, because one can take more than one needs and then sell it? Locke denies this. Taking as many plums as one wants and swapping them for nuts, which can last the whole winter, or money, that can last even longer is no problem. The only thing that is important is that you do not have something that you will have to throw away because you took too

³³ *Id.*, paragraph 57.

³⁴ *Id.*, paragraph 27.

³⁵ *Id.*, paragraph 46.

much and it rotted.³⁶ I will explain more on the issue of money in the next section.

What does the state of nature mean? Is it a prehistoric condition or is it a pure imaginative situation? Robert A. Goldwin helps us answer this question in his article: “Locke’s State of Nature in Political Society”. Here he argues that the state of nature is somehow omnipresent, in the way that even in the civil society it is possible to return to the state of nature. When Locke claims that man must give up his freedom to preserve himself in society and leave it to the institutionalized judges, he claims it with restrictions. I will give two examples. The first is an example taken directly from Locke. He claims that if an armed thief is trying to rob you, even only for a small thing, you have the right to defend yourself. In principle you would have to wait for the police to take care of the situation, but in practice there is no time. For all you know the thief might kill you, he is armed after all, and then it will be too late to call the police. Therefore you have the right to step out of the civil society and take the situation in your own hands. As soon as you have taken care of the situation, you will return to the civil society. Locke differs though between the state of nature where everyone lives in peace with each other and the state of war, which is a variation of the state of nature, but where hostility, cruelty, violence and murderer prevail.³⁷ Goldwin claims that it is possible to be both in the civil society, in the state of nature and in the state of war at the same time. He gives an example. Imagine that you are in a dark and empty street and you suddenly see a mysterious stranger walking towards you. He has seen you. In this situation, which Goldwin claims is quite familiar to everyone, you would wish that a police car would turn up. The want for a protective power leaves you in the state of nature, the need for protecting yourself brings you in the state of war, when you overall know that you really are in a civil society.³⁸ The other way, which is actually quite the same as the thief example, just in a higher scale, is when or if the civil society is taken over by an absolute monarch who claims to have power over every citizen and her property. In this way the monarch puts himself in a position over the laws of the society and thereby puts himself above the general agreement, the public good. By this he puts himself in the state of war. Everyone feeling a threat to his life, liberty or estate by him

³⁶ *Id.*, paragraph 46.

³⁷ *Id.*, paragraph 19.

³⁸ Goldwin, 1976, p. 128.

has the right to fight him, in self preservation and for the good of humanity.³⁹ In this claim by Locke I read that people have a right to revolution, when revolution is no more than defending life, liberty and property. My reading of Locke's permission to revolution is strengthened in the following quote:

*“God and Nature never allowing a Man so to abandon himself, as to neglect his own preservation: And since he cannot take away his own Life, neither can he give another power to take it. Nor let anyone think, this lays a perpetual foundation for Disorder: for this operates not, till the Inconvenience is so great, that the majority feel it, and are weary of it, and find a necessity to have it amended.”*⁴⁰

These examples show that the state of nature in either form is somehow always there, surrounding the civil society. I find this, the right to revolution when one's rights are being violated, important because it shows that Locke takes the rights seriously and it supports the view that rights are inalienable and may not be taken away from the individual.

In concluding this section I will highlight two rights that Locke thinks we have in the state of nature. These are the right to ones person and property and the right to punish the people who want to take it away from us.

2.2 Locke's Society

How then does Locke make this fit into a civil society? Already in the section of the state of nature Locke begins to develop his thoughts into the civil society by admitting that there are disadvantages in the state of nature. He concedes that when people are judges in their own affairs it could lead to a contradiction. To think that if a person is so cruel to interfere with the negative concept of freedom then it is odd to think that he at the same time would be wise enough to judge himself for it.⁴¹ This is an emerging step towards his reasoning for the society. A society begins when peers rationally decide to create one institution they all will call the state. Why would they do that? Locke claims that people (because God created us so) have strong desires to comfort and that we do not like to be alone. Thereby we have the path paved for society. That we moreover

³⁹ Locke. 1988, paragraph 16.

⁴⁰ *Id.*, paragraph 168, ll. 8-14.

⁴¹ *Id.*, paragraph 13.

have language and rationality means that we can enjoy the benefits of society.⁴² Therefore peers in the state of nature will decide to hand over the right to punish whoever interferes with their freedom to a neutral institution in order for everyone to live a more secure and comfortable life. Locke stresses that this is only valid if everyone agrees. Nobody can be taken away from the state of nature where she is free and independent without her own consent.⁴³ As soon the consent is given the society binds though. It is not possible to go in and out of the state of nature. Once the consent is given you hand over the right to punish and you cannot take it back, unless in extreme situations, which I explained in the above section. You are now in society forever, except if the society disappears as a result of war, either temporarily between two persons or in a matter of war between states.⁴⁴

Not even in the society with a chosen king or other leader can property legally be taken away from the individual. And this applies both to property and money, that the state cannot take it away⁴⁵. This is a strong claim against taxes and it goes in line with Locke's negative concept of freedom. He does claim elsewhere though that a state cannot be maintained without taxes, and without a state the individual would feel more insecure, so it is only reasonable that every individual in the society pays for the state. The important fact to stress here is that everybody voluntarily entered into the society, so the tax money is not being taken without one's consent. Contrary it is a voluntarily action to pay the state. No one can claim the power over the society and thereafter take what he wants. No one can take any property without the persons consent.⁴⁶ Locke stresses that every time a new tax is being suggested it has to be confirmed by the majority or their representatives. This is because taking taxes is such a fundamental balance between property right of the individual and the survival of the state that the people must decide every time the matter comes up. Locke leaves it open how much they should decide on, but given his otherwise negative concept of freedom I cannot interpret it otherwise than that he would not argue for more taxes than what are needed

⁴² *Id.*, paragraph 77.

⁴³ *Id.*, paragraph 95.

⁴⁴ *Id.*, paragraph 121.

⁴⁵ *Id.*, paragraph 138.

⁴⁶ *Id.*, paragraph 140.

just to keep the state going and to be able to protect the property of the citizens. Given the voluntary consent to enter into society and the right to pursue only one's self-interests it seems unethical if Locke demanded more than just the taxes that are needed to protect the individual. According to C.B. Macpherson, Locke states elsewhere that the poor laborer or handicraftsman do not need to pay taxes. They live only from hand to mouth, and paying taxes would raise the price on clothes, food and other necessities, so if the labor class has to pay taxes the wages have to rise.⁴⁷ This would interfere with the free market though and according to Macpherson Locke is a capitalist and therefore in favor of the free market. According to Macpherson Locke does not think that any institution owes anything to the civil society but is based on agreement between individuals only bound by natural law (rationality). So accumulation of capital through money is based only on consent of individuals to put value on money. Therefore the wage relationship is based only on the free contract of the individuals concerned.⁴⁸ In other words, a capitalistic society. As I wrote in the previous section, before money came into the society every man could take only what he needed or what he had time to eat or use before it rotted. This changed with the introduction of money. Now there is no longer the spoilage limitation on accumulation. This goes both for commodities and for land. With the introduction of money, with which people can get more land than they need for themselves there is not enough land for everyone. This means that some people do not have land but are forced to sell themselves as labor force, which again means inequality in resources. Even with this result Locke insists on the negative concept of freedom, with ownership as the main goal. He explains his way out of the problem of inequality in the following quote:

“There cannot be a clearer demonstration of anything, than several Nations of the Americans are of this, who are rich in Land, and poor in all the Comforts of Life; whom Nature having furnished as liberally as any other people, with the materials of Plenty, i.e. a fruitful Soil, apt to produce in abundance, what might serve for food, raiment, and delight; yet for want of improving it by labour, have not one hundredth part of the Conveniences we enjoy: And a King of a large and fruitful Territory there feeds, lodges,

⁴⁷ Macpherson, 1964, p. 217.

⁴⁸ *Id.*, p. 218.

*and is clad worse than a day Laborer in England.*⁴⁹

In this paragraph Locke claims that being poor in a rich country is better than being poor in a poor labored country because the work of the rich will be credited the poor. If there were no land owners for example there would be no work to get because there would be no factories. Macpherson explains this as even though there is not as much and as good land left for others, there is still enough and as good living left for others.⁵⁰ Macpherson's capitalistic interpretation of Locke is not the only interpretation however. Laslett has a different interpretation and he attacks Macpherson's (and the classical interpretation in general's) view: "*Nevertheless it is gratuitous to turn Locke's doctrine of property into the classic doctrine of the 'spirit of capitalism', whatever that may be. It can only be done by explaining away all the statements which he makes about the origin and limitations of property as obstacles to his true meaning*".⁵¹ Laslett explains that we have natural political virtues towards each other because we not only have the right to preserve ourselves but also the duty to preserve each other⁵². Moreover there lies a virtue in being cooperative and well-meaning towards one another. The results of these virtues are the majority rule, the doctrine of trust and the common contract in civil society. This means that the political virtue is "other-regarding". Robert Grady counter argues Laslett here; in claiming that the most important principle of negative freedom is self-regarding and since it is the most important principle Locke would have to accept the fact that when it comes down to securing one's own property or another's one would choose one's own. This means that it might be that the general political virtues in civil society are other-regarding but fundamentally they must be self-regarding. In other words, a long way down the road we can and will be other-regarding, meaning helpful and cooperating, but when it comes to extreme cases where one can either choose to help oneself or another Locke's negative freedom allows one to help oneself.⁵³ This discussion shows that Locke can be used for several purposes. Laslett's interpretation is liberal and could therefore endorse HR. Macpherson's and Grady's interpretation on the

⁴⁹ Locke, 1988, paragraph 41 .

⁵⁰ Macpherson, 1964, p. 212.

⁵¹ Locke, 1988, p. 106, ll. 7-11.

⁵² *Id.*, p. 109.

⁵³ Grady, 1977, pp. 90-1.

other hand suggests a form of libertarianism. In the next chapter I will show how Locke's theory actually has been used as a starting point for a version of libertarianism.

The concrete way to create a state is to decide on someone who has the power to judge discrepancies. There is a common court to appeal to and it is no longer legal to judge in one's own cases. Therefore Locke concludes that an unrestricted monarchy cannot be the solution in the state, because this regime is able to do anything to its citizens.

Therefore such a regime would still be in the state of nature towards its citizens. This will not do for Locke since everybody is and should be equal in freedom. If the monarch is in the state of nature towards his citizens but the citizens are in the 'state of society' towards the monarch it means that the monarch can kill and punish the citizens and the citizens cannot fight back, because they left that opportunity behind when they entered the society.⁵⁴ Therefore, Locke claims, everybody must, including the legislative power, be equal under the rule of law.⁵⁵ Locke pictures this equality under the rule of law as a body. A body can only turn one direction at the time and that direction is decided by the majority.⁵⁶ Whether the people give the power to one or more people, Locke does not seem to care. The important thing is that the legislative power is chosen to do good for the people (at least the majority) and not himself. Good means here security of property. The reason for this limited legislative power is that every person has only power over property in the state of nature, therefore it is the only power she can hand over to the legislative power, and therefore it is the only power (s)he/they can have.⁵⁷

Now we have a legislative power together with the sentencing. To exercise the legislative power an exercising power is needed. This, the legislative, the sentencing and the exercising power is the modern tripartition of power, and together with the rule of law, which I showed Locke's argument for above we have something that seems like a modern society. The question is if Locke holds this tripartition as a right or just a practical measure in order to uphold the right I already concluded that we have according to Locke, which is the right to property. He does speak of democracy in a

⁵⁴ Locke, 1988, paragraph 90.

⁵⁵ *Id.*, paragraph 94.

⁵⁶ *Id.*, paragraph 96.

⁵⁷ *Id.*, paragraph 135.

positive way although he claims that the legislative power can be one person or more, it does not matter as long as this person/those persons rule according to the principle of property right.⁵⁸ But the fact that the person/persons must be chosen by the people, at least by the majority, suggests a kind of democracy. It is not though the modern kind of democracy we know it to be today where the state must take minority rights into consideration as well as a number of positive measures towards promoting freedom in a positive way of the term. But the question remains the same, does he think of this as a right or just a practical matter? I suggest the latter option, because the only reason to join a society is to secure one's property. He then gives practical examples on how a society could violate that security, e.g. by a tyrant. He discusses different options and ends up with the above mentioned kind of democracy. I think this means that it is only the best way to secure the real right, which is property right. At most we could call the "right" to democracy and rule of law a second order right, made to secure the real right, property right, which would then be a first order right. This means that at the end of this section Locke has still only given us one right and that is right to property, in the negative sense of the definition. Everyone has a right to property and a right to noninterference with it. If anybody interferes the state must take measures to judge and punish the intruder. That is all; the tripartition of the state could have suggested a right to democracy with all it leads to, from minority rights to freedom of association etc., but as I have shown the tripartition is only a practical matter and therefore it does not bring any rights with it.

In the remainder of this chapter I will use some space to discuss an article by John T. Bookman where he asks if people would actually consent to Locke's civil society, which Locke is so sure of. The article is interesting because it takes Locke's utopia and brings it down to earth by questioning its realistic capability. First Bookman asks if there is a realistic way of opting out of society. Again something that Locke claims that there is, nobody is forced to live in the civil society. But Bookman argues, even though there might be a possibility of revolution, to change the government, one is still left with the entire civil society, the institutions and the majority rule. This means that even though one has gotten rid of the government one is still obliged to obey the majority,

⁵⁸ *Id.*, paragraph 85.

which is how Locke imagines the society. Just because the government is gone it does not mean that the way of ruling and taking decisions will change. Another possibility is that both the government and the civil society satisfy the criteria of a 'good' state. If one is dissatisfied with the structure, what then to do? Locke mentions the possibility of emigration and building up a new society anywhere there is still free space.⁵⁹ Bookman calls that liberty empty in today's world where every piece of land is occupied.

Therefore there can be no opting out, we are born into civil society, it is not something we choose.⁶⁰ This is important because Locke believes that people by nature grow to be rational creatures with a free will. But being born into a certain society would violate the free will to choose how one wants to live. Bookman's next question is that if we hold life, liberty and property as rights to be protected in the best way, would we then choose Locke's option? Bookman finds it doubtful. First he mentions the problem of the majority rule. This kind of democracy could turn into a utilitarian regime where the majority rules over the minority. This leaves the life, liberty and estate of the minority in great danger. Locke says himself that the role of the government is to ensure public good.⁶¹ If it is up to the majority to decide the public good, they might choose the utilitarian regime. It is for example in the public good to use a limited amount of people as test persons for new medicine, cosmetics or surgery. Locke's civil society does not guarantee any rights against a government that has the majority's support. It is only when people are generally ill treated that there is a legitimate possibility of revolution. Therefore, Bookman concludes, people would refrain from choosing Locke's civil society.⁶² I think Locke would counter argue by claiming that every individual has the right to go back to the state of nature when someone is directly attacking their life, liberty or estate. This means, to use my above given example, that when the government's agents come in the middle of the night to take you to the secret hospital for experimental surgery you are free to fight, defend yourself and kill. The minority who stands on your side are free to join in the fight. This will solve the small scale problem on first sight. But taking this further means that if the agents know that there

⁵⁹ *Id.*, paragraph 113.

⁶⁰ Bookman, 1984, p. 360.

⁶¹ Locke, 1988, paragraph 136.

⁶² Bookman, 1984, p. 363.

will be a fight whenever they take a person they will just gather even more men. They are the majority after all, so when it comes to numbers the majority will win. Therefore this hypothetical counterargument fails. I am not claiming that Locke wanted this regime to rule, I am mere suggesting that it could turn out that way in practice without more restrictions on the government. Peter Laslett interprets Locke's § 107 in the way that men must have trust in each other in order to live in a society; Trust, both in each other and in the governors⁶³. Trust we can have because we all have such a thing as natural political virtue. Laslett explains this virtue as something we all possess because we are disposed favorably towards each other by nature and because when we, in society or elsewhere, discuss things with each other the tendency of what we say and do will be towards the politically efficacious, that will work out for all of us.⁶⁴ The claim is backed up by Locke, who puts stress on reason in the state of nature and the fact that he thinks that people are, by nature, good. For the most part we do not need a government, we are perfectly capable to live together and cooperate without killing each other.⁶⁵ This suggests that Locke would simply dismiss Bookman's critique as contradictory towards human nature. Even though Locke thinks man is good by nature he takes security measures, by tripartition of power, rule of law and by majority rule. But even if one accepts Locke's hypothetical dismissal of Bookman's critique I will still recommend one not to believe too much in people's natural political virtue. The thing is that if it comes down to preserving one's-self or another one has to choose to preserve one's-self in order to be consistent with Locke's negative concept of freedom. This means that the only right which is truly innate and inalienable is the right to defend oneself based on the negative concept of freedom.

The last critique from Bookman I will use here is that of who gets to be in the majority rule? Is it everyone or only those with property? Property is very important to Locke, so it might be the latter case. According to Macpherson this indeed is the case. He explains that only those with estate have a full interest in the preservation of property and only they are fully capable of the rational life which is the necessary basis of full

⁶³ Locke, 1988, paragraph 142.

⁶⁴ *Id.*, paragraph 138.

⁶⁵ *Id.*, paragraph 19.

participation in civil society.⁶⁶ By this he divides civil society in two classes, those with property and those without, where those with estate are the more rational.

If however it is the case that everyone can join in the majority rule the system will be rejected according to Bookman, because those without property might want a redistributive welfare system, which will interfere with the negative liberty right of the property owners. Therefore the property owners would not consent to such a system.⁶⁷

The other option, that it is only property owners who have access to the government, could turn out to be a better option even for the property-less. The alternative to this model is after all the state of nature and one could suspect that in almost every society property-less would be better off than in no society.⁶⁸ The property owners would develop the society so that even the worst off would be better off. For example could the schools and hospitals be better in a society with many property owners. Property owners mean tax money to the state and tax money means better infrastructure for all. In a liberal society where entrepreneurs build new factories all the time there are good opportunities for the property-less to gain property by getting a job and thereby money. There is a chance of class mobility in states with property owners. But as Bookman notices, this is true for every society, not only Locke's, so why choose Locke's option when there are better (in terms of more redistributive) options?⁶⁹ I believe that Locke would hold on to his concept of negative freedom and claim that it is such a fundamental right that everyone rationally would want to protect it. Therefore it is impossible to ask people to reduce their liberty for the sake of the property-less. They simply would not agree to create such a society. He might very well be right, but that does not answer why the property-less would choose Locke's society and not another. Locke's only option is to claim the state of nature as the only other option, but I have already shown, through Bookman, that the state of nature is not the alternative.

Does this critique mean that Locke's theory is useless for my further research? No, because it still has some important elements I can use to argue against the loose fundamental explanation of HR I discovered in the previous chapter. The element that I

⁶⁶ Macpherson, 1964, p. 248.

⁶⁷ Bookman, 1984, p. 365.

⁶⁸ *Id.*, p. 366.

⁶⁹ *Ibid.*

will stress is that Locke builds his theory on a fundamental assumption about human nature and interaction. From this he develops some rights which are in a stringent line with human nature, which makes the rights innate and inalienable. This is an important counter position to the previous chapter. From the first premise of individual rights Locke builds a society, again in a strict line with human nature, as he sees it. This makes his line of thought logically coherent. That Locke does not give a realistic alternative to the state is not a problem for my conclusions, because as we shall see in the next chapter Nozick develops a society where there is room for every kind of society one wants within the state. Thereby people are actually free to start a new society. Since Nozick builds his theory on Locke's I think that Nozick's society can also help Locke out of the criticism from Bookman.

2.3 Concluding Summary

In this chapter I have shown that there exists a theory about rights that lives up to my criteria that a right should be innate in order for it to count as an argument for claiming the right. Locke shows that rights, the life, liberty and estate, are innate. He shows this by referring back to the state of nature, where these rights also are applicable. He also shows though that there are problems with protecting these rights in the state of nature and it is therefore individuals agree to build a society. Since it is exactly because they want to protect their rights that they build a society it is only logically that they take their rights with them in society. Thereby rights are the foundation of society and not the other way around as we saw with Donnelly, claiming that because there is international consensus on HR they must be applicable. Thereby Donnelly takes first the society and thereafter creates rights that apply to this particular world order. Locke argues the other way around; that the world order, or society as such must be built up in a certain way to protect the rights that people already have. In the next chapter I will show how this society must look like according to a more modern philosopher, Nozick and how the right to life, liberty and estate, or property right, as he calls it, is best protected.

Chapter III: Libertarianism

In the last chapter I showed how Locke explains the creation of society and which rights people take with them from the state of nature. I showed that the rights people have are natural rights. Rights people have just for being people. I also showed that the rights were purely negative. In this chapter I will describe the theory of Lockean libertarianism. As the name indicates it builds on Locke's definition of rights and the negative concept of freedom. Lockean libertarianism is opposing the UDHR, in claiming that the only truly innate right people have is property right. The core of the libertarian theory is that everyone must be free to live her life according to her own values and plans. For the structure of society this means among other things that paying taxes is an interference with this for many reasons. Partly the individual could want to spend the money differently and partly she has to work more to earn the same amount of money as without paying taxes. The consequence of the rejection of paying taxes is that UDHR cannot function. (E.g. the right to free education, health care and food cost money, and it is paid by the taxes) This is not a problem to libertarians though, since they hold that people only have negative rights and not right to be supported in any positive way. I will explain the libertarian theory as Robert Nozick defines it in his *'Anarchy, State, and Utopia'*. The book is theoretical and does not include discussions about human rights. Therefore I will introduce Jan Narveson to discuss the theory in more practical matters. Narveson is not a Lockean libertarian; therefore I will not use him in outlining the Lockean libertarian theory. Narveson is a contractarian libertarian. This version of libertarianism does not operate with rights as innate or natural, but rather agreed on as a contract. The reason I use exactly him in spite of his contractarian theory is that he gives practical examples and real-life considerations of what it means to have a right in his conception. Because Narveson is not a Lockean libertarian I am, when I am claiming that libertarianism sees rights as natural, only referring to Lockean libertarianism. I will use a lot of space explaining the theory because I want the reader to get a full understanding of libertarianism, its arguments and its suggestions to a better world. The reason why I have chosen Lockean libertarianism as my counter theory to Donnelly's version of Human Rights is that it has the philosophical features that I miss

in Donnelly's definition of Human Rights, but it leads to very different conclusions. This makes it interesting as well as dangerous for not only Donnelly's theory of HR, but also the other defenses for HR I describe in this thesis.

3.1 Creation and Justification of the Minimal State

Nozick builds his establishment of the state the same way we saw Locke did it, only Nozick is more detailed in his explanation. In the state of nature we saw in the last chapter that everyone was free to defend herself. This has some inconvenient consequences. For example that it is difficult to be impartial in one's own affairs and that everyone can claim to be harmed according to their own standards, even though she might not have been objectively harmed. This leads Nozick to seek for an agency to protect people and to decide whether they have been harmed or not. All the citizens have to do to be protected is to pay the protective agency. Nozick lets the market decide which agency in practice gets a de facto monopoly on using violence. Thereby he follows Locke's demand that one will only enter the society from the state of nature if the power to protect oneself voluntarily is handed over. The voluntariness to hand over power over oneself is crucial to the free, independent and rational person. This libertarianism takes very seriously. For them it leads to the consequence that the state cannot have any higher goal than its individuals each have. This means that the state cannot be redistributive, because redistribution means that the state takes something (most often money) from the individual and gives it to something or someone it sees fit. Thereby it overrules the life plans of the individual and uses her for the sake of others. This is disrespectful of the person and his life.⁷⁰ The argument builds on the Kantian categorical imperative. Here we see a different use of the word 'respect' than the one UDHR seems to use. Where UDHR wants to help people out of respect towards them, Nozick claims that respect is to leave people alone to do what they want. There is no social entity, only individual people with their own individual lives, therefore the only public body that can decide over people is the protective agency, and it can only do so because people agreed so on rational egoistic basis.

⁷⁰ Nozick, 1974., p. 33.

3.2 The Entitlement Theory

*“The minimal state is the most extensive state that can be justified. Any state more extensive violates people’s rights.”*⁷¹ When Nozick in this quote speaks of people’s rights he is referring to the Lockean rights to property. Everyone owns their own body and skills. Therefore they own what they can make with the skills. This means further that they own the money they can get in exchange for what they make. Therefore, the conclusion is, it is theft when the state (or anyone else) takes some of the money for taxes or anything else. Theft is an interference with the negative concept of freedom, which I showed in the previous chapter. The argument goes in line with the refusal to accept any given value of life the state sets out. The state will use the taxes for redistribution, but without asking the owner of the money (before the state took it) what to redistribute the money to. In that way the state ignores your values in life and uses the taxes on what it sees fit, for example protecting HR, without your voluntary consent. This, claiming taxes for redistribution, is seen as disrespectful to the ‘right’ owner of the money. Nozick builds up his argument for the above through his entitlement theory. This theory consists of three topics. The first one is called ‘the principle of justice in acquisition’ and claims that the original acquisition of holdings must be just. The second topic is called ‘the principle of justice in transfer’ and deals with the justice of transferring holdings⁷². The last one is a bit more controversial from the ‘minimal state point of view’. It is called ‘the principle of rectification’ and claims that if the original acquisition was not just after all and some people have their rights violated as a consequence of it, the state can, for a limited time, claim extra taxes to compensate the people who got their rights violated.⁷³ Nozick does not explicitly say who this might have been historically speaking, but it could very well have been for example the African people during colonization. The Africans owed the land, it was their property and the Europeans did not have any right to enter their property and act as though it was unowned. Nozick claims that if everything has been done justly, both in original acquisition of the holding and in the transfer, nobody can be justified in taking away the holding, this means that the state is not justified in taking taxes, if money is the holding

⁷¹ *Id.*, p 149.

⁷² *Id.*, p. 150.

⁷³ *Id.*, 231.

in question.⁷⁴ To underline the justice in the entitlement theory Nozick has constructed an example with a basketball player Wilt Chamberlain (WC). WC is very good at playing basketball and people enjoy watching him play. He therefore makes a contract with a basketball team, that for every ticket that is bought to see the team play on their home field 25 cent of the commission shall go to him directly. The season starts and people cheerfully buy their tickets and put 25 cent in a separate box to WC. At the end of the season WC is logically much richer than the rest of the players on the team. Is this unjust? Not according to Nozick, because the team voluntarily made the contract. They might even have become richer themselves, since more people bought tickets to the games to see WC. The people who bought the tickets also did it voluntarily. Nothing in this situation is unfair, therefore WC is entitled to his money, even though he is now richer than the average citizen and therefore has contributed to inequality in society.⁷⁵ *This example tells us that Nozick does not see socio-economic equality in society as an intrinsic value. And it shows us that redistribution of income (taxes) interferes with people's lives. If WC did not get the contract with the additional 25 cent he would not have joined the team. If he did not do that the people would not have seen them play so much, which means less income to the rest of the players. WC owns his talent and therefore he owns what he can earn using his talent. According to G.A. Cohen Nozick can summarize the WC example the following way:*

1) Whatever arises from a just situation by just steps is itself just.

Steps are just if they are free of injustice, and they are free of injustice if they are fully voluntary on the part of all legitimately concerned people. Hence:

2) Whatever arises from a just situation as a result of fully voluntary transactions on the part of all legitimately concerned people is itself just.⁷⁶

In other words, in whatever society there is, it could be as egalitarian as it wants, when the basketball fans voluntary pay 25 cent to watch WC play it is a just transaction. But according to Cohen there is a difference between what one thinks will happen when she pays 25 cent to somebody and what will actually happen. The ticket buyer thinks she will watch WC play and that is it. But it does not end here according to Cohen. When

⁷⁴ *Id.*, p. 151.

⁷⁵ *Id.*, p. 161.

⁷⁶ Cohen: 1977, p. 7.

WC gets all the money he moves up a class, which gives him more power, possibility for corruption and speculation. Moreover it could very well turn in to a class divided society. It does not really matter of course if it is only WC who is in that position, but the example is indicative for every transaction. Therefore it can shake an otherwise egalitarian society. Do the people who pay to see WC really want that? Would they still pay if they knew the consequences? They might, but they might also not and therefore Nozick is not correct in assuming that voluntary transactions are what people want, and that it is self evident that such a model is always just.⁷⁷ This casts a shadow over the principle of justice in transfer.

Apart from Cohen's egalitarian critique the entitlement theory, which is crucial to Nozick's version of libertarianism, it also contradicts Donnelly's definition of a right. In chapter I I outlined that Donnelly defines to have a right to x means that the person A is entitled to x. Moreover, if x is threatened or denied, A can claim from the duty-bearer B that she takes measures to give x to A. I showed in this section that Nozick finds taxes to be violating the justice of transfer. The same goes for other involuntary transfers. Like for example if A, according to UDHR has a right to food⁷⁸, and B happens to have food, maybe even more than she needs, then A is entitled to claim some of the food from B, even though B does not want to give A the food. Since this is an involuntary transfer of food it is an unjust transfer according to Nozick. Therefore the absolute right to food should be dismissed. The same goes for many other positive rights from the UDHR, like right to medicine, health care, water and education.

3.3 Entitlement II –Right to life

I will now focus on the consequences of Nozick's first topic of the entitlement theory because it raises some interesting issues about human rights, e.g. the right to life. Nozick claims, on the basis of Locke's theory of appropriation (see the previous chapter) that a holding is just if the original acquisition is just. In that he also recognizes the limit Locke sets on appropriations, namely that, that there must still be enough and as good for everyone else after the appropriation. This Lockean Proviso means for

⁷⁷ *Id.*, pp. 7-10.

⁷⁸ UDHR, 10. December 1948.

Nozick that if one woman bought all the wells in the country she would have to be fair on her prizing the water to the other people in the country, also interested in the water, obviously. Does this mean that Nozick after all recognize the UDHR right to life? I will answer this question with the help of Nozick of course and thereafter the Canadian philosophy professor Jan Narveson, who has a different angle on the answer. In a footnote Nozick refers to Ayn Rand's theory of property rights which, according to the footnote, claims that a right to life is not a right to certain things or products, because other people can have property rights over the things, but a right to be able to strive for whatever one needs to live. In the same footnote Nozick concludes on the basis of Rand's theory that the right to property comes before the right to life when it comes to material things.⁷⁹ The Lockean restriction on the example says that if you do own the only water hole in the desert you may not charge what you want for the water in it. There has to be a chance for others to use it at a reasonable prize. According to Nozick's claim that property rights comes before right to life, he claims that it would be a different matter if the water hole owner did something with the water hole in order for it not to dry out. Then the owner has a stronger property right over the water hole.⁸⁰ The reason for this is that if one person did something to a water hole in order for it not to dry out, others could have done the same to other water holes (there was still as many and as good left for others to try). It is not the water owner's fault that the others did not manage to prevent their holes from drying out. Therefore, to go back to Donnelly's definition of a right, A cannot, according to Nozick, claim B's (the water hole owner) water, even if it is a matter of survival. The same goes for the next example of the same, with a medical researcher who synthesizes a new drug that effectively can cure a certain disease. Even though there is a great need for the drug the medical researcher does not need to sell it at a certain low prize, because there is still enough and as good herbs to collect to make the same drug. Therefore the researcher does not meet the Lockean restriction on appropriation. (This argument clearly goes against UDHR's article 25, which specifically claims that everyone has right to medical care⁸¹) It is only if he took the last plant, essential to the making of the drug that he has to be reasonable.

⁷⁹ Nozick, 1974, p. 179.

⁸⁰ *Id.*, p. 180.

⁸¹ UDHR, 10. December 1948.

Jan Narveson has a different answer than Nozick, which does not include the property right, but instead asks where to set the limits of liberty. In this way the question about right to life will be a question about how much interference with B's negative liberty A can claim in order to stay alive (if A is for example starving to death without B's help). The negative concept of freedom claims that B is not allowed to preventing A from eating, but neither can A demand that B feeds her even though he could perfectly well have given A some of his food. The consequence is that B cannot do what she wants (stay alive) which is a restriction on her liberty. But Narveson argues that this kind of liberty is positive; demanding B to feed A is violating B's negative liberty. Narveson concludes that it comes down to action versus non-action. Is not giving money to the children of Ethiopia the same as actively murdering them? In that case the reader should not be sitting down and reading this thesis but instead go out and save whoever is in need; People non-actively murder people all the time. Therefore it seems intuitively wrong to equate an action and a non-action. B not actively feeding A is a non-action. Therefore A cannot blame B for violating her liberty when he is not feeding her.⁸² The UDHR article 25 does not explicit claim that one has to feed the hungry, but it does state that everyone has a right to food, which indirectly implement someone to feed them. In this way Narveson's action vs. non-action theory contradicts the UDHR. This is a problem for the defenders of UDHR because without a motivation factor to motivate people to actively act on other people's needs UDHR becomes empty paragraphs. Libertarians like Narveson could state his non-action argument and UDHR defenders would stand without a motivation for helping people in need. This suggests a stronger formulation of the demand for the duty bearer in the UDHR.

For the sake of it I will just mention that it is not so that Nozick and Narveson necessarily enjoy watching people starve or suffer. Nozick claims that everyone is free to donate as much as he wants to whomever he wants. The thing that he is opposing is not helping people in need, but the fact that the state forces one to do it. Narveson also claims that charity is a moral good, which should be supported and approved of, but if one after all has an opposite conception of what is good he need not join bureaus of

⁸² Narveson, 2001, pp 37-8.

charity, it should be completely voluntarily, with conscience as the only enforcing factor.⁸³

3.4 Voluntary Exchange of Goods

So far we can conclude, at least, that Nozick puts value on the free choice to do what one wants with their life.

In the documentary movie, *The Cooperation*⁸⁴ there is a speech by Michael Walker from the think tank “Market solutions” under the Fraser Institute. He explains the social irresponsibility of big companies like Nike. The companies work the strategic way that they move a factory to a very poor place in the world. People get jobs there; they have to, because otherwise they would starve. The jobs are really miserable and so are the wages. It is preferable to starving, but not more than that. As soon as the workers are not starving anymore they start calling for a higher wage and better working conditions. When that happens, the company moves the factory to a new poor place and the story starts over. In the movie Michael Walker calls this strategic moving around exploitation. But is it really? Did the workers not choose to work there themselves? Was it really a choice when the alternative was starvation and death? Nozick claims that it is really a free choice. He assimilates the situation (not the situation from the movie, but the situation where a worker can either work or starve) with a situation where people want to get married. Even if the person one wants to marry the most decides to marry someone else it is still a free choice to find someone else to marry. Even if it is not choice no. 1 it is still a choice. So the supply of mates and jobs can be wider or smaller but whatever one chooses it is a free choice. The worker voluntarily decides to work or not.⁸⁵ Thereby Nozick counter argues great parts of the ILO charter, because when one voluntarily decided to work somewhere, with the knowledge of the conditions, he must accept it as it is. Of course he can try to change things once he is in, but he does not have a right to things being differently. Partly because it is his own choice to work there and partly because nobody, not the workers, not the state and not the ILO charter has the right to interfere with the owner of the factory’s private property. Nozick calls the above

⁸³ *Id.*, p. 264.

⁸⁴ ‘*The Cooperation*’, available at www.youtube.com/the_cooperation/case (consulted at 3/3 2012).

⁸⁵ Nozick, 1974, p. 263.

way of reasoning 'voluntary exchange of goods'. The worker has her hands, head or whatever is needed to do the work and the employer has the money. Their arrangement to exchange goods is voluntary.

3.5 Utopia

The above exchange of performances and wages works both when one applies for a job and when one enters society. No association will admit a person who has nothing to give, or if the society loses more than it gains by letting him enter. If everyone is free and a rational egoist she will not let anybody enter who takes more than he gives. Nor would she enter a society where she gains less than in another society. Therefore tyrannies are practically excluded from Nozick's utopia, because no one would enter a society with a tyrant. A person can always shape a society according to her wishes, the only constraint is that other people will have to like it too, otherwise they would not join, but join or create another society, which leaves your 'society' empty.⁸⁶ This model for building up a society is a critique of ideologies that force people to live according to a person's wishes and ideas. Nozick retains that people are different and therefore the best society is where people can live according to their own wishes and values.⁸⁷ With this foundation he claims that there is no reason to think that there is one community where all people in the world want to live. Some want to live in mountains, others in cities, seashores, deserts and so on. Actually, Nozick claims, there is much reason to think that everyone will not choose the same community. Therefore Nozick's utopia is a place filled with small utopias. A place liberal enough to hold many different small communities. A place where people voluntarily can create their own little utopia with whoever wants to join on the given conditions. A place, where no one forces one to live in accordance with his vision of the good life.⁸⁸ This kind of utopia is open to almost any kind of smaller utopias, so almost nobody would disagree with this utopia. Nozick writes 'almost nobody' since it is possible that tyrants and other who would like to force people to live according to certain values have no place in this utopia. I find it important to mention that the UDHR under these premises would force people to live in a certain

⁸⁶ *Id.*, p. 302.

⁸⁷ *Id.*, p. 309.

⁸⁸ *Id.*, p. 312.

way, since the protection of UDHR demands taxes, which are used to protect certain areas that the individual paying the taxes might not agree with. –A clearly violation of the negative freedom, unless of course all the people wanting to protect UDHR gathered in one society and everybody voluntary paid her taxes, and that UDHR defenders did not force other societies to join.. Again I will refer to the problem UDHR has when it refrains from motivating people to protect HR. Without a motivation or an explanation why HR should be protected rational self interested people could be suspected not to enter a society A that helps other societies with the tax money from the people in society A. I believe that since UDHR defenders clam that HR are universal, and that the protection of HR in Nozick’s model for utopias is contingent, HR defenders would not abide by it. HR are simply too important to protect for HR defenders.

All that is demanded to make this utopia work is an administrative and protective agency to deal with migration and immigration, as well as protection so that people truly can live in accordance with their negative freedom. In other words, a minimal state. In the previous chapter we saw that Locke had a problem, according to Bookman, in explaining exactly where the people unsatisfied with the state should go and make a new state according to their wishes. I claimed that Nozick could solve the problem for Locke. I believe that I just showed that. In the minimal state with only a bureau taking care of registering immigrants and migrants as well as a protective agency there is plenty of space to build up whatever society one wants, just within the limits of the negative concept of freedom.

3.6 Narveson’s Definition of a Right

*“Individuals have rights, and there are things no person or group may do to them (without violating their rights).”*⁸⁹ This claim is the very first sentence in Nozick’s major work, *Anarchy, State, and Utopia*. Throughout his book though he never explains exactly why we have these rights. Narveson though uses a linguistic definition on which rights and why we have them. He claims that when claiming that A has a right it entails that A has a right against B. This means that some action or non-action of B is required. B must refrain from doing something because it is wrong towards A or do something

⁸⁹ *Id.*, p. ix, ll. 1-2.

because it would be wrong towards A not to do it. Now we can say that A has a right against B to do x entails that B has the duty to do y. This definition is what Narveson calls the correlativity of rights and duties. There is now two ways of looking at the definition. The stronger view claims that A has a right against B if and only if B has a duty with respect to A. The weaker view, which Narveson uses, claims only that of A has a right, then B has a duty. The weaker view does not claim that every duty we have is a duty grounded in someone else's right. So far so good. But which rights can A claim against B? If A has a right to do something the answer must clearly be that B has a duty not to prevent A from doing it. In other words B must let A do what she wants. Not preventing from or letting are *not* actions, but non-actions. This means that B's duty to do y is a non-action which again means that A can only claim her right to non-action from B. This leaves A with a right to negative freedom, logically and coherently defined.⁹⁰ Thereby Narveson navigates around the question of why we have the rights we have and who gave them to us. Instead he turns to semantics and leads us to the conclusion (negative freedom) through premises from where the conclusion logically follows. One could though question the definition of a right as a right *to do* something. This is a different definition than the one given in UDHR. Here a right is not only defined as the right to do something but also the right to have something, e.g. the right to food⁹¹ is not only a right to planting and harvesting (an action) but also a right to get food if one is starving. The difference between UDHR's definition of a right and Narveson's is interesting, because UDHR's definition clearly demands that there is a society or some kind of institution or at least other people around you that can help you fulfill your rights. If you have not only a right to harvesting but also a right to be fed, then it demands that there are people around you to feed them. Narveson's definition does not demand that. According to his definition of a right, the right can in principle be fulfilled on a deserted island where only you are left. The paradox is that as I showed in chapter I that Donnelly defines rights as being inalienable to people. But if they are inalienable they have to be able to be fulfilled on the deserted island and Human Rights cannot live up to that since they demand a duty bearer. This makes Narveson's

⁹⁰ Narveson, 2001, p. 42.

⁹¹ UDHR, 10. December 1948.

definition stronger in the sense that rights are inalienable, since they do not necessarily include any duty bearers. Narveson pictures the right to do x as a football match, where each player has the right to *try to* make a goal but no one has a right to make the goal. This means that you cannot throw dart arrows in the player's chest just before she tries to score and thereby preventing her from making the goal, but you can stand in front of the goal and try to catch the ball so that she does not score. Everyone has the right to do the best she can, but no one is promised to win.⁹²

3.7 Property rights

In discussing the right to property Narveson argues that the right to property actually is the only fundamental right there is. All other rights derive from this right. This is so because one owes herself, meaning that one has property in one self. Above I showed how people only have rights to do something not to have something. So if one has property right in herself she can decide over herself to do anything; and here it ends. No one has property rights over anybody else than oneself therefore she cannot decide over others to do something for her.⁹³ When all rights can be reduced to property rights it does not only affect the economic, social and cultural rights which is commonly said to demand something of others. It also affects the civil and political rights. Narveson gives an example of free speech taken from Murray Rothbard's '*Power and Market*'. He claims that such a thing as free speech⁹⁴ is not a right in itself either. A right to free speech is bound to a place where the free speech will take place. And if I have a right over my property, for example a field, then you cannot decide to have free speech there, because it is my field and therefore it is I that decide whether you can speak freely there or not. If everything is owned by private people and not collectively owned then it is up to each of the private individuals to decide what is allowed on their property. Therefore the only right there is is property right.⁹⁵

⁹² Narveson, 2001, p. 43.

⁹³ *Id.* p. 66.

⁹⁴ UDHR, 10. December 1948.

⁹⁵ Narveson, 2001, p. 67.

3.8 The Market

Insofar there are property rights there is a market and if everything is owned by individuals then there is a full market. In such a situation everybody just aims to maximize her utility from her own production and the result will be that everybody gets the full out of the market. According to the libertarians everything should be based on market premises. There should be no such thing as private and public sectors, everything, such as education, health care and general welfare should be in the private sector and thereby on the market. Only the rules for the market itself could be regulated to avoid fraud etc⁹⁶. This means that the UN or other international institutions has no place in demanding health care or education to all, actually no one can demand anything, because the market decides. The problem with UN demanding health care and education is that according to Narveson the Lockean mutual consent of rational individuals would be violated. People do not want to pay for things they do not need, for things that have no value for them. The straight forward reply to that would be that everyone wants health care at some point in their life. But if this is the case then the market would be happy to deliver insurances people could sign up to. Why make it compulsory then and thereby violate the Lockean free consent and the negative freedom, if the market could provide the same insurance on voluntary basis.⁹⁷ Regarding education Narveson claims that if this, and the same applies to health care and other positive rights, really is a right then why do we not pay for it in other states than our own? If it is a universal right then not only people in state x should have it, then the rest of the 7 billion people on earth should be given an equal amount of money. State borders are irrelevant when speaking about universal rights.⁹⁸

The only right which is secured by this model is the property right, this is what every individual bring to the bargaining table. What the individual comes out from the bargaining table with is depending on the market. The market is supposed to give people a free choice to live their lives according to their values. One can work less and thereby earn less money, but that is her choice. Narveson gives an example of this by referring to the Mennonite community. According to Narveson they have apparently

⁹⁶ *Id.*, 190.

⁹⁷ *Id.*, p. 246.

⁹⁸ *Id.*, p. 279.

chosen a life with much work and little money, since they work hours and hours on handmade items for which they get very little money, instead of using a machine to do the work.⁹⁹ The same applies to philosophers and religious groups. If they decide to preach instead of earning money it is their choice. Put their theories or services on the market so they can earn a living by doing what they want to do. This is freedom in practice according to libertarianism. (And a very democratic approach to truth and knowledge if I may say so, but that is a different discussion). I will give two further examples of private property in Narveson's understanding of it. The first has to do with safety. Does the owner of a shop for example have to make sure that the shop is not falling down on the customers while grocery shopping? Not according to Narveson's understanding of libertarianism. If safety is important to the customers then it will automatically be on the market. In that way the customers for whom safety is important can go to shops where safety measures have been taken. They will probably have to pay more for the goods there, to compensate the prize of the safety measures for the shop owner, but that is a choice they have made.¹⁰⁰ Narveson uses a shop as an example but with everything being privatized in the libertarian world the example could also be a school, a hospital or a street. With this example Narveson dismisses the right to life in the positive understanding of it. Everything is privatized so there will be no official body to expect positive measures from and the shop-school-hospital owner is not responsible for the client's safety. Everything, even so called 'rights', is subject to the right to property and thereby the market. The other example on private property I will make is about discrimination. Discrimination is defined as A treating B and C differently for morally irrelevant reasons. (I am aware of slightly different variations of the definition, but this is the definition Narveson uses himself, and it is sufficient for the example in question.) In cases where the discrimination has hiring as its object Narveson claims that there is no such thing as discrimination. The owner of the business can do exactly what she wants, including hiring people for whatever reason she has. The business is her private property and on it she can do whatever she feels like. Moreover no one has to go into business at all. Going in to business is completely voluntary. And

⁹⁹ *Id.*, p. 199.

¹⁰⁰ *Id.*, p. 308.

if no one has to work there, then the owner does not have to hire anybody. If she does not have to hire anybody then she certainly does not have to hire C, even though he would be competent for the job. And therefore it is not discrimination when the owner of the business in question hires B and not C, whether it is on the basis of race, sex, religion or whatever.¹⁰¹ The examples underline that Narveson dismisses the UDHR, where people have responsibilities towards other people just because they are people.

3.9 Narveson on Foreign Aid

In the International Covenant of Economic, Social and Cultural Rights from 1966 it is claimed that: *“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”*¹⁰² The article stresses the need of economic aid for poor states in order for them to protect HR as well as the duty for richer states to help. Narveson does not agree with the article, therefore I find Narveson’s perspective informative to lighten. In the article ‘*Welfare and Wealth, Poverty and Injustice in Today’s World*’ Narveson attacks the egalitarian view that A having more than B equals injustice. He claims that they do not give any reason why this is so. He claims that they claim it to be an objective moral truth. Narveson rejects this by claiming that it is a preference that they want equality, and preferences are per se subjective. And enforcing one’s subjective value on others and thereby changing their life plans is a serious violation on the negative freedom. If there is a situation where A gets 4 points of welfare and B gets 6 points and another situation where they both get 3 points the egalitarian would choose the latter situation, which according to Narveson is irrational, because they both get less points. The situation could also be that A gets 9 points and B gets 2 where the latter situation being the same, 3 and 3. In this case A might have been lucky, perhaps even for no fault of his own, by having good genes and growing up in an intellectual stimulating environment

¹⁰¹ *Id.*, pp. 315-6.

¹⁰² ICESCR, article 2, 16. December 1966.

and so on. Egalitarians would equalize this, which is incomprehensible to Narveson, who claims that punishing the lucky A for being lucky is just as arbitrary as punishing the unfortunate B for not being lucky. If someone arbitrarily does something to one (A) but not the other (B) he is discriminating. As we saw earlier in this chapter discrimination is not a problem if it is done privately and with one's own money, but when it is done with other people's money, taxes that is, it is a problem to Narveson. Narveson's suggestion is instead to refrain from neither doing anything to A nor B. If we translate this into a real world scenario it says that Narveson claims that the lucky people in rich states are not obliged to donate money (or anything else) to the unlucky people in poor states because it is of no fault of the rich that they are rich and lucky and the others poor and unlucky. But is it not the rich states' fault that the poor countries are poor? Not according to Narveson. He claims the opposite that trading with the rich countries has made the poor countries richer, and not poorer. Moreover, Narveson claims, are the poorer countries' people not necessary more unhappy than the rich countries' people. Therefore we should be very careful not to disturb their way of living by imposing our conception of welfare on them.

Why are the poor countries poor then? According to Narveson it is because their governments will not let the people work in an efficient way. They are keeping away from the kind of trade relations with richer states that would make the states and their people richer. Moreover, in many of the poor states the governments steal whatever money there may be in the country and use it for its own purposes, like palaces, cars and torture chambers. Another problem is restriction on the free trade set up by for example EU which subsidizes agriculture internally and discriminates against import from other countries. Instead of free trade we give the poor countries Foreign Aid. According to Narveson there are three problems with foreign aid. The first problem is that the money goes from government to government and not from directly to the people. This means that the money goes to the government who was the problem to begin with as shown above and the only thing it helps then is that it helps the government in question to tighten its iron-grip of the population. The second problem is what Narveson calls free lunch. The donors are often bad at directing the free food to the right people. Instead they should open up for capital investment, which according to Narveson always knows

where it is needed the most. The last problem is the side effects the foreign aid has on the free market. Where the rich countries give foreign aid it is reluctant to open the free market. Instead of giving foreign aid, with the money of the tax payers, not to forget, the rich countries should rather open the market to include everyone. That is true respect according to Narveson, to let people live and be their own master. This applies to all rational people, both poor and rich and this is deeply connected with the negative concept of freedom.¹⁰³

I have two counter arguments to Narveson; the first attacks his version of dignity. If dignity is to seek survival on own means then to help anyone is undignifying for the person being helped. Since Narveson encourages people to help anyway, as I showed above¹⁰⁴ he is either contradicting himself or he does not think dignity is more important than basic needs. If the latter is the case he would not be far away from the UDHR definition of dignity, claiming basic needs before dignity. (UDHR defenders thinks that having basic needs lead to dignity, so the argument is not completely the same, but they both have intuition as starting point). The other counter argument to Narveson attacks the voluntariness of charity. Can libertarians, and with them Narveson, really claim, intuitively speaking, that their right to have too much food/medicine, just because they are entitled to according to libertarianism is more important than other peoples' lives? Is the demand for freedom really more important than life, objectively speaking? I think the general deep intuitive understanding of desperateness, helplessness and humility tells us otherwise.

3.9.1 Concluding Remarks

In this chapter I have explained the libertarian theory. I have moreover explained how and why it cannot include UDHR. The libertarian definition of dignity is when the individual has the freedom to make of her life whatever she wants, without having anybody interfering. To show a person dignity is therefore to refrain from interfering. The UDHR version of dignity is different. Here it is not only allowed, but also demanded that the state interferes with the individuals life. The consequences of this

¹⁰³ Narveson, 2004.

¹⁰⁴ See p. 34.

could be that everybody gets medical care, education and food. But the consequences are also that in order for the state to provide this it is justified in taking taxes from people who would not otherwise give their money to the poor. This consequence is so contrary to the libertarian idea that the libertarians must reject it, in spite of its pleasurable consequences. Instead the solution of the poverty and health problems of the world is to open the markets and make capitalism flourish. In this way people are free to earn their own living without having to rely on other people. This is respect to and dignity of the individual.

I have now showed how a theory of rights can be built up. Lockean libertarianism has philosophical foundations in Locke's theory of human nature, it can claim universality because of this and its definition of dignity is connected with the theory. This means that the theory stands strong against Donnelly's theory of HR. Because Donnelly's philosophical argumentation for HR is weak in the above mentioned areas Lockean libertarianism will win a discussion based on logically coherent arguments. The consequence of this is that the libertarian version of negative right to property will outcompete the intuitive HR. This is very serious for HR defenders. I will therefore turn to other theories for HR, which might be able to help Donnelly in his argumentation.

Chapter IV: Defending HR

In the first chapter of this thesis I outlined some problems with the general understanding of HR. I argued that since Donnelly did not explain the foundations of HR they were not safe from counter arguments. In chapter II and III I outlined a theory which countered HR in many ways. In this chapter I will try to find solutions to the problems Donnelly faced and thereby try to strengthen the arguments for human rights. To do that I will use a political scientist, Charles Beitz, a philosopher, Thomas Pogge and a political theorist Simon Caney. Charles Beitz explains HR in political terms. He rejects the philosophical foundations. This makes his theory strong in its own political right. Therefore I find Beitz' theory important to outline. Pogge introduces me to the relevance of the global order, which is why I find his theory important to outline. Caney builds his arguments on the same theory as Pogge. I find it important to describe both of their argumentations in order to show the strengths and weaknesses of the theory, cosmopolitanism. Caney does, though describe cosmopolitanism in a more structured way than Pogge, which is why I find it important to include Caney in this survey too.

4.1 Human Rights versus Natural Rights

What I have been looking for in this thesis is the foundations of HR; where do they come from and why do we have *these rights* and not others. Charles Beitz explains this in his article "*What Human Rights Mean*". Beitz explains that HR as we know them in UDHR are not philosophically founded but is rather a compromise of political ideas. How each culture wants to explain and justify them is up to each culture. This means that HR do not have a philosophical foundation like the rights Locke and later Nozick argue for. Here we see that Beitz is more political oriented than Donnelly. Donnelly also denies that HR are natural founded, but still he tip toes around philosophical concepts like moral and human nature. Beitz is more clear cut in his defense. He claims that HR are a political project, and therefore no philosophical concepts are needed. Rights which have philosophical foundations are what Beitz calls natural rights.¹⁰⁵ Natural rights are innate for every human being. The fact that human beings are human beings means that

¹⁰⁵ Beitz, 2003, p. 36.

they have natural rights. These rights could be claimed anywhere, even outside any society whatsoever because they deal with the rights of the individual qua being individual and not qua being part of a society with other individuals. We saw this in chapter II, where I showed Locke's version of natural rights in the state of nature. HR on the other hand are an attempt to turn the world in a more just direction. They deal with the individual in the society in a more concrete way than Locke did. Locke claimed that everyone should have life, liberty and estate. How that is to be interpreted is a philosophical question. HR are much more concrete than that. They deal with everything within society; health, education, fair trial and marriage, to mention just some of the areas where HR are present. Besides that they stress the responsibility to protect, which is deeply contrary to Locke's negative freedom. They frame a society the authors find just. Not just principles which in themselves are just, disregarding the consequences as Nozick did, refraining from making an end-state pattern as he called it. The UDHR is not afraid to do that. With its definition of justice and dignity it is allowed to create circumstances for people to live under, like a moral and political framework that promotes one way of life. In this way the Universal Declaration does not fit into the libertarian utopia as Nozick explains it. Nozick claims that there is space for every sub-society in his utopia, as long as people want to live in the sub-society. But the UDHR claims that its version of justice and rights are for everyone in every nation. In that way UDHR enforces its ideology on people who would rather live in a different framework, e.g. the libertarian.

In the abstract I defined universality as a characteristic that every human being have, regardless of time and place. Natural rights comply with this definition. The UDHR does not though, since it is a political contract between individual and state. The UDHR claims that everyone is born free and equal in dignity and rights and that everyone is entitled to the rights subsequently enumerated. In this way Beitz acknowledges that it is not universal like the natural rights are, but in its own way can claim 'universality'. The lack of true universality is not a problem to Beitz though. He claims that rights arise out of context. For example is there such a thing as global political economics. This is contingent, but it happens to be so. And people are participants in this. Therefore they have rights towards to this. Those rights are not innate, because they would make no

sense to have in the state of nature, or another world without such institutions, but since the institutions are there and people are participants people have rights towards those or any other institution. As long as one holds this as the definition of HR, then the lack of universality is not a problem, in fact it would be absurd to claim universality through this definition.¹⁰⁶ Again we see that Beitz is more clear cut than Donnelly. Donnelly claims that HR are universal but also that they are bound to the contemporary world. I have already claimed that this is a contradiction. Beitz does not claim that HR are universal in the way universality is normally defined. He does not thereby bet on two horses, like Donnelly, but admits that HR are a political project bound to a world with societies and institutions.

4.2 Human rights and the Global Order

Thomas Pogge suggests a kind of universality when he discusses HR as moral rights. He claims that it is not wrong to claim that HR are whatever governments create under this title, which is a common understanding of human rights among lawyers, activists and politicians, but Pogge claims that HR are more than that. Even though HR are not recognized as was the case in Nazi Germany for example they still exists, they were just being violated. Pogge gives an example of this claiming that torture was always a violation of HR, but if torture was done after 23 of March 1976 it was also legally wrong (article 7 of CCPR)¹⁰⁷. In that way Pogge suggests that HR are not directly linked with legal documents and agreements. These are mere recognitions of the HR that we already have. But what are HR then if not legal documents? Pogge discusses four definitions. The first understanding of HR, U1, claims that every human being has a moral right against every other moral agent (persons, companies, groups, governments etc.). In this way every person has a right against assault and if positive rights are included she also has a right to be protected by everyone against assault. This definition will not work though because, as Pogge realizes, HR, in their written form does not deal with assaults between normal citizens. Take for example a regular pub fight. As inconvenient as it might be it is not recognized as a HR violation to get a punch in the

¹⁰⁶ *Id.*, p. 42.

¹⁰⁷ Thomas Pogge, 2002, p. 159.

face. If the punch was given at the police station though by a police man it is recognized as a HR violation. This, Pogge claims, suggests that there needs to be an official person involved in the action. This leads Pogge to a second understanding of HR, U2, which claims that HR are rights the individual has against their governments. This definition solves the problem with U1, because it distinguishes between civil and official persons. But in that it takes away any responsibility for HR protection by the individuals in the state. As long as the government is taking care of the HR situation we do not need to worry about it. Even if the government is not dealing with the HR situation the citizens still do not need to worry about it, because under this definition it is none of their concern. Moreover if HR are an arrangement between citizen and state it leaves no space for intervention between states. The HR protecting states can be justified in not helping the citizens in states with poor HR records. This is clearly not the intention with HR either. To avoid this Pogge makes a new understanding of HR, U3, which claims that HR should be constitutional founded in each states constitution and supported by institutions and policies in society. In this way Pogge divides HR into a juridification and an observance part, where the society is founded on HR and they are present in society. This gives the citizens a moral duty to protect HR. As good and solid as this definition may sound it still faces problems though. The first problem is connected with what I wrote above about legal documents. HR are not just legal rights. It is not a right just because it is written that it is a right, HR are something more. Pogge gives an example of this by explaining that a society can have secure access to adequate nutrition for all its members but not a legal right hereto. The right to adequate nutrition is better protected in this society than in a society where there is a legal right to it but when it comes to it there is not secure access after all. What matters is the integration of HR in society, a feeling of solidarity and mutual protection among neighbors, friends and community. The legal framework is not truly essential for this. Another problem with U3 is that when the rights are merely legal documents it might not reach the entire population. People in rural areas could be uneducated or illiterate and therefore not be able to understand their rights. Or people could be too poor to use the legal access to claim their rights. The last problem with U3 is that there are no demands to protect HR in other societies or states. It is purely domestic. The solution of U3's problems lies

according to Pogge in the UDHR itself. Article 28 of UDHR claims that: “*Everyone is entitled to a social and international order in which the rights and freedoms set forward in this declaration can be fully realized.*”¹⁰⁸ In this article it is stated that an institutional order is only successful if it realizes, protects and fulfills the HR of its participants. This holds both domestically and internationally. The government of the state must protect HR for its citizens; an international organization, like for example IMF of the World Bank must do the same to its participants. The importance lies not in the legal texts but in the actual fulfillment of HR. Thereby Pogge manages to solve the problems with U3, where HR relied on the legal framework. Within the article 28 there lies a universal normative reach, in that that it claims that every human being has a right to an international recognition of her rights. This fits with the article 2 of UDHR claiming that everyone is entitled to the rights set forth in the declaration.¹⁰⁹ In claiming international reach the UDHR takes monopoly on rights worldwide, and claims universality in that way. There can after all only be one global order. But according to Pogge the UDHR does not go into details about how to create one’s life or a society. It just states some values that must be protected in order for people to live a decent life, for example right to health care.¹¹⁰ Once the UDHR version of HR are realized there is, according to Pogge no attractive alternative to it. Therefore it is a universal moral claim. Pogge stresses though that it is compatible with almost every other way of arranging a society. Iranians can for example build a Muslim society all they want, as long as the Iranians can meet their most basic needs. Pogge claims that the article 28 does not demand of individuals or states that they take positive action to protect HR outside of their reach. It merely demands that they do not interfere with or violate the HR already existing in the system. Instead of interfering with the lack of HR protection of a system one should rather support the institutions that actually support HR. In this way Pogge meets the libertarian critique, claiming that humans only have negative rights and therefore no duties towards each other. Pogge claims that U4 does not demand that people must take positive action. Only the people supporting the violations of HR in the institutions must refrain from doing so. Pogge twists the argument so that it is now a

¹⁰⁸ UDHR, 10. December 1948.

¹⁰⁹ *Ibid.*

¹¹⁰ Thomas Pogge, 2002, p. 178.

negative duty not to violate HR. And negative duties are accepted by the libertarians.¹¹¹

4.3 A Response to Libertarianism

Pogge claims that he is meeting the libertarian critique by turning HR protection into a matter of negative duties. I do not though think that Narveson and Nozick agree with this. First of all they would not agree that there should be only *one* global order in the first place. If the Muslims want to be Muslims and focus on Allah's rights instead of their own they should be free to do so, without having to implement HR. This is clear from Nozick's utopia as I wrote about in the last chapter. Everyone is free to choose the society they want and more important nobody is entitled to impose their concept of the good on anyone. Moreover Narveson and Nozick would not agree with the fact that, even though the individual does not actively need to protect other peoples HR, they would still have to pay taxes to the system that protects the rights. This is a problem for several reasons. Partly paying taxes in itself is a violation of the individuals freedom not to work more that absolutely necessary. It is moreover a problem because the individual might not agree with the way the tax money is spent. And very importantly it is disrespectful for the individual the money goes to, because it takes away her dignity, which she gets from surviving through her own efforts. The problem for libertarians is the claim of universality. If the HR defenders want to live according to HR standards and create constitutions and build institutions according to it, it is perfectly accepted by libertarians, but that they claim universal reach and enforces their morals on others is completely unacceptable. Entering into a 'HR society' must be voluntary in order not to violate the libertarian basic right of negative freedom.

4.4 The Problems of Human Rights

In chapter I I mentioned some problems with Jack Donnelly's understanding of HR. In this section I will outline three problems I pointed at in chapter I and discuss whether Pogge and Beitz can help Donnelly through the articles I have outlined above. Donnelly claims that living according to the moral nature of human beings equals a life in dignity. The society must provide the basic resources so the individual can live a dignified life.

¹¹¹ *Id.*, 181.

We find somewhat the same argument in Pogge's article. Pogge claims that we have moral rights that underline HR. Neither of them explains the content of that morality though. Donnelly claims that we are potentially both good and bad, and society must pave the way for the good in people to come out. But this still does not explain anything. In the last chapter I wrote about Lockean libertarianism. They have a different version of what is good and bad, so to assume that moral rights/moral nature is only one thing is wrong, at least they need to define what the moral is first. Beitz can help us here. He claims that HR are not philosophically founded. They are political principles that are meant to turn the world into a more just place according to the framers' definition of justice. HR are thereby not necessarily corresponding with our so called moral nature. And they do not need to be. A more just world does not have to correspond to our moral nature. It can be argued for in political and rational terms, so it does not need the link with our nature. HR are politically agreed upon and whatever justification one culture wants to use for it is as good as any. Thereby, as Beitz explains, HR distinguishes itself from natural rights, which are the rights I described in the last chapter. Rights that have; and need to have, foundations in something (could be God or human nature). Defenders of natural rights are much concerned with the protection of these rights because anything else would be illogical according to the foundations. HR on the other hand seem to be more consequentialistic, in the way that it is not important why we have them or where they came from. The importance lies in the demand for a just world. Beitz makes this clear in his above described article. Donnelly tries to go down a philosophical road by referring to humans' moral nature, but he does not need that. In fact he should not do that since he cannot bring it to a coherent conclusion. The second problem with Donnelly's explanation of HR is that he does not define dignity, he simply assumes that dignity equals having basic access to basic needs and thereby he concludes that we have right to HR. Neither Beitz nor Pogge can help here, because since Donnelly's definition is also the definition used by the UDHR framers it is reasonable to assume that both Pogge and Beitz also use that definition. Libertarians use a different definition on dignity, as I showed in the last chapter. In this way both HR defenders and libertarians are logically coherent; if human dignity is to be free in the negative sense of the word, then libertarians are logically coherent in building up the

society the way they do. And if HR defenders define human dignity the way that everyone must have access to basic human needs they are logically coherent in demanding HR protection. Where the UDHR definition can seem a bit weak is that it does not explain why human dignity should be defined the way they do. Lockean libertarians draw on Locke's state of nature and humans in it. They build up their argument for dignity through a first premise as a foundation. Thereby this definition seems stronger. The problem leads back to the above mentioned division between HR and natural rights. HR are not meant to be philosophically founded; they are a set of political principles that correspond to the framers understanding of a just world. UDHR does speak of dignity though, even though it could have avoided it by claiming that HR were just political principles, but this is not the case. And since it brings the concept out itself I find it reasonable to ask for a stronger definition. The last problem I will deal with here is the question of universality. In its very name UDHR claims to be universal. But by which definition? In the introduction I mentioned that the usually agreed upon definition of universality is something that can be claimed by everyone, everywhere, in every epoch of time. This is not Donnelly's definition though. Donnelly admits that HR are a symptom of our time and that they will develop according to new needs and new technologies. But what makes HR universal then? It is supposed to be the claim that they are held by everyone. But that is not true either, since not every state or institution protects HR. I think the universality lies in the wish that they should be universal. This means that the framers of the declaration wished for everyone that the rights applied to them. The problem is just that this is not the case. Turning to Beitz does not help much here. He acknowledges that HR are not universal in the sense that they are innate or derives from a first principle. He does though claim that they are universal in the sense that they apply to every individual of today's world participating in an institution, whether it is the state, the EU or another. But again, setting all philosophical objections aside, this is not the case politically speaking. Every individual of the world cannot claim her HR since not every state of the world has signed the UDHR. I believe the problem is connected to Hume's is-ought problem, where it is claimed that just because it ought to be the case it is the case and because it is the case it ought to be the case. Unfortunately for the HR defenders this is not the case, just because it ought to be the

case that HR should be universal it is not the case that they are. Pogge claims that we have moral rights against institutions and that these moral rights are prior to the legal HR. This understanding suggests that moral rights appeals to something innate in the human being. Pogge does not say this, but he does claim that e.g. torture has always been a HR violation, even before it was recognized as such. This means that actions can be right or wrong without people agreeing on their being right or wrong. This claim is much closer to my definition of universality with respect to the time question. At least Pogge's timeframe includes all the time there has been and will be institutions to claim HR protection against. Pogge's problem is though that he does not explain why we have our moral rights, why these rights and not others. In claiming that UDHR has universal reach it would have been appropriate if he explained why we must respect it. The reason he gives is that human beings must have access to basic human needs. Although this claim is very intuitively acceptable it probably would not convince a libertarian, whose intuition claims otherwise, namely that everyone should have maximal negative freedom. It seems to me that the only way UDHR can claim universality is when the HR defenders defend HR in practice. They cannot discriminate between people claiming they have their rights violated, because everyone has a right to HR protection according to UDHR article 2. Outside of its own scope it does not have strong enough arguments to claim universality.

4.5 Cosmopolitanism

I will here introduce the political theorist Simon Caney who gives a logical definition of universality. By this he helps Pogge, who in his own argumentation claims the same, but Caney is more systematic in his argumentation, therefore I find him helpful in my understanding of Pogge. Caney discusses the universality of HR and claims that HR rests on what he calls The General Argument for Moral Universalism. The argument goes: 1) There are valid moral principles. 2) The moral principles that apply to some persons apply to all persons who share some morally relevant similarities. 3) Persons throughout the world share some morally relevant similarities. Thereby Caney concludes that HR are both universal in form, in that that it is *the same* principles that apply for everyone and in scope, meaning that the principles applies to *everyone*. The

morally relevant similarities Caney refers to are the common need for water and food to stay alive, and the fact that we are all vulnerable to diseases, malnutrition and pain in general. In spite of different cultures and circumstances all people have the same basic human needs. Therefore HR must be universal.¹¹² This argument is very connected with Pogge's argument, as I showed above, in that that they both stress the universality of HR. But where Pogge, in the article I used, does not explain the claim that we need to act on people's needs Caney uses Pogge in his introduction to *Justice Beyond Borders* to mention their moral starting point, namely cosmopolitanism. Cosmopolitanism builds on individualism, equality and the existence of obligations binding on all¹¹³. With this starting point it is not necessary to dig any deeper into why we need to act on people's needs, because if they believe in the existence of an obligation that binds us all in the first place then it is obvious to translate the obligation into Helping People In Need. The logic of the argument comes close to the natural right theories' argumentation. There is a first principle x which everyone in order to be consistent in their morals must apply to. In this cosmopolitan case human nature is used as a first principle. Basic human needs and therefore basic human goods derive from our common nature. If people's moral is to be consistent it must correlate with human nature. Therefore the morally good thing to do is to protect basic human needs and this leads to the UDHR. With cosmopolitanism as a starting point it is therefore seems to be possible to tie HR to human nature and thereby claim that HR are natural rights. To have one's basic human needs protected is a very different natural right than to have the maximal amount of negative freedom as I showed Locke and Lockean libertarians see as a natural right, although both theories build on human nature. It should be obvious that since the two theories exclude each other they cannot both be universal. The problem for cosmopolitanism is that it only partly builds on human nature. Human nature is only part of the first premise. The other part is the obligation to act on protecting it. This makes cosmopolitanism a positive theory, a theory that per se demands something of people. Caney does not explain why people must protect other people's rights, he only claims that it is in Pogge's definition of cosmopolitanism, he does not explain why. This

¹¹² Caney, 2005, pp. 36-7.

¹¹³ *Id.*, pp. 3-4.

means that the motivation part of cosmopolitanism's first principle stands unexplained. Therefore cosmopolitanism fails to give a motivation to why people should engage in protecting other people's right. And therefore Locke's theory stands stronger. It is clear that if one is a cosmopolitan one needs to accept UDHR, but not if one is not. Caney defines a right as if A is entitled to x then B, the duty bearer, must provide x to A. The same definition I showed that Donnelly used in the first chapter.¹¹⁴ But to have a right does not necessarily include an active duty bearer B. As I showed in the third chapter Narveson gives a libertarian definition of a right claiming that if A has a right it means that A has a right to non interference.¹¹⁵ Thereby Caney, like Donnelly, lacks to give an objective reason for why a right includes a duty bearer. It all comes down to different definitions of rights.

4.6 Concluding Summary

In this chapter I have analyzed arguments defending HR. Charles Beitz claimed that HR were not an abstract philosophical theory, but rather a set of political principles, made to make the world more just for the people in it. Thereby he claimed that there is a difference between natural rights, which have philosophical features like first premises and universality, and HR. HR do not arise out of a first principle, to which they have to be consistent. HR deal with the consequences for people. And they give people their basic human needs. Beitz claimed that HR are not universal in the way natural rights are. HR are universal in the sense that as long as people live under institutions they have rights, but these rights are not innate in people, they are a bond between institutions and the people participating in them. Thomas Pogge explained the universal reach of UDHR by referring to moral rights. Pogge claimed that moral rights were somehow connected to being human and only secondary connected to the legal agreements. He did not explain this morality and therefore I must conclude that he runs into the same problem as Donnelly, claiming that we have a moral nature but without explaining of what this moral nature consists. Caney helps Pogge by defining the starting points for Pogge and his own thoughts, namely cosmopolitanism. If one accepts this theory one must also

¹¹⁴ See pp. 6-7.

¹¹⁵ See pp. 37-8.

accept HR. But cosmopolitanism has a weak starting point, namely that there is an obligation binding on all. This starting point is not weak per se, but since Caney does not explain why it is so, the starting point stands as an unexplained assumption, which does not convince anybody of its importance. My conclusion of this chapter will therefore have to be that a defense of HR can be given, but the strongest argument among the defenders I have analyzed in this thesis is the political defence from Beitz, therefore I must suggest a political defense for HR instead of a philosophical. Philosophically they are weak and therefore not safe from stronger counter arguments. I do not think this is a problem though because as Beitz explained, they were never meant to be philosophical principles, but rather a political compromise of how to make a more just world. Thereby it becomes a political ideology that can be defended on its own premises instead of a fluffy philosophical theory.

Conclusion

Jack Donnelly claims that because human beings have dignity they need HR. He defines dignity through basic human needs. So when a person's basic needs are covered she has dignity. In order for her basic needs to be covered she needs HR.

In this paper I have shown that that way of defining human dignity is only one definition among others. The libertarians have a different definition of dignity, namely that dignity is when you use your maximal freedom to create a life the way you wish. This definition leads to a very different society, as I have shown, a society where HR protection would mean violating the right to freedom, which is the basic need to obtain dignity. Therefore it seems artificially constructed when HR defenders use dignity as an argument for HR; because they did not have to define dignity the way they do. They could have defined dignity differently and thereby come to a different conclusion about HR. The HR defenders I have used in this thesis do not explain how they came to their definition of HR, but since their concern is basic human needs for everyone I conclude that their definition appeals to a general human intuition about helping people in need. This also explains why UDHR is so relatively widespread around the world. Actually even the libertarian Jan Narveson agrees with this intuition of helping people in need. He talks about the intuitive wanting to help a homeless child. Narveson claims that it would be morally good to help homeless defenseless children and he even encourages people to do that. Narveson's problem with the institutionalizing of help lies in the forcing people to help even if they do not want to. The charity must be voluntary in order not to interfere with the negative concept of freedom. I have counter argued Narveson's argument from a deep intuitive perspective. From this intuitive understanding human rights make sense and just because intuition cannot be identified through first premises it does not mean that it is false. It is not universally true either, since not everyone agrees with this intuition, neither in this contemporary world nor through different epochs. The only way, I have argued, UDHR is universal is that in agreeing with UDHR one must agree that it should apply to everyone regardless of sex, color, nationality etc., because that is what the framers agreed. It is not universal in the sense that everyone agrees with its consequences. It is not universal in the sense that

everyone has her HR protected. And it is not universal in the sense that in every imaginary world the rights would be the same. The only universality is the one the framers gave it themselves. Human rights make no sense outside of society. Thereby human rights do not live up to the definition of universality I set out to discover. This is not a political problem. In arguing for a politically just society one already accepts that there must be a society. I do therefore not disagree with Donnelly's political dimension. Donnelly though, who partly argues for HR as a philosophical concept it is a problem. Donnelly does though only partly rest HR on political premises. He also claims universality of HR, through dignity which is inherent in people. This means that HR is something prior to society. With the help of Beitz I have shown that this is not the case. Natural rights as I showed Locke and after him Nozick defined are innate and therefore apply to people qua being people, whether they live in a society or not. Therefore they can be claimed to be universal according to my definition. But as I showed in the last chapter, Charles Beitz explains that HR are not natural rights, but merely a set of rights that are created without first principles with the intention to make the world more just. Therefore my suggestion to human rights defenders, among them Donnelly, is to take HR for what they are; a political set of principles, which due to one political understanding of justice tries to create a more just world. If HR defenders, like Donnelly, begin to explain human rights by universality and an objective definition of dignity it can easily be counter argued by skeptics and will not gain support from others who do not already have the same intuition. I have used space on outlining libertarianism in order to show a different version of justice, dignity and rights. There are other counter theories as well. I used libertarianism because I think that, even though it lacks the deep general intuition that human rights enjoy, it is a strong countering theory with philosophical foundations. A theory which surpasses Donnelly's theory of human rights in logical arguments. Defending human rights from a philosophical starting point will therefore be a lost cause. It will be trumped by stronger theories. Therefore I suggest defending HR from a political perspective, like one would defend an ideology. Then they would be defended in their own right and the declaration's just features would stand stronger. Things are not so bad for HR though. I have shown that they are actually being defended from a political starting point e.g. by Charles Beitz.

But as I showed in the introduction Donnelly is being quoted and referred to a lot when HR are the topic. That is a shame for the reasons I have just mentioned. HR are not a philosophical set of principles but a political one and should be defended like that.

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