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Human Rights, Emotion, and Critical Realism: Proposing an Emotional Ontology of International Human Rights

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Human Rights, Emotion, and Critical Realism: Proposing an Emotional Ontology of
International Human Rights

by

Ben Luongo

A dissertation submitted in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy in Government
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Abstract

This dissertation proposes a critical realist framework of human rights and argues that emotion plays a foundational role in constituting a human rights ontology. I build this framework as a critical response to other IR human rights theories which have largely been developed in accordance with either empiricist or rationalist paradigms. Both empiricist and rationalist theories fail to articulate a firm ontological foundation which can support their human rights claims.

This ontological concern may not seem too important for human rights scholars interested in more substantive political issues, but it does lead to problems because no human rights theory is ontologically neutral. Theoretical claims are always predicated on some ontological presumptions, whether those presumptions are explicitly stated or not. As a result, scholars will likely remain unable to resolve their theoretical debates without first recognizing how they reflect ontological disagreements underpinning them. This dissertation, then, calls for an ontological intervention and employs the critical realism of Roy Bhaskar in order to build a human rights framework.

At the root of my framework is emotion and the role that it plays in structuring human rights. Emotion relates us to our environment and mediates our social interactions with others. These interactions shape our values and behaviors from which we acquire a sense of rights and responsibilities. Underpinning this sense are real emotive processes which serve as the ontological foundations from which human rights norms and practices emerge. Because these real emotive mechanisms mediate our complex cultural interactions, rights practices emerge in

different ways to reflect particular cultural values. As a result, my ontological approach can explain how human rights are naturally real while the practice of human rights are simultaneously culturally relative.

Introduction

Summary

Discussions regarding the importance of ontology in international relations research have grown to be more prominent (see Patomaki 2002; Wight 2006; Kurki 2008; Joseph 2007). The IR discipline has undergone several ‘great debates’ over the years, and some speculate as to whether disagreements over ontology will constitute a fifth great debate (Brown 2007, 409). The primary argument IR scholars give for taking ontology seriously is that it conditions the research it underpins (Bhaskar 1989; Archer 1998). The scientific decisions a researcher makes are always premised on some ontological presumption, whether those presumptions are explicitly stated or not. As Colin Hay puts it “to commit oneself to an epistemology is also to commit oneself to a position on a range of ontological issues” (2007, 117).

Despite this, very few political scientists and IR scholars take ontological matters seriously. Wendt points this out saying that “ontology is not something that most IR scholars spend much time thinking about” (1999, 370). This may be because ontological issues seem too abstract for scholars interested in more substantive and urgent political issues. This leads to a problem for political science and IR research: Because no research is ontologically neutral, theoretical and methodological debates over political issues may persist without scholars recognizing how they reflect the ontological differences underpinning them. I argue that this is the case with the IR discipline’s theoretical debates over human rights.

The discipline’s theoretical understanding of human rights has been dominated by either empiricist or rationalist approaches, both of which fail to provide a firm ontological foundation

to support their human rights claims. On one hand, empiricist approaches to human rights pursue an anti-realist form of science which emphasizes the necessity for methods of observation. In doing so, these approaches conflate the ontological nature of human rights with what can be epistemologically known. This is an error in logic which Roy Bhaskar refers to as “epistemic fallacy” (2008, 5).

On the other hand, rationalist approaches to human rights continue a philosophical tradition which argues that human rights are ontologically founded on human rationality. In doing so, it attempts to derive normative claims to human rights from a rational understanding of nature. This is an error in logic known as the naturalistic fallacy. In the end, both empiricist and rationalist approaches fail to provide a firm ontological foundation. Empiricist approaches largely ignore ontology, while rationalist approaches fail to provide an ontology that can logically support their human rights claims.

This dissertation inquires as to how an ontological framework for human rights can address the limitations posed by empiricist and rationalist approaches. Specifically, I’m interested in exploring the prospects of an emotional ontology, and how it can resolve both the epistemic and naturalistic fallacy. The research question guiding this dissertation, then, is how can emotion provide the theoretical foundations to support both the ontological and normative dimensions to human rights? In addressing this question, I propose an ontological framework which responds to the failures of both empiricist and rationalist approaches. My ontological approach affirms that human rights refer to real public goods that arise from the emotional interactions of rights bearers. These interactions reflect how we appraise a situation and how emotion mediates our relationship to others in that situation. In doing so, emotion provides us with a sense as to what people are due and the responsibilities one has to another. Underpinning

this sense are real emotive processes which serve as the ontological foundations from which human rights emerge.

My argument for the emotional foundations of human rights situates itself as a critical response to other prominent human rights approaches in the IR discipline. Specifically, my framework aims to correct for the errors of the empiricist and rationalist approaches to human rights. This dissertation a) counters empiricist approaches by affirming the ontological foundations of human rights within a critical realist framework and b) challenges rationalist approaches to human rights by anchoring those foundations within the emotional faculties of the person. My dissertation, then, follows a two-tracked argument – one emotional and the other ontological.

Together, these two tracks carve out a space in the literature to think about human rights in new ways. The emotional track to my argument emphasizes the importance of social relations and empathy. This breaks from traditional rationalist approaches of natural law philosophy which have emphasized the importance of self-determination and personal autonomy. Emotion functions to mediate our social and cultural interactions and it inclines us to build relations. It is through these interactions and relations that emotion generates a sense of human rights and responsibilities we have to each other. Because we come to understand human rights in terms of our relations to others, emotion emphasizes the importance of reciprocity and empathy.

The ontological track to my argument affirms that human rights refer to real public goods that reflect the emotional nature of the rights bearer. This challenges empiricist approaches to human rights which reject ontology and, instead, argue that rights are socially constructed. I agree that human rights are socially constructed, but my ontological framework asks about the building blocks that they are constructed from. Emotions serve as those building blocks and,

because they also mediate our social and cultural interactions, rights practices emerge in different ways to reflect particular cultural values. As a result, my ontological approach can explain how human rights are naturally real while the practice of human rights are simultaneously culturally relative.

The Ontological Track

My ontological track provides a framework to think about the relationship between human rights and the emotive foundations underpinning them. I argue in this track that an ontology of human rights arise from the complex interaction of both the social and natural world. Human rights are real public goods that are socially constructed from naturally occurring generative mechanisms. Specifically, human rights activity emerges from how the nature of human emotion mediates our social relations.

I employ a critical realist framework to theorize as to how human rights emerge from the complex interactions of both natural and social phenomena. Critical realism is not a theory of IR but, rather a meta-theoretical framework to scientifically study social phenomena. It was created by Roy Bhaskar who advocates for scientists to take ontological matters seriously. It argues that the social phenomena which scientists aim to understand is a production of both the social and natural world. It proposes a portrait of reality which illustrates how the changing and diverse social world we experience reflects natural and stable mechanisms underpinning it. I employ this framework to argue that human rights are real public goods that reflect how natural mechanisms generating them are translated into culturally diverse social practice.

My critical realist argument positions itself as a response to much of IR's human rights research which has been conducted in accordance with the discipline's empiricist orthodoxy.

While critical realism takes ontological questions seriously, empiricism rejects ontological matters outright. Generally speaking, empiricism requires that science be based on methods of testing and measurement, which naturally places unobservable phenomena outside the scope of valid scientific inquiry. Social scientists, then, study the world in terms of what can be observed – behaviors, discourses, artifacts, etc. By extension, the discipline’s theoretical development of human rights follows the same scientific orthodoxy. For instance, human rights are often understood in terms of their cultural practice (Donnelly 1984; Renteln 1990; Walzer 1994), or as rules produced by international agreement (Taylor 1996; Habermas 1998), or as manifestations of political power (Mutua 2002; Grovogui 2011; Peck 2011).

The major limitation to these empiricist approaches, however, is that it provides a superficial understanding of the social world. Simply put, there is more to the world than what we see. If we limit the development of theory to observable phenomena, then our theories describe our experience of the world more than they describe the world itself. The focus on observation, then, leads empiricist research to conflate ontology with epistemology – an error that critical realists call the “epistemic fallacy” (Bhaskar 2008, 5). Critical realism corrects for this by divorcing the two and reprioritizing ontology over epistemology. It assumes that there must be a real world that produces our experience of it. In this sense, critical realism is concerned with the ontologically real causal mechanisms generating the world that science attempts to understand. Several IR scholars have advocated for such a critical realist approach arguing that it can move the discipline beyond the confines of its empiricist orthodoxy (Joseph 1998; Patomaki 2002; Wight 2006; Kurki 2008; Roach, 2010).

This dissertation contributes to this growing body of literature on critical realist IR by developing an ontological framework to study human rights as it fits into international relations.

While the empiricist conflates human rights with their practices, my critical realist framework inquires as to what those causal laws are that generate human rights activity. In doing so, my analysis can probe further than previous human rights literature and answer questions about the causal mechanisms that generate human rights overlooked by other theories.

A Critical Realist Framework

Critical realism is a meta-theoretical framework to scientifically research the causal relations between natural and social phenomena. To do this, it critiques the empiricist understanding of causality and proposes an alternative. Empiricism's focus on observation assumes that all cause and effect resolve on the same level as human experience. Empiricism, then, assumes that causal relations can be studied in terms of the constant conjunction (if A, then B forms of analysis). Critical realism takes issue with this arguing, again, that not all causal mechanisms are observable. To illustrate this, it paints a complex portrait of reality with two important dimensions – ontological stratification and open systems.

Ontological stratification refers to the vertical dimension of Bhaskar's framework. Instead of a flat surface, critical realism argues that observable phenomena at the top are generated by causal mechanism from below. It organizes this into three levels: the empirical, actual, and real (Bhaskar 2008, 2). At the top is the domain of the empirical which refers to our experience of events. This is the domain that empiricist research is concerned with given its focus on observation. In the middle is the domain of the actual which consists of events that we experience on the domain of the empirical (it also includes those which have not yet actualized but have the potential to). Underpinning this is the domain of the real which refers to the unobservable causal mechanisms always at work whether they are generating events that

actualize or not. In this sense, the domain of the real refers to causal potentials which may translate into events given the right environmental conditions.

The second dimension refers to those environmental conditions and the system they are in. This system refers to the horizontal dimension of Bhaskar's framework and whether it is open or closed. Closed systems are controlled environments that empiricist research tends to favor in order to isolate constant conjunctions. However, the phenomena that the social scientist researches occurs in an open system and cannot be replicated in a controlled environment. Nor can the causal laws observed in a closed environment sustain themselves in an open system where causal processes interact with other intervening variables. Critical realism argues, then, that an ontological approach should understand the complex reality that causal relations resolve in. As a result, they prefer to understand how social phenomena unfold in an open system. The focus on open systems, then, requires an understanding that how causal potentials on the domain of the real generate events depends on the environment conditions within an open system (Bhaskar 2008, 3).

Both of these critical realist dimensions – ontological stratification and open systems – provide the framework to theorize as to how human rights emerge from the complex interactions of the social and natural world. Stratification provides the vertical dimension which illustrates how human rights exist on different ontological levels: the social practice of human right actualize on the domain of the actual and emerge from natural generative mechanisms constantly at work on the domain of the real. Openness provides the horizontal dimension to explain the diversity of human rights practices: natural human rights mechanisms on the domain of the real produce cultural variations of human rights practices depending on the social conditions of the domain of the actual. In the end, critical realism's portrait of reality provides the framework to

theorize as to how a world of culturally diverse human rights practices reflect the natural foundations underpinning them. I use this framework to articulate the role that emotion plays as those natural foundations and how they function on the domain of the real.

The Emotional Track

I build my emotional argument on top of the critical realist framework outlined above in order to illustrate how the nature of human rights reflect the emotional foundations of the people they serve. Emotion plays a central role in mediating our social relations and judging situations. In doing so, it provides us with a sense as to what people are due and our responsibilities to each other. This emotional sense reflects natural mechanisms on the domain of the real which produce behaviors within culturally diverse human rights contexts on the domain of the actual. In doing so, I argue that emotion provides the ontological foundation from which human rights emerge.

My focus on emotion challenges a long philosophical tradition which, throughout history, has argued that natural rights are founded on human reason. The focus on reason is a trend beginning in ancient philosophy (see Plato; Cicero) and continued throughout Medieval religious thought (see Augustine; Aquinas), Enlightenment philosophy (see Leibniz; Kant; Bentham), and contemporary moral philosophy of today (see Finnis; Gewerth; Smith). In general, this rationalist tradition has advanced the argument that rights and morals derive from our rational nature through which we also come to understand them.

While this rationalist tradition has been the predominant philosophy of right and ethics throughout history, it does suffer from a major problem. The argument that right derives from, and can be understood through, human reason commits the naturalistic fallacy. Generally

speaking, this fallacy states that one cannot predicate what is good based on what is natural. The reason for this is simple – an evaluative conclusion cannot be rationally justified on a factual premise. This is closely related to Hume’s guillotine which claims that you cannot rationally derive a normative ‘ought’ from a positive ‘is.’

My focus on emotion, and how I frame it within a critical realist ontology, corrects for the naturalistic fallacy. What is right is not understood purely through deliberate and rational analysis but, instead, reflects the visceral and often spontaneous experience of emotion. It is this emotional experience which informs our sense of right and inclines us to act in accordance with it. Underpinning this sense of right are real emotive structures that provide the ontological foundation for it. Human rights, then, are real in that they reflect natural structures generating them, but this eschews the naturalistic fallacy because the sense of right produced does not depend on a rational understanding of how those natural structures work. Instead, our sense of right just instinctively comes to us as a matter of viscerally felt emotion.

There is some precedence in the history of philosophy to ground rights and ethics on emotion. The best examples are the moral sentimentalist philosophies of Adam Smith and David Hume which argued that moral senses come from our emotional interactions with others. Moral sentimentalism has grown in popularity in just the past couple of decades with the work of Michael Slote (2009), Simon Blackburn (2001), John McDowell, and Jesse Prinz (2007). Contemporary political philosophy has also discussed the role of emotion in constituting civic values and notions of justice. The most famous is Richard Rorty’s article “Human rights, Rationality, and Sentimentality” (1993) in which he argues that human rights require an emotional education. Other works include Annette C. Baier (1995) who argues that emotion plays an important part in building civic care and trust; Ian Ward (2003) who argues that

sentiment plays an important part in constituting international justice; and Martha Nussbaum (2015) who discusses how intense feelings of love constitute civic values and bind a community together.

This dissertation builds on this literature by discussing the role that emotion plays as the generative mechanism underpinning human rights. I not only engage this philosophical dimension to emotion and human rights, but I contribute to it by considering the real psychological structures that underpin human rights practices. Specifically, my use of critical realism provides me with an ontological framework to ground emotion and human rights in the nature of reality. In doing so, I consider much of the experimental research conducted by the cognitive sciences on emotion. Specifically, my understanding of emotion borrows from emotional research within the social psychology discipline.

My Emotional Framework

While there is currently no agreed upon definition of emotion, the field of psychology generally understands that emotions are complex biological reactions to internal and external stimuli that motivate behavior (Russell & Barrett 1999, 806; Nairne 2000, 444; Daniel 2011, 310; Schacter 2011, 373; Sternberg 1998, 542). This basic psychological understanding of emotion includes both an observable and unobservable dimension. The observable dimension includes the displays of emotion and the environmental situation inducing it. The unobservable dimension includes the physiological and cognitive processes that react to the situation and produce the display of emotion. Social-psychology researches both the observable and unobservable dimension to behavior and, because both are important for my argument, my emotional framework borrows a lot from the social-psychology field.

The social-psychology field studies the observable and unobservable side of emotion through two approaches: situationism and dispositionism (Houghton, 2008; Bliss 1991; Endler 1976). Research on the observable side is called situationism because it researches the environmental situation that induces the observed behavior. Examples of situational factors may include family life, socio-economics, culture, immediate surrounding, etc. Research on the unobservable side is called dispositionism because it researches the internal structures – or dispositions – that govern behavior. Examples of dispositional factors may include cognitive processes, neurological structures, personality, etc.

Social psychologists acknowledge that the way people think, feel, and act is actually a combination of both their surroundings (situations) and their psychology (dispositions) interacting with each other in complex ways. This has lead psychologists to develop a third perspective, known as *interactionism*, which combines the two. In general, interactionism argues that human behavior expresses those internal factors of the individual as they appraise and relate to the external pressures of their environment (Blass 1993; Norenzayan 2002; Caprara & Cervone 2000; Endler & Magnusson 1976; Snyder & Ickes 1985). It frames these interactions as a process whereby environmental factors of the situation select or “activate” certain internal dispositional factors in order to produce behavior (Sabini, Siepmann, & Stein 2001; Bargh 1997; Kihlstrom 2008; Reynolds et al 2010).

I use this interactionist framework to explain how human rights express the emotional values of people as they appraise and relate to others and the events around them. Human rights, then, have a situational and dispositional side. The situational side refers to events that implicate the rights of people and how we behave in response to those events. The dispositional side refers to the real emotive structures “activated” by events and how they shape how we feel about them.

Together, both situational and dispositional sides illustrate how human right emerges from both social and natural processes interacting with each other. At the core of those interactions is the role that emotion plays in mediating our social relations. It is through these social relations we emotionally judge the treatment of others which generates a sense of rights and responsibilities.

Proposing a Combined Approach

I bring the two tracks together into a combined approach capable of demonstrating how an ontology of human rights arise from the emotional interactions of rights bearers. Interactionism and critical realism integrate nicely into a combined approach because the former coheres with latter's portrait of reality. First interactionism's disposition-situation framework presupposes a stratified ontology. Again, critical realism's stratification assumes that observable phenomena at the top are produced by both social and natural mechanisms from below. This is consistent with interactionist psychology which aims to understand how human behavior reflects both the social situation and the unobservable natural dispositions underpinning them. Second, disposition-situation interactions presuppose an open system. Again, open systems refer to the uncontrolled social environment that diversifies the behaviors within it. Interactionism recognizes this open system in order to understand how natural dispositions produce social and cultural variations in behavior; how behavior actualizes depends on the social conditions of the situation.

Together they provide a combined framework that demonstrates how human rights exist on different levels. Human rights practices occur on the domain of the actual and arise from the emotional judgements of rights bearers on the domain of the real. These judgements constitute a sense of right that a) reflect ontologically real dispositions of the rights bearer and b) result from the social situations through which rights bearers interact with each other. This combined

framework paints a pictures of how complex human rights really are. Human rights are more than just the observable behaviors and events that empiricists study; they reflect ontologically real unobservable dispositions that make those behaviors and events possible. Additionally, human rights are not, as natural law philosophies argue, rational goods. Human rights emerge from how emotive dispositions interact with, and judge, social situations. In this light, our sense of right reflects viscerally felt emotion; conscious analysis may or may not be present.

Structure of the Dissertation

I organize the dissertation into four chapters. The first chapter discusses the limitation of the human rights literature and the need for an emotional ontology of human rights. As previously mentioned, the discipline's understanding of human rights commits either the epistemic fallacy or the naturalistic fallacy. I divide the chapter into two in order to discuss both at length. I begin by discussing how empiricist approaches to human rights commit the epistemic fallacy. They do this by conflating the causal mechanisms of human rights with the cultural or legal practices they generate. The second part discuss how rationalist approaches to natural rights commit the naturalistic fallacy. I discuss how rationalist philosophies attempt to justify rights on the premise of rationality. Both of these demonstrate how the human rights literature rests on unstable ontological grounds. Rationalist approaches to natural law fail to establish an ontological framework that can support their human rights claims, while empiricist approaches either conflate ontology with epistemology or ignore ontology altogether. I end this chapter by stating that an emotional ontology to human rights can correct for this.

The next two chapters discuss my ontological and emotional tracks. The second chapter discusses how my ontological track corrects the epistemic fallacy committed by empiricist

approach to human rights. I divide this chapter into two parts. The first part discusses the empiricist approaches to human rights and how they commit the epistemic fallacy. Positivist human rights theories reduce scientific knowledge of rights to what can be scientifically observed, while constructivist approaches argue that the scientific research of rights simultaneously constructs our knowledge of them. They both commit the epistemic fallacy, and the theoretical disagreement between them is symptomatic of their unacknowledged ontological differences. The second part of the chapter introduces critical realism as an alternative to empiricist sciences and discuss how it can address the ontological gap in the human rights literature. I provide an ontological framework that can theorize about the foundations of human rights.

The third chapter discusses how emotion serves as those foundations. I divide this chapter into three parts. The first part discusses how emotion corrects for the rationalist approaches which commit the naturalistic fallacy. In assuming that rationality serves as the natural foundations of human rights, rationalist approaches argue that claims to rights can be premised on a rational understanding of nature. In doing so, they derive a normative ‘ought’ from a positive ‘is.’ The second part discusses how an emotional framework corrects for this. The motivating force behind human rights action is an emotional sense of rights and responsibilities. My argument roots this sense in nature as it reflects the functioning of ontologically real psychological structures, but I avoid committing the naturalistic fallacy because this sense does not require a rational understanding of nature. In other words, a sense of rights and responsibilities are informed by viscerally felt emotion. The third part of this chapter anchors this emotional sense of rights within the interactions that we have with fellow rights-bearers. Emotion can generate a sense of right because they mediate our social relations through

which we observe and emotionally judge how people are treated. These emotional judgements serve as the sense of rights which may inform and motivate human rights actions and practices.

After discussing both the ontological and emotional tracks separately, the fourth chapter discusses how I integrate them into a cohesive human rights approach. I divide this chapter into two parts. The first part discusses how the ontological and emotional dimensions address issues within the human rights literature. Specifically, critical realism provides the ontological framework to explain how natural emotive mechanisms can produce the cultural diversity in human rights practices. Additionally, interactionism provides the psychological framework to explain how human rights arise from social relations. The second part of the chapter discusses the contributions this approach can make to human rights. It is important to state that my approach is not meant to rationally justify a list of specific human rights items – that would reproduce the errors of rationalist approaches. Rather, it focuses on the social conditions necessary for the recognition of human rights. If people realize rights and responsibilities through their emotional interactions with others, then a social and political environment that fosters these emotional relations serve as a requisite condition for human rights. I argue that these conditions constitute a different kind of rights in their own terms. They do not emerge from emotional interactions but constitute the social conditions necessary for such interactions to take place.

Chapter 1

The Errors of Empiricist and Rationalist Perspectives: Ontological Foundations and Human Rights Theories

Introduction

The IR discipline's theoretical understanding of human rights has been dominated by two broad perspectives – empiricist and rationalist approaches – both of which fail to provide a firm ontological footing to theorize about human rights. First, empiricist approaches follow an antirealist form of science which holds that research should be based on methods of observation. Because it ignores unobservable phenomena, empiricism makes the mistake of conflating ontology with human experience, an error known as the epistemic fallacy. Empiricist approaches to human rights commit this fallacy by either reducing the ontological foundations of rights to observable phenomena or ignoring ontology altogether.

The second broad perspective are natural law philosophies which, unlike empiricist approaches, do take ontology seriously. However, their ontological assumptions fail to fully support their human rights claims. They follow a rationalist paradigm which argues that human rights can be understood through the same rational nature they derive from. Such an argument assumes that human rights claims can be rationally justified on factual knowledge about the world. This commits the naturalistic fallacy, however, as positive knowledge about nature cannot logically justify normative claims to human rights. Human rationality, then, fails to provide a stable ontology for basing natural human rights on. In general, neither the empiricist

nor the rationalist perspectives provide a firm ontological grounding that can support their human rights theories.

The lack of a firm ontological framework in the human rights literature may not seem like a serious problem. Debates over ontology often seem too abstract or inconsequential for researchers interested in more substantive human rights issues. And IR scholars and political scientists will likely continue their human rights research without giving ontological questions much thought or attention. The problem with this, though, is that no scientific research is ontologically neutral. The scientific choices we make always reflect some deeper ontological assumption, whether those assumptions are explicitly stated or not (Hay 2011; Kaidesoja 2013). Choosing to ignore or overlook these deeper assumptions means that ontological disagreements in the discipline go unresolved. As a result, theoretical and scientific debates over human rights may persist without researchers realizing how they actually reflect the ontological disagreements underpinning them. I demonstrate in this problem how this problem is present in IR human rights theory.

Aims and Structure of the Chapter

The first section discusses the empiricist approaches to human rights and the antirealist forms of science underpinning them. The primary empiricist approaches are agreement theories (common-core theories and overlapping consensus theories) and relativist theories (including cultural relativism and postcolonial perspectives). Because both share epistemological commitments to scientific antirealism, they both research the casual mechanisms of human rights in terms of what can be observed. Specifically, both agreement theories and relativist theories research the causal mechanisms of human rights in terms of how they are practiced. Doing so,

however, commits the epistemic fallacy because it reduces the ontological causal mechanisms of human rights to what can be epistemologically experienced.

This epistemic fallacy creates a problem for human rights theories: there is no stable ontological footing upon which agreement theories or relativist theories may base their theoretical and methodological choices. As a result, they focus on different observable phenomena to explain the causal mechanisms of human rights (agreement theories argue rights are structured by intercultural agreements, while relativist theories argue that rights reflect the autonomous practices of cultural members) with no way to resolve their differences. I demonstrate in this first section how the epistemic fallacy underpins the methodological and theoretical differences between agreement and relativist theories.

The second section discusses the ontological problem inherent with natural law philosophies. Unlike the empiricist approaches, natural law philosophies do explicitly acknowledge their ontological commitments – again, they ground human rights in a rationalist philosophy. There are two forms of this: derivationism and inclinationism. Derivationism argues that we come to know natural rights using the same faculties of human reason that rights derive from. In doing so, however, it commits the naturalistic fallacy because it attempts to derive natural rights from our rational knowledge of nature. This creates problems for rationalist approaches: derivationism fails to establish a stable ontological foundation from which it can philosophically justify the epistemological understanding of natural right.

Inclinationism attempts to correct for the problems by arguing that rights do not derive from a human reason. Instead, it argues that human reason merely inclines our behaviors to conform with what is right and good. This successfully avoids the naturalistic fallacy because it no longer derives right from reason, but it creates a new problem because it fails to provide any

ontological foundation at all. Rather than address this issues, its rationalist commitment merely shifts its focus to discuss the epistemological role of reason in rights. I discuss in this second section how this rationalist focus prevents these philosophical approaches from providing the ontological stability to theorize about human rights.

The Antirealism of Empiricist Approaches

The primary limitation of empiricist approaches to human rights is that these approaches assume that human rights foundations can be observed at the same level of the human rights phenomena which they generate. In other words, empiricist human rights approaches attempt to explain human rights in terms of other observable phenomena. Specifically, empiricist approaches tend to explain human rights in terms of observable cultural phenomena (culture generally understood as shared and reiterated systems of behavior). For instance, agreement theories argue in favor of human rights in so far as they can evidence observable cultural regularities. Relativist theories argue against international human rights based on the observed salience of cultural differences. (I explain these theories in greater detail in the following section). While both advance competing human rights arguments, they each rely on observable cultural phenomena to frame the foundations of human rights. As a result, they disregard the need to inquire about unobservable and underlying structures responsible for generating human rights.

The focus on observation reflects the empiricist orthodoxy of the social sciences and the antirealist epistemology it is built on. It is important, then, to briefly discuss empiricism and the antirealist thought underpinning it. In brief, empiricism holds that all knowledge is acquired through sense-experience and, therefore, restricts scientific inquiry to phenomena that can be observed and/or tested (Godrey-Smith 2003, 35-37; Chakravartty 2007, 8-15; Shapere 2000,

153-163). This can be traced to John Locke who introduced empiricism as an approach to study the world scientifically. According to Locke, the mind is born a blank slate and acquires knowledge only through experiencing the world around it (Locke). This epistemological claim serves as a predicate for its methodological extension – if sensory experience is the sole source of knowledge, then science must be based on observation. Those parts of the world that cannot be observed/experienced are not suitable subjects of research. The limits to observation, however, prevent empiricism from researching the ontological nature of things (van Fraassen 1980; van Fraassen 2002; Harre 1986, 57-58; Bhaskar 1979). Empiricism studies only the world as we see it, not the world as it is.

This has sparked a debate as to whether science can provide a true account of the real world. In general, realists believe that scientific theory can and should work to offer a true account of the real world, while antirealist argue that theory serves only as an approximate representation of the world (Dewitt 2004, 71-77; Chakravartty 2007, 3-5; Bhaskar 2008). For the antirealist, theory does not aim to explain the world as it is but, instead, aims to predict how the world works. Antirealism does not disagree with the realist that science should be as accurate as possible but, accepting the argument that knowledge is based on experience, it disagrees with the ability of science to describe all aspects of the world with such accuracy.

There are a couple of reasons for this. First, according to antirealism, science requires subjecting the researched phenomena to scientific methods of observation. Those things that cannot be observed, then, are not suitable for scientific inquiry. Second, there are practical limits to sense experience itself and even those observations made through scientific method reflect our experience of the world rather than the world independent of experience (Chakravartty 2007, 14-15, Okasha 2002). In essence, antirealism recognizes that our experience of the world does not

accurately portray reality and, therefore, no theory can claim to offer a true account of the real world. Instead, antirealism argues that science speaks only to those parts that we can experience. At the heart of the conflict between realism and antirealism, then, are disagreements over the scientific appropriateness of unobservable phenomena (Chakravartty 2007, 8-15, Bhaskar 2008).

The distinction between observable and unobservable phenomena is rather self-explanatory – observable phenomena are those units of analysis that can be subject to observable testing while unobservable phenomena are not. Realists believe that unobservable objects can be subject of scientific inquiry (Godfrey-Smith 2003, 185-186; Chakravartty 2007, 14-15). For the antirealist, however, unobservable phenomena marks the limits of scientific knowledge; if there is a real world independent of human experience, how can we know anything about it without referencing our experience of it? Because sense-experience does not correspond completely and/or accurately with reality, the antirealist argues that science cannot advance claims referencing the nature of reality.

Due to the scope of its research restricted to observable phenomena, empirical knowledge plays a key role for antirealism. It is no surprise, then, that many of the disagreements to realism come from the empiricist camp. As Godfrey Smith notes, “Indeed, one side of the debate about realism is often referred to as the debate between realism and empiricism” (Godfrey-Smith 2003, 180). The empiricist philosophy that all science be based on scientific observation is predicated on its epistemological assumption that knowledge acquisition occurs primarily through sense-experience. Thus, empiricism advances a purely antirealist agenda for the social scientist.

Because empiricism holds that our sense-experience marks the practical limits of science, it requires that the scientist resist making claims of an ontological manner. In this light, theories about the world serve more as devices or instruments that help us understand our experience of

the world. Philosophers refer to this view as instrumentalism (Dewitt 2004, 72; Godfrey-Smith 2003, 183). In this view, theories are not meant to be taken literally but instead are tools that help describe and predict our experience of the world. Thus, the success of science is not judged according to whether it corresponds with reality, but whether it provides accurate empirical predictions (Dewitt 2004, 71-77, Godfrey-Smith 2003, 183-186).

The Empiricist Approaches and their Focus on Culture

Empiricism serves as scientific orthodoxy within the political sciences and international relations. Much of the IR literature discussing human rights, then, works within an empiricist paradigm. Here I discuss those empiricist approaches to human rights and how they frame human rights foundations in terms of culture.

The theoretical debate over human rights is shaped by competing empiricist approaches. On one side are agreement theories which argue that international human rights can be constructed on top of cross-cultural or international agreement. According to these theories, the legitimacy of international human rights must reflect some intercultural consensus or patterned regularities. Agreement theory, then, explains the source of international human rights as identifiable social regularities determined by cross-cultural structures. In this light, agreement theories are interested in uncovering the possibility of rights within the intercultural and political structure that allow for them.

On the other side are relativist perspectives which remain critical of international human rights given the observable salience of cultural difference. These theories do not view culture as a structural constraint on human agency but, instead, a reflection of it. According to these theories, rights are culturally relative and, therefore, reflect the agency of the group practicing

them. They argue, then, that rights only have meaning within a cultural context. Because of this, they cast suspicions on international human rights as violations of cultural autonomy or expressions of imperial power.

Despite their theoretical disagreement over international human rights, they both operate within an empiricist approach to science which assume an antirealist epistemology. In other words, they frame the foundations of rights in terms of observable social phenomena. Specifically, they both emphasize the role that culture plays in serving as a rights foundation. For agreement theories, cultural structure serves as a major constraint that determines international human rights, while relativist theories refer to culture as expressing the agency of groups to form culturally specific rights. I explain each of these in more detail below.

Agreement Theories of Human Rights

According to agreement theories, different cultures practice different sets of rights which makes the prospect for human rights dependent on some form of agreement. For example, Renteln describes the prospect of international human rights through agreement by saying “where it is possible to demonstrate acceptance of a moral principle or value by all cultures, it will be feasible to erect human-rights standards. The reality of universality depends on marshaling crosscultural data” (Renteln 1990, 135). There are two types of agreement theories (Beitz 2009) which discuss the ontology of rights within a cultural and political framework. The first is common core theories which frame the possibility of rights within a structure of cross-cultural regularities, and the second is overlapping consensus theories which views the possibility of rights within the political and cross-cultural structure of international agreements.

Common core theories frame human rights as reflecting a core value held by all societies, something akin to what R.J. Vincent describes as a “lowest common denominator” (Vincent 1986, 48). One way to describe this would be to consider this core as a set of general values that other more particular and tangible rights may branch from. Another example is Michael Walzer’s argument for a “moral minimum” (Walzer 1994). Walzer recognizes how values are expressed differently between cultures but discusses how moral judgments are possible across cultural lines. He does this through a distinction between the thin global level of human values and the thick local level of their cultural expression. Such general rights constitute the common core of international human rights if they enjoy an intercultural consensus. In general, these “lowest common denominators” or “moral minimums” are human rights attempts to work within a cultural structure. Rights are only possible if they can work within the “social facts” of cross-cultural regularities.

The overlapping consensus approach, differs in that it does not define human rights narrowly to a “core” of inter-culturally shared values; cultural similarities are not necessary prerequisites. Instead, rights should be seen as “norms for global political life reachable from a variety of possibly incompatible foundational positions” (Beitz 2009, 76). In this sense, the legitimacy of human rights rests on the ability for different cultures to bargain and compromise on different values. The term overlapping consensus originates in John Rawls’ *A Theory of Justice* (1971) where he discusses the possibility for different systems of justice to agree on similar legal values. A better example of how it relates to human rights is found in Charles Taylor’s argument for an “unforced consensus” (1996) where cultures with different interest find common ground regarding how best to govern intercultural politics. While common core theories frame the possibility of rights in terms of intercultural structures, overlapping consensus

frames them in terms of consensus which structures the concessions or settlements made on how best to govern international rights. In this sense, the possibility of rights depends on either intercultural compromise or overlapping cultural interests.

In general, both common-core and overlapping consensus theories define the status of international human rights in terms of observable cultural phenomena: common core theories argue for rights in so far as we can evidence cross-cultural similarities, and overlapping consensus theories argue that rights embody intercultural settlements on how best to manage international rights issues. As a result, they frame the foundations of international human rights within the observable phenomena of cultural regularities/agreement.

Relativist Approaches to Human Rights

Relativist approaches cast suspicion on international human rights. In general, cultural relativism argues that rights derive their meaning from within the culture that practices them. Thus, human rights standards are relative according to culture, and one cannot judge cultural practices from an outside perspective.

Cultural relativism was originally proposed by Franz Boas as a methodological tool for cultural anthropology (1887). He developed it to counter ethno-centricism and racism within the cultural studies (Lewis 2001). Inspired by the philosophical idealism of Kant, Boas wanted to emphasize the role that ideas play instead of race. For him "...civilization is not something absolute, but ... is relative, and ... our ideas and conceptions are true only so far as our civilization goes" (Boas 1887, 64). He argued that people are products of different social, historical, and geographic environments from which cultural differences arise.

Cultural relativism in the human rights debate serves less as a methodological tool and more as a substantive perspective. As George Marcus and Michael Fischer point out, “through academic and broader ideological debates in the United States during the 1920s and 1930s, the expression of cultural relativism developed more as a doctrine, or position, than as a method” (Marcus and Fischer 1999, 10). In this light, relativism holds that human rights values really do have different meaning relative to one’s culture. Because culture is a lens through which we make sense of the world, claims to rights and values derive their meaning within the context of culture. As Teson puts it, relativism is a “position according to which local cultural traditions (including religious, political, and legal practices) properly determine the existence and scope of civil and political rights enjoyed by individuals in a given society” (Teson 1984-1985, 870-871).

For this reason, the cultural relativist argue that external judgments from non-cultural members lack context and, instead, reflect particularized conceptions of rights that cohere with their own culture (Mayer 1999). In fact, the observed salience of cultural difference refutes the claim that rights can be internationally agreed upon. It is for this reason that the theory remains skeptical of international standards. Instead, cultural relativism, as Jack Donnelly asserts, serves as “a doctrine that is strongly supported by notions of communal autonomy and self-determination” (Donnelly 1984, 400).

Like cultural relativism, postcolonial perspectives are also critical of international human rights in a culturally diverse world. While relativism discusses how rights have meaning within a cultural context, postcolonial perspectives shift attention to how international human rights are used as tools of power. Specifically, this perspective exposes how international law and human rights interventions continue a pernicious history of imperialism. They reveal how the current international human rights regime reflects the cultural hegemony of Western states given their

shaping of the UDHR and international human rights law. In this sense, human rights function as a tool for Western states to impose their interest on the less powerful, thus reproducing the historical conditions of colonialism. S.P. Sinha makes this point by saying that “to the extent these kinds of rights are concerned, we have the scenario of one particular culture, or one particular ideology, or one particular political system claiming to be imposed upon the entire world” (Sinha 1978, 144). For this reason, postcolonial perspectives view the discriminatory aspects of human rights as a “history still in process (Gandhi 1998, 7-8).”

An example is the work of M. Jacqui Alexander who argues that the practice of human rights today does nothing to address the legacies of colonialism but, instead, reproduces them. According to him, liberal human rights organizations, agreements, and interventions advance Western ideals through a “dominant knowledge framework” (Alexander 2005, 124). Human rights, then, express the unequal distribution of power in the world by imposing a particular cultural vision on others.

Makau Mutua echoes these sentiments that international human rights reflect the imposition of a neo-imperialist agenda to export Western values (Mutua 2002). He argues that “The levers of power at the United Nations and other international law-making fora have traditionally been out of the reach of the Third World. And even if they were within reach, it is doubtful that most Third World states actually represent their peoples and cultures” (Mutua 2017). This detachment makes it completely unfit to address the legacy of colonialism. For him, “the human rights corpus is simply unable to confront structurally and in a meaningful way the deep-seated imbalances of power and privilege which bedevil our world” (Mutua 157). For him, this intellectual and organizational make-up of the human rights project are unfit to address the problems created by colonialism.

In general, both relativist and postcolonial perspectives recognize the active role that cultural agents play in constructing rights. Rights have meaning precisely because they reflect the constructive agency of cultural members. For this reason, they remain suspicious of international standards because such standards may reflect the imperial interests of the west rather than the cultural interest of the local groups.

Below the Surface of Culture?

Both of the empiricist approaches above frame the premise of their human rights arguments in terms of observable cultural behavior. Agreement theories argue that international human rights are to be founded on the observation of cultural agreement. Relativists remain critical of international human rights given the salience of cultural difference. Instead, they argue that issues of rightness are founded in the cultural particularity of each group.

However, framing the foundations of rights in terms of culture assumes that the source of rights can be evidenced on the same level of observation as the human rights phenomena that they produce. Their tendency to frame rights in terms of other cultural phenomena, then, results in tautology where rights are evidenced only through the observation of cultural norms and customs. As a result, they conflate rights with culture and fail to identify the underlying structures generating human rights.

This explains why empiricist approaches arrive at different human rights conclusions despite the fact that they both begin with cultural premises. The reason is that they both make different scientific/theoretical choices as to what they should observe: agreement theories observe intercultural regularities while relativist perspectives consider the cultural particularity of different rights practices. This exposes the limitations to empiricist approaches – they fail to

establish an ontological foundation which can justify their scientific/theoretical decisions. In other words, their theoretical disagreement over human rights actually reflects unacknowledged ontological differences.

Taking human rights foundations seriously requires that we consider those underlying structures responsible for both human rights and the cultural behaviors associated with them. Contrary to antirealist epistemologies, philosophically realist approaches work to do this by exploring unobservable phenomena. If we are interested in the ontological foundations of rights, then we should consider those unobservable mechanisms responsible for generating rights.

The Rationalist Approaches to Natural Law

In its most basic form, naturalistic philosophies assume that rights reflect fundamental principles that govern the natural world; natural right is an objective part of the world that we live in. Understanding nature as the foundation of right, then, is the primary interest of these philosophical approaches. They attempt to discuss the foundations of human rights in reference to two basic principles: fundamentality and universality (Beitz, 2009, 52–53).

The first principle – fundamentality – refers to rights as “pre-institutional”, which is to say that they operate separately from the cultural and legal ways of society. Therefore, naturalistic philosophies reject the empiricist assumptions that human rights are mere social and cultural constructs. Instead, these philosophies argue that positive law should correspond with natural law.

The second principle – universality – assumes that all people possess human rights. This is closely related to the first principle. Naturalist philosophies assume that the fundamental laws of nature are unchanging and govern all of life and, therefore, extend to all people. In general,

these two principles suggest that the foundations of human rights operate as basic natural laws governing issues of right.

This raises an interesting question, though, as to what exactly those foundations are and how they can be known. Natural law philosophies have traditionally answered these questions by framing the foundations of rights in terms of human reason. Specifically, human rights derive from the same capacity to rationally understand them. I explain this in more detail below.

Rationality as a foundation of right

The history of natural law philosophies have emphasized the foundational role that human rationality plays in both constituting rights and understanding them. The Stoic philosophy (c. 300 BC) held that there is a rational order to the universe, and that the recognition of right occurs when rational beings live in accordance with it. Drawing on Stoic philosophy, for instance, Cicero wrote that “true law is right reason in agreement with nature” (59-47 BC) which is to say that natural right can be known to those who reflect upon their actions.

The emphasis on rationality was an important point in Christian and runs through the works of Augustine (354–430) and later Aquinas (1225–1274). Augustine argued that natural comes directly from God which is “inscribed upon the rational soul, so that in the very living out of this life and in their early activities people might hold to the tenor of such dispensations” (2002, 92). Centuries later, Aquinas provided a new interpretation which suggested that natural law is not created directly from god but, instead, arises from the world that God created. Specifically, people are part of the rational order of the world and, therefore, can rationally understand it. According to him, natural law is “the participation of the eternal law in the rational creature” (Aquinas, www.nlnrac.org). For him, our ability to rationally understand

nature and our place within it is the very thing that natural right also derives from. In his words, “the rule and measure of human acts is the reason, which is the first principle of human acts.”

The emphasis on rationality became a core tenet in much of the modern philosophies associated with the Enlightenment. For instance, the writings of Hugo Grotius (1583–1645), often considered the “father of natural law” (1917), continued to emphasize the foundational role of reason in natural law. Like much of the philosophy at the time, he broke from the Christian tradition and its emphasis on God. Instead, Grotius argued that law itself derives from rational people working in accordance with nature. We see this in the *De summa potestatum*, where he writes that right “arises from the nature of the action itself” (*Opera Omnia Theologica*, vol. III, p. 187). In other words, rights are emergent properties from the rational nature of people. He states this more clearly in “The law of nature is a dictate of right reason, which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity” (1925, 38-39). In other words, it is the study of our rational nature which informs us of natural right. Other natural law writers during this time echoed these sentiments. For instance, Gabriel Vasquez (1549–1604) echoes this sentiment in saying that “The first natural law in rational creation is, therefore, nature itself, as rational, for this is the first rule of good and evil” (Kilcullen, 2012).

Other writings on natural law during this time include the work of the social contract theories of Hobbes (1588–1679) and Locke (1632–1704). In general, social contract philosophies assert that the rules that organize a society derive from an agreement between rational actors. Hobbes’ argument that authoritarian rule is preferable to the state of nature is based on our rational desires for security. According to Hobbes, “it is a precept, or general rule of reason: that every man ought to endeavour peace, as far as he has hope of obtaining it” (2004,

1980). Locke's writings are more optimistic than Hobbes' and argued that the social contract is not designed to protect fearful individuals from each other but, instead, create a public sphere of cooperation. According to Locke, "The state of nature has a law of nature to govern it, which obliges everyone: and reason which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions..." (117, 1994). Our rational capacity is best developed in public sphere of cooperation. Despite this different vision of society, he still presumed that our cooperative nature stems from a collective rationality where reasonable people understand the benefits of cooperation

Contemporary natural law philosophy still continues this rationalist tradition. This is true for the work of John Finnis and his writings on "practical reasonableness." His thoughts on human reason and rights differs from many of the modern thinkers of the enlightenment who argued that natural rights derive directly from facts about the natural world. Instead, Finnis argues in *Natural Law and Natural Rights* that natural law is an intuitive part of us that inclines us towards what is good (he refers to this as "basic human flourishing"). For him, practical reasonableness – as normative mode of thought – inclines us to these ends. What is right and good for human flourishing is not derive from anything but, rather, become intuitively known through our practical reasonableness. He describes natural law, then, as "the set of principles of practical reasonableness in ordering human life and human community..." (Finnis, 2011, 280). In this sense, Finnis' major contribution lies in his ability to overcome this naturalistic fallacy where previous theories derived 'ought' from 'is'. In this context, human reason provides the intuitive understanding which makes sense of our actions in the context of the inclinations that brought them about.

Derivationism and Inclinationism

In general, naturalistic philosophies assume that rights are real because they reflect the laws that govern human nature. Specifically, natural law philosophies ground the moral realism of human rights in our innate capacity for rational thought. According to natural law philosophy, the substance of rights can be understood through human reason precisely because they reflect our rational nature.

This rationalist approach, however, just begs the question further as to what the relationship is between rights and reason and, also, how human rationality allows for the understanding of natural right. Naturalist theories have addressed this question through two competing philosophies: derivationism and inclinationism. Both of these provide an account as to how natural rights are known.

Derivationism, in general, argues that natural law derives from the nature of rational beings who, in turn, can understand it through human reason. This is true for the works of Grotius, Hobbes, and Locke. Inclinationism, on the other hand, argues against the idea that rights derive from anything and instead holds that knowledge rights become intuitively understood through inclinations. This is the case with the work of John Finnis. I discuss these in detail below.

Derivationism

Again, derivationism asserts our knowledge of right derives from acts of human reason which assumes a rational human nature capable of moral discovery. To make sense of this, it is important to make a distinction between practical reason and speculative reason. In their simplest form, speculative reason concerns claims about the world while practical reason

concerns how best to act within it. Practical reason, then, is inherently normative as it concerns how we should act. Practical reason's normative approach is what makes it different from the positive approach of speculative reason which, again, is concerned with how the world works. Both speculative and practical knowledge are important to understanding derivationism because it argues that the latter derives from the former.

If we start with the premises that a) rational beings are capable of self-understanding and b) that our ability to understand operates according to the laws governing the natural order of things, then one can conclude c) that the rational being should, through speculative reason, apprehend natural law so far as those laws relate in some way to the governing of human nature. (Augustine takes this one step further by claiming that nature is comprised not only of physical laws but divine laws of rightness as well). In other words, rational beings capable of self-understanding, through speculative rationality, recognize themselves as part of the world's natural order and, by extension, can understand how those laws work. How our practical reason informs us to act in accordance with those laws, then, constitutes natural right, which derived purely from speculative reasoning. In other words, we can speculate about the world and, in turn, reveal insights through practical reason into moral action.

There are issues with this derivationist approach, however. The first is that the practical reasoning of morality and rights requires deriving natural rights from the speculative reasoning of how the world works. In doing so, these approaches attempt to draw a practical 'ought' from a speculative 'is' which commits the naturalistic fallacy – you cannot derive values from facts. Derivationists may challenge the fact/value distinction by claiming that the innateness of values constitutes part of the facticity of the natural world, but they still must articulate how in order to clarify where its normative authority comes from. Social contract theories do their best to trace

this authority back to human nature, but this just further begs the question as to why facts of human nature rationally authorize values.

Second, and a more obvious critique, is that derivationism puts a lot of faith in the rational capacity of people to recognize natural law in an accurate way. Modern cognitive science now recognizes the limits of rationality, let alone how our speculative account of the world is based on imperfect perceptions and subjective experiences. The derivationist, then, overlooks the cognitive limitations of human reason when it assumes that we can somehow rationally understand how the world works through reason.

Third, and related to the second, its reliance on speculative reason oversimplifies a culturally diverse world. Different cultures understand the world differently and these diverging speculative accounts are going to produce practical knowledge along the subjective experiences of culture, politics, economics, etc. In short, speculative accounts of the world vary according to culture and the derivationist has no way to explain the plurality of these divergent understandings. In fact, such a multitude of different “reasons” exposes the falsehood that rationality is universal and serves as the foundation for human rights.

Inclinationism

Inclinationism counters derivationism and argues instead that our awareness of rights occur through a non-derivative form of human understanding – a view associated primarily with contemporary natural law of Finnis. Rather than actively discovering rights through reason or making reference to facts about the natural world, our awareness of rightness occurs intuitively through inclinations.

Inclinations serve as an intuitive understanding of rightness. Specifically, acting in line with rights requires some intuitive understanding that those actions are so. While eventually rational understand that our actions are rights after reflection, they do not come from reason. Instead, we reflect upon our actions and become aware of their rightness (Finnis 2011).

Thus, what distinguishes inclinationism from derivationism is their epistemological and ontological focus. Contrary to inclinationism, derivationism emphasizes ontology because it presumes a rational human nature in order to base its argument for rights. This is why derivationism emphasizes the importance of speculative reasoning – so that we can better understand the natural world that rights derive from. By contrast inclinationism focuses more on epistemology. It is concerned with how we know moral goods which do not need a concept of human nature. Rather, rights naturally occur to the rational being intuitively. This is why inclinationism focuses more on practical reasoning on how best to act, rather than speculative reasoning.

This poses a problem, however, for inclinationism because it rejects the ontological assumptions that make it a naturalistic theory – it claims that these self-evident goods are non-derivable. The question rises then as to how rights can be self-evident without a natural grounding. On one side, it fails to communicate how rights serve as an essential part of nature but, on the other side, any attempt to ground the theory in nature just makes it another form of derivationism.

Are the Foundations of Rights Non-rational?

The last section reviewed the derivationist and inclinationist approaches and discussed their respective limitations. Here I wish to remark on how those limitations reflect upon the rationalist

assumptions within natural law. Both approaches to natural law relate our understanding of rights to our innate sense of reason. Each emphasize different aspects of that relationship: derivationism frames the foundations of rights in the ontology of a rational human nature, while inclinationism emphasizes the epistemological aspect of rationality as a process that inclines us towards natural right. Both of these approaches have their limitations: derivationism fails to articulate an epistemological account as to how we come to know natural right, while inclinationism fails to offer an ontological account as to the source of those inclinations. In fact, the focus of each of these approaches serves as a response to the other's limitations. In other words, they are two different sides of the same coin – both address the link between reason and rights, but remain distinct and independent from the other. Any attempt to marry their respective ontological/epistemological foci into a coherent approach results in a contradiction: derivationism cannot discuss how practical rationality derives from speculative knowledge without committing the naturalistic fallacy, and inclinationism cannot articulate the source of practical rationality without becoming just another form of derivationism. The inability to marry both the ontological and epistemological dimensions of natural right into a coherent model exposes the limitations of a rationalist approach. After all, rights have both an ontological and epistemological dimension; something generates them and somehow we become aware of them. If human reason cannot explain both of these dimensions without contradiction, then perhaps human reason is not the source of natural right as traditionally thought. In general, their rationalist ontology cannot sustain their normative claims to human rights.

If we are to theorize about the foundations of natural rights, then those foundations should articulate both an ontological and epistemological dimension without one contradicting

the other. In other words, it should identify the source that rights derive from which inclines us towards right behavior.

Conclusion

Both empiricist and rationalist approaches fail to provide a stable ontological foundation that can support their theoretical arguments for human rights. First, the antirealism of empiricist approaches assume that the foundations of human rights can be located on the same level as the observable human rights activity that they generate. Therefore, they frame the foundations of rights in superficial terms of observable cultural practices while ignoring the ontological structures that underpin them. Essentially, empiricist approaches commit the epistemic fallacy by conflating the ontology of rights with our epistemological experience of them. Second, natural law perspectives attempt to base human rights, and our understanding of them, within a rationalist ontology. These theories argue that human rights can be understood by the same rational human nature they derive from. However, this argument can't explain how rational agents come to understanding human rights without internal contradiction. Specifically, the argument that we can rationally derive rights from factual knowledge commits the naturalistic fallacy. As a result, rationalism fails to provide a stable ontological foundation capable of supporting its epistemological claims about rights and reason. To conclude, the ontological problems of both empiricist and rationalist approaches can be summed up in the following: the antirealism of empiricist approach conflate the ontological foundations of human rights with how rights are practiced, while the rationalism of natural law approaches fails to provide the ontological stability to support their human rights theories.

Having diagnosed the problems of empiricist and rationalist approaches, I have situated the dissertation to argue for alternatives that can address the fallacies committed by the two dominant approaches. I advance a two-tracked argument that can correct for a) the epistemic fallacy committed by empiricist approaches and b) the naturalistic fallacy committed by rationalist approaches. In correcting for the epistemic fallacy, I propose a critical realist approach which attempts to uncover the causal mechanisms generating observable phenomena. In correcting for the naturalistic fallacy, I propose a social-psychological perspective which emphasizes the importance of emotion in generating human rights values and behaviors. By framing my two-tracked argument as a response to the limitations of both empiricism and rationalism, I carve out a space to discuss the foundational role that emotion plays in generating a human rights ontology.

Chapter 2

Correcting for the Epistemic Fallacy: How Critical Realism Provides the Ontological Framework Missing in Empiricist Approaches.

Introduction

Chapter 1 briefly discussed the ontological problems with empiricist approaches to human rights. It argued that these approaches fail to conceptualize an ontological foundation to support their human rights theories. This is largely due to empiricism's focus on observation: researchers conflate the causal foundations of human rights with observable human rights activity rather than anchoring these foundations within the ontological structures producing them. The empiricist tendency to ignore ontology creates more disagreement than it resolves. The reason for this is that no theory is ontologically neutral, and the decision to research some observable phenomena over others reflects deeper ontological presumptions whether they are explicitly stated or not. This leads to theoretical debates over the causal foundations of human rights which will likely persist without researchers realizing how they actually reflect the deeper ontological disagreements underpinning them.

Correcting this problem requires an ontological intervention which can seriously and critically investigate the unobservable structures generating human rights activity. This chapter aims to initiate that intervention by proposing an ontological framework for human rights which divorces their causal mechanisms from the social activity they produce. Specifically, I employ

the ontological framework articulated by critical realism, a philosophy of science associated with the work of Roy Bhaskar. While the empiricist conducts science according to what can be epistemologically understood, critical realism asks how reality must be ontological structured in order for science to be possible. In answering this question, critical realism articulates a structure of reality that divorces social activity from the natural mechanisms generating it. I use this ontological framework to explore the foundations of human rights.

Structure of the Chapter

This chapter is organized into two major parts. The first part of the chapter deconstructs the ontological problems of empiricist human rights theory from a critical realist perspective. These ontological problems were discussed briefly in the last chapter as a way to justify an ontological intervention. However, it is important that this chapter critically examine those problems further using a critical realist perspective in order to demonstrate how it can correct for them. I begin with a distinction that critical realism makes between the two epistemological camps within the empiricist sciences: empirical realism (positivism) and transcendental idealism (constructivism). Positivism holds that the social world operates much like the natural world, and that the job of the scientist is to observe and identify the causal laws responsible for social regularities. Constructivism argues instead that we impose our subjective understanding of the world onto social phenomena in order to make sense of it (Bhaskar 1979, 2-4; Bhaskar 2008, 26-27). From there, I discuss how these two empiricist camps buttress agreement theories and relativist theories. Agreement theories follow a positivist form of science which explains why they conflate the ontology of rights with empirical structures of cultural and legal agreement. Relativist theories follow a constructivist form which explains why they reject the objective

reality of rights altogether and, instead, conflate rights with how they are subjectively practiced within culture. Despite their theoretical differences, both agreement and relativist theories commit the epistemic fallacy. This is important because it illustrates that underpinning their theoretical debate over human rights are deeper unacknowledged ontological disagreements.

The second part of this chapter explains how a critical realist approach can provide the ontological framework to theorize about human rights practices. Critical realism is comprised of two philosophies: transcendental realism and critical naturalism. Together, they paint a complex portrait of reality which I use to explain how human rights practices reflect deeper ontological structures generating them. Transcendental realism argues that reality is hierarchically stratified so that observable phenomena at the top are generated by natural mechanisms from below. Critical naturalism explains how those natural mechanisms interact with social phenomena and how this can be studied within the social sciences. It constructs a model that illustrates how those natural mechanisms from below can, in turn, be affected by the same social phenomena that they generate. From there, I discuss how these two core philosophies of critical realism can theorize about human rights. Transcendental realism provides a structure of reality to theorize how observable human rights practices at the top are generated by unobservable mechanisms from below. Critical naturalism explains how the practice of human rights either reproduces or transforms those unobservable mechanisms over time.

Critiquing the Empiricist Sciences

In general, critical realism divides empiricism into two camps that have dominated the social sciences: empirical realism (which takes shape in positivist sciences) and transcendental idealism (which takes shape in constructivist approaches) (Bhaskar 1979, 1; Bhaskar 2016, 44).

Positivism adopts a naturalist approach to the social sciences, an approach which holds that social phenomena can be studied the same way that we study natural phenomena. It builds primarily on a Humean philosophy of causal relations, which I will describe in detail below. Constructivism holds, instead, that the social world is inherently different than the natural world and, therefore, must be studied differently. It borrows from Kant and holds that the social world reflects human thought and language. In general, the differences between the two can be summed up as such: Positivism's naturalist assumptions focus on identifying observable regularities within social phenomena, while constructivism argues instead that we impose our subjective understanding of the world onto social phenomena in order to make sense of it.

Cause and Effect in the Empiricist Science

The aim of the scientific method is to establish a causal relationship between phenomena. Despite the theoretical differences between positivism and constructivism, they both employ an empiricist scientific method in regards to the nature of cause and effect. As Bhaskar points out, "the mainstream in the philosophy of science, in both its classical empiricist (Humean) and transcendental idealist (Kantian) currents, presupposes an implicit empirical realism according to which the real objects of scientific investigation are defined in terms of actual or possible experience" (Bhaskar 1986, 5). At the heart of both positivism and constructivism is David Hume's empiricist philosophy of causal relations, also known as the "constant conjunction" (I explain this below). Positivism accepts Hume's philosophy as both necessary and sufficient, while constructivist approaches view it as only necessary. This section explains how Hume's philosophy of cause and effect advances a purely antirealist foundation, and how the positivist and constructivist sciences work with it.

David Hume's philosophy of causa and effect (the "constant conjunction") follows an 'if A, then B' form of causal analysis. He justifies this form of analysis through his philosophy of mind. For Hume, knowledge is either outwardly received through sense-experience or inwardly understood through reflection. The former refers to empirical matters which can be observed and verified while the latter deals with logical statements. Hume argued that these two different processes of understanding reveal that knowledge separates into two different categories (also known as Hume's Fork): facts and ideas (Hume 1777, E 2.3).

This was an important distinction for Hume because it offers us a way to think about cause and effect. He argued that causation cannot be a matter of relation between ideas and, therefore, must be a matter of facts – it must be an empirical problem that we perceive through sense experience. Accordingly, Hume provides three criteria for causal events: 1) The first refers to what he calls the "constant conjunction" which is to say that cause and effect implies a paired relationship between two empirical events, 2) the second is temporal priority where one of those events precedes the other, and 3) the necessary connection between the cause and the effect (Hume 1777, E 7.28).

Hume points out that there is an empirical problem with the third criterion. While the first two lend themselves easily to observation, the third does not. We can experience both the constant conjunction and temporal priority of causal phenomena – both of these are matters of facts. However, we can never evidence their necessity – this is a matter of ideas. Hume writes,

When we look about us towards external objects, and consider the operation of causes, we are never able, in a single instance, to discover any power or necessary connection; any quality, which binds the effect to the cause, and renders the one an infallible consequence of the other. We only find, that the one does actually, in fact, follow the other. The impulse of one billiard-ball is attended with motion in the second. This is the whole that appears to the outward senses (Hume 1777, E 7.6)

In other words, we only expect the conjoining of two events to be necessary based on our previous observations, but this is not an empirical truth. Hume's fork demonstrates how these three criteria refer to two different forms of knowledge. Necessary connection between the conjoined events is not a matter of empirical fact because it is not evidenced within the real world but, instead, is a matter of interpretation. Following this line of thinking, Hume asserts that the aim of sciences is to research cause and effect in terms of the constant conjunction within space and time. This has shaped most of the social sciences as both the positivist and constructivist strands of empiricism have adopted this view. According to Bhaskar:

The Humean theory of causal laws, the idea that a constant conjunction of atomistic events was either necessary and sufficient (the empiricist variant) or at least necessary (the neo-Kantian variant) for the attribution of a law, underpinned the standard (Popper-Hemel) deductive-nomological or covering-law model of explanation and almost all the other theories of orthodox philosophy of science" (Bhaskar 2016, 6).

The following section a) explains how both positivism and constructivism incorporate Hume's constant conjunction as well as b) exposes the limitations of Hume's causal philosophy as it pertains to the social sciences.

The Positivist Camp

Positivism advances a naturalist approach to the social world, meaning that the social sciences can study the world similarly to that of the natural sciences. If natural laws can be observed in terms of constant conjunctions, then observed social regularities should also be treated as expressing causal laws. For this reason, the positivist camp accepts Hume's constant conjunction as both necessary and sufficient (Bhaskar 2008).

However, there is a problem with researching social phenomena like the natural sciences, and it concerns how constant conjunctions in the social world react differently in closed and open systems. Closed and open systems simply refers to the environment that the researched phenomena occurs in. A closed system refers to a scientifically controlled environment while an open system does not. The natural sciences can identify constant conjunctions within a controlled laboratory environment and expect those casual laws to sustain themselves in a completely different environment. This is not, however, how the social world works. Social behaviors observed in a controlled environment will not necessarily repeat themselves in real world contexts.

Understanding the differences between social and natural phenomena, as well as how they react to open and closed system, illustrates the problems with positivism's assumption that constant conjunctions are necessary and sufficient. First, constant conjunctions are not necessary because observed social regularities in a closed system will not necessarily repeat themselves within an opens system. While natural constant conjunctions can repeat themselves outside of laboratory conditions, social phenomena cannot; observed regularities of social phenomena operate differently in open systems than they do in closed systems (Bhaskar 2008, Bhaskar 1989, 22-24). So, social events constantly conjoined within a closed system should not be understood as causal laws, though positivism take them as such due to the emphasis that empirical realism places on observation.

This focus on observation leads to the second limitation – constant conjunctions are not sufficient because they ignore the unobservable structures implicated in causal relations. Positivism accepts the sufficiency of constant conjunctions because it assumes a flat world where everything occurs on the level of observation. However, causal phenomena behave differently in

open systems than they do in closed systems because of unobservable mechanisms governing their behavior. Thus, empiricism assumes a flat world which ignores the unobservable structures governing social phenomena underneath it. In other words, positivism is concerned with only the superficial dimension of social reality and is completely uninterested in the underlying causal mechanisms making it (Bhaskar 2008; Bhaskar 1979).

In general, positivism assumes a flat and closed system where observed regularities are treated as causal laws, despite the fact that they do not repeat themselves in an open system. It thus conflates the underlying causal laws with the observable social regularities that they try to describe. As a result, the positivist sciences fail at their naturalist mission to understand the world because it treats only controlled observations as real and nothing else. By framing observed regularities as natural – rather than the causal laws governing those regularities – it frames the reality of the world in terms of our ability to study it. Positivism, then, commits the epistemic fallacy by conflating ontology with epistemology.

The Constructivist Camp

Constructivist approaches differ from positivism in an important way. While positivist approaches are built on the empirical realism of Hume, constructivist approaches borrow also from the transcendental idealism of Kant (Bhaskar 2008). Empirical realism considers only the observable parts of the world as independently real, while transcendental idealism considers the social construction of the world as dependent on the observer. While empirical realism assumes that knowledge derives passively from our senses, “transcendental idealism maintains that this order is actually imposed by men in their cognitive activity” (Bhaskar, 27). In other words, positivism holds that knowledge is acquired from an external world while constructivism holds

that knowledge is socially constructed internally. Constructivist approaches to science, then, do not treat the world as a surface as positivism does. Rather it treats the world more as a structure reflecting theory, ideas, models, etc.

They agree with positivism that constant conjunctions are necessary for a scientific understanding of cause and effect, but they disagree that they are sufficient. What is missing is the active role that the observer plays in the construction of causal analysis. The social regularities observed reflect how the observer understands causal relations within society. This changes the empiricist understanding of causality to make nature dependent on our understanding of it rather than the other way around. By treating social reality as a reflection of human understanding, it prioritizes our experience of the world over the world itself. In doing so, it commits the same errors as positivism. Positivism's dependence on Humean causal laws reduces social reality to observed patterns of human behavior, while constructivism's interpretivist methods assume that such observed patterns are constructions of the theories themselves; positivism refuses to acknowledge the real world while constructivism frames it as construct of the human mind. Bhaskar sums this comparison up by saying,

Neither classical empiricism nor transcendental idealism can sustain the idea of the independent existence and action of the causal structures and things investigated and discovered by science. It is in their shared ontology that the source of this common incapacity lies. For although transcendental idealism rejects the empiricist account of science, it tacitly takes over the empiricist account of being. This ontological legacy is expressed most succinctly in its commitment to empirical realism, and thus to the concept of the 'empirical world' (Bhaskar 2008, 28)

In general, both positivism and constructivism understand the social world only in terms of our experience of it. Despite their shared antirealism, they both exhibit philosophical differences –

positivism relies solely on Hume while constructivism incorporates Kant. These epistemological differences translate into larger disagreements regarding social theory. The next section explains how their epistemological differences translate into disagreements in social theory.

Positivist and Constructivist Social Theory

There are two models of social theory associated with the positivist and constructivist approaches: positivist models are built on Durkheim and constructivist models are built on Weber (Bhaskar 19979). Sociological theory often draws on a distinction between Durkheim and Weber because each viewed the relationship between the individual and society differently. Durkheimian theory often considers social structure as a reality independent of individual agency. These pre-existing social structures serve as a constraint on behavior which frames the agency of the individual in terms of what social structure allows. This reflects Durkheim's concept of "social facts." According to Durkheim, social facts are "a category of facts which present very special characteristics: they consist of manners of acting, thinking, and feeling external to the individual, which are invested with a coercive power by virtue of which they exercise control over him" (Durkheim 1895, 52). By contrast, Weber reverses this relationship to make society dependent on the individual. Rather than serving as a constraint on agency, social life is instead constituted by the individual's meaningful thoughts and actions. As Ager points out, "the former have historically wanted to reduce the subject matter of psychology to the status of mere epiphenomena of the social structure, whereas the latter wish to reduce sociology to the epiphenomena of cognitive psychology."

These theoretical differences between the two stem from their differences in their antirealist philosophies underpinning them. Bhaskar sums up the differences between the two

saying that the constructivist approaches are “represented above all by Weber, in which social objective are seen as the results of (or constituted by) intentional or meaningful human behavior” and that the positivist approaches are “represented by Durkheim, in which they are seen as possessing a life of their own, external to and coercing the individual” (Bhaskar 2008).

The Durkheimian assumption that behavior is governed by social structure reflects the empirical realism of the positivist sciences. Again, empirical realism accepts social objects as having an ontological status, but the facts of social reality are limited to what the scientist can observe; society is considered real but is reduced to social structures that the scientist can passively observe. This allows for the positivist to uncover causal laws within society by identifying social regularities as they relate to real social structures. Durkheim builds on this positivism to assert that real structures serve as the determinants of social phenomena. Hence, positivist social theory subordinates behavior to society structure.

The Weberian mode, predicated on the transcendental idealism of constructivist approaches, reverses this to make social structure dependent on agency. Again, transcendental idealism highlights the active role that the researcher plays in constructing reality. Contrary to positivism which assumes that the research passively observes the world, constructivism argues that the scientist makes sense of the world by imposing our understanding on to it. Causal relations are not objective laws of nature but instead reflect the ideas of those studying them. In this view, science is not a structure that we depend on to understand society but, instead, actively constructs our understanding of society. By prioritizing agency over structure, social theory subordinates social reality to the agency of individuals acting within it.

In short, both positivism and constructivism affirm that the scientific discipline should study the world according to our ability to understand/experience it. Positivist sciences are built

on empirical realist epistemologies which reduce social ontology to what can be observed. Constructivist approaches are built on a transcendental idealist epistemology which rejects social ontology altogether by making social life dependent on the observer. These two camps propose very different approaches to the study of social life. Positivist approaches adopt a Durkheimian model which subordinates human agency to observable social structure which reduces social reality to what can be experienced. Constructivist approaches adopt a Weberian model which changes it to make social reality dependent on agency. This illustrates that underpinning their theoretical disagreements is the epistemic fallacy, which they both commit.

Scientific Perspective	Positivism	Constructivism
Causal Philosophy	Hume's Empirical Realism	Kant's Transcendental Idealism
Structure/Agency	Durkheim's "Social Facts"	Weber's Agency-Centrism

Figure 1: Positivism and Constructivism

The next section discusses how these different frames have shaped human rights theory. It discusses how agreement theories operate within the positivist approach and how the relativist perspectives operate within the constructivist approach. By explaining how the different human rights theories are associated with these empiricist frames, the next section hopes to expose the epistemological limitations to empiricist human rights theory.

Critiquing the Empiricist Human Rights Approaches

The two core empiricist human rights approaches (agreement theories and relativist theories) are both built on top of empiricist philosophies. Their disagreement over issues of human rights can be traced to the specific disagreements between the particular antirealist philosophies

underpinning them – agreement theories operate within a positivist perspective and relativist theories operate within a constructivist perspective.

Agreement theories function according to a positivist form of science, so their theoretical argument for human rights is framed within a) an empirical realist epistemology which treats observable social regularities as real structures and b) a Durkheimian social model that treats these structures as the determinants of social phenomena. Agreement theory explains the ontological source of international human rights, then, as observable social regularities determined by cross-cultural and political structures. In this light, agreement theories are interested in uncovering the possibility of rights within the intercultural and political structure that allow for them.

On the other hand, relativist perspectives function within a constructivist approach, so their critique of international human rights is framed within a) a transcendental idealist epistemology which asserts that science actively constructs the reality that it observes and b) a Weberian social model which subordinates structure to agency. Relativist and postcolonial theories, then, do not view culture as a structural constraint on human agency but, instead, a reflection of it. According to these theories, rights are culturally relative and, therefore, reflect the agency of the group practicing them. Because of this, they criticize international human rights as violations of cultural autonomy or expressions of imperial power.

In general, culture plays an important role in each of these theories. For agreement theories, cultural structure serves as a major constraint that determines international human rights, while relativist perspectives refer to culture as expressing the agency of groups to form their own rights. Because they both focus on culture, they each discuss human rights only in terms of epistemology. However, they theorize about the relationship between culture and rights

very differently – agreement theories reduce human rights to observable cultural regularities that are structured by social facts, while both relativist perspectives frame rights as constructs reflecting our subjective values. These theoretical disagreements are a result of their inability to provide a proper ontological foundation that can support their theoretical choices. I elaborate on this below.

Positivist Approaches to International Rights – Agreement Theories

Again, empirical realism accepts the ontological status of social structures so long as they can be evidenced through scientific observation. This buttresses positivism which practices a naturalist form of social science and attempts to identify social regularities within a flat and closed system. Following Durkheim, these regularities serve as “social facts” that structure our agency. Human rights theory that functions within this positivist perspective frames the foundations of international human rights within the cultural and political structures that allow for their agreement. The human rights theories that work within this frame are common-core and overlapping consensus theories.

As I discussed in the previous chapter, both common-core and overlapping consensus theories frame the prospects of international human rights in terms of observable intercultural regularities. Common core theories argue for international human rights in so far as we can evidence cross-cultural similarities, and over-lapping consensus theories argue that human rights embody intercultural settlements on how best to manage international rights issues.

Again, common core theories frame human rights as reflecting core values held by all societies. Examples of these core values are RJ Vincent’s “lowest common denominator” or Walzner’s “moral minimum.” In general, these core values serve as the cross-cultural

regularities, or “social facts,” which structures the possibility of international human rights. Overlapping consensus functions in a similar fashion because they also frame the prospects of international human rights within a structure of observed cultural agreement. Specifically, they view rights as “norms for global political life reachable from a variety of possibly incompatible foundational positions” (Beitz 2009, 76). An example of this is Charles Taylor’s “unforced consensus” where cultures with different interests find common ground regarding how best to govern intercultural politics.

Both of these agreement theories accept the empirical realism of positivist sciences by reducing the reality of human rights to observable social structures. Specifically, agreement theories recognize how cultural “social facts” structure the possibility of human rights. As a result, they frame the foundations of international human rights in terms of structures of intercultural agreement: common core theories argue that rights are real in so far as we can evidence cross-cultural similarities, and over-lapping consensus theories argue that rights embody intercultural settlements on how to regulate international issues.

Constructivist Approaches of Rights – Relativist Perspectives

Again, constructivism differs from positivism in that it does not reduce the world it studies to observed phenomenal regularities. Instead, constructivism recognizes the active role that the observer plays in constructing the world. Following Weber, constructivist approaches to rights argue that rights reflect our agency in actively constructing them (this runs counter to the positivist approaches to rights which argue that rights reflect social structure). Perspectives that fit into this category are naturally critical of international human rights given the active role that

cultural in-groups play in constructing the meaning behind their own behavior. Theories that fit into this category are relativist approaches (cultural relativism and postcolonial perspectives).

As I discussed in the previous chapter, both cultural relativism and postcolonial perspectives recognize the active role that cultural agents play in constructing rights. Rights have meaning precisely because they reflect the constructive agency of cultural members. For this reason, these perspectives remain suspicious of international human rights because no objective standard of right exists to base them on. In fact, such international standards tend to reflect the imperial interests of the west rather than the cultural interest of the local groups.

Cultural relativism argues that rights derive their meaning from within the culture that practices them. Again, cultural relativism was originally designed by Franz Boas who, inspired by the idealism of Kant, wanted to argue for the role that ideas play in culture. For him, cultural practices really are relative and cannot be judged from an outside perspective. In this light, cultural relativism holds that human rights values only have meaning relative to one's culture. Like cultural relativism, postcolonial perspectives also argue that rights have meaning within a cultural context, but they focus on how international human rights assume universal standards to judge them. Specifically, this perspective exposes how international law and human rights reflects particularly Western values rather than universal ideals. This is seen with Alexander's argument that liberal human rights advance Western ideals through a "dominant knowledge framework" (Alexander 2005, 124). Another example is Mutua who argues that the West has to justify international human rights by first demonizing non-Western people through a savages-victims-saviors narrative.

The role that ideas play in these perspectives reflects the transcendental idealism of the constructivist approach which assume that we project our understanding of social reality onto the

world. Culture is not a structure that we act within but, instead, reflects our agency to construct it. Rights, then, only have meaning when they reflect the subjectivities of cultural agents actively constructing how the world operates. Both relativist and postcolonial perspectives reject the ontology of international human rights because they recognize the active role that cultural agents play in constructing rights. If notions of right reflect the constructive agency of cultural members, than no international standard can exist. Rights only have meaning within a particular cultural context (relativism) and claims to their universality usually reflect imperialist efforts (postcolonialism). Hence, they research the rights as they are practiced in closed cultural systems.

Human Rights Approach	Agreement Theories	Relativist Perspectives
Scientific Philosophy	Positivist	Constructivist
Human Rights Foundations	Structured by Cultural Agreement	Reflect Cultural Agency

Figure 2: Human Rights Foundations per Theory

Flat and Closed Systems in Empiricist Human Rights Theory

Both the positivist approaches to rights (agreement theories) and constructivist approaches to rights (relativist perspectives) pursue an empiricist agenda to science where they frame the foundations of rights in terms of observable cultural phenomena. This agenda is built on a causal philosophy which researches constant conjunctions in terms of flat and closed systems. Specifically, each of the human rights perspectives discussed above frame the foundations of rights in terms of culture constantly conjoined with issues of right. Agreement theories discuss the prospects of human rights as structured by social facts. For them, international human rights are constantly conjoined with structures of intercultural agreement. Relativist perspectives, by

contrast, reject international rights due to the observable salience of cultural difference. For them, the only constant conjunctions of rights exist within culture, not between them. The theoretical disagreements between these perspectives stems from how each commits the epistemic fallacy. I explain below.

Agreement theories are built on positivism's empirical realism which treats social phenomena as real so long as it can be evidenced. They follow the positivist tendency to treat the social world like the natural sciences. Therefore, agreement theories a) view the constant conjunction as both necessary and sufficient and b) subordinate agency to the "social facts" of structure. The job of the scientist, then, is to identify the causal laws responsible for social regularities. As such, they assume that social phenomena operates in a way where causal laws can be evidenced on the level of observation. Thus, they assume a flat reality where all phenomena is caused by observable structures. As a result, agreement theories frame the foundations of human rights in terms of the structures of observable cultural regularities that determine them. Their attempt to evidence international human rights requires that they research rights in an open international system. However, the assumption of flatness prevents them from understanding the underlying structures responsible for cultural agreement/difference in an open system.

By contrast, constructivist approaches a) view the constant conjunction as only necessary and b) prioritize agency over social structure. For them, the constant conjunction is not sufficient because they consider the active role that agents play in constructing our understanding of the world. Their emphasis on agency serves to highlight how social reality is structured by ideas, perceptions, models, theories, etc. Thus, constructivists recognize how rights and culture are constantly conjoined but, because culture reflects the agency of those practicing rights,

culture serves as the constitutive cause of rights. In doing so, they assume a closed system by observing how these ideational structures manifest within a singular cultural environment. This closed-ness shifts their attention to cultural difference which prevents it from observing international human rights.

Both demonstrates how their unacknowledged ontological problems leads to theoretical differences. Agreement theories treat the world like flat surface and, therefore, reduce the foundations of rights to observable cultural regularities. Relativist perspectives close their analysis to particular cultural systems and, therefore, ignore ontological questions altogether. Instead, they focus on how culture constructs rights.

Summary of Part 1

This section discussed the empiricist human rights approaches and the theoretical differences that arise from their inability to resolve the ontological problems underpinning them. Both agreement theories and relativist perspectives fail to understand the ontological foundations of human rights because both study the world solely in terms of human experience – they both draw conclusions about the foundations of human rights based on what the researcher can observe. Again, this reflects their epistemological commitment to Hume's constant conjunction. Because of this, they struggle to explain the foundations of human rights in open and structured systems. Agreement theories argue that international human rights reflect cross-cultural regularities in an open international system. However, they reduce human rights to observable behavior which reveals how they treat the social world as a flat surface. Relativist perspectives, on the other hand, assume that the social world is socially constructed by ideas, perceptions, and ways of knowing. Thus, they argue that rights only have meaning within a particular cultural context.

Their decision to ignore ontological questions, however, begs the question as to what makes the practice of rights possible. In short, their inability to provide an ontological foundation underpins their theoretical disagreement as to how to research human rights.

The empiricist assumption that foundations of human rights can be scientifically observed in flat and closed systems commits the epistemic fallacy because it reduces the nature of the world to what can be humanly experienced (again, the epistemic fallacy occurs when we attempt to answer ontological questions in terms of what can be epistemologically known). Correcting the epistemic fallacy means that we study the world as it really is, and that we take unobservable phenomena seriously. Specifically, researchers interested in revealing the unobservable foundations underpinning human rights needs to study them in an open and structured system. The next section reviews how a realist form of science accomplishes this. Specifically, I review critical realism which offers a scientific frame to study the world in terms of open and structured systems.

Critical Realism – An Alternative to Empiricism

This section reviews critical realism and demonstrates how it addresses the specific empiricist limitations discussed in the previous part. While the empiricist researches ontological questions in terms of what can be epistemologically known (the epistemic fallacy), the realist works to understand the world as it is. After all, knowledge is about something that we assume pertains to the real world.

This part is organized into two sections. The first discusses the core tents of critical realism, which is comprised of two philosophies: transcendental realism and critical naturalism. Transcendental realism serves as a scientific frame that establishes the primacy of ontology and

how the observable world manifests as a result of underlying generative mechanisms which actualize in an open and structured system. Critical naturalism discusses how this open and structured reality shapes social phenomena in a way that resolves the Durkheim/Weber debate over structure and agency.

The second section discusses how critical realism provides the framework to research the foundations of human rights. Transcendental realism articulates a structured and open system that allows for us to conceptualize the unobservable mechanisms which generate human rights. Critical naturalism explains how those unobservable mechanisms structure human rights in a way that still recognizes the agency of culture to construct the meaning behind rights.

Transcendental Realism

Bhaskar's transcendental realism attempts to establish both a) the primacy of ontology and b) the nature of that reality, or what he calls a "new ontology" (Bhaskar 2008). He builds both arguments by correcting for the limitations of empiricism. Again, the empiricist sciences conflate ontology with epistemology by either reducing it to what can be observed (empirical realism) or by framing it as a construct of the mind (transcendental idealism). Bhaskar's argument for ontology affirms a mind-independent reality (contra transcendental idealism) and his argument for a "new ontology" asserts that reality cannot be reduced to observation (contra empirical realism). He argues both of these points by way of a transcendental argument which asks what reality must be like in order for science to be possible (Bhaskar 2008; Bhaskar 1979; Collier 1994). The next section discusses his argument for ontology and the following section discusses his argument for a "new ontology."

An Argument for Ontology – Rejecting Transcendental Idealism

Bhaskar builds an argument for ontology by challenging the transcendental idealism of the constructivist sciences. Constructivism avoids issues of ontology because the scientist proactively constructs the world that they are studying. Thus, the scientist never describes the world but, instead, their ability to construct the world. However, we must assume a mind-independent world in order for the sciences to have any meaning. Progress for the social sciences, then, requires that we take ontology seriously and theorize about it in a way that allows for our scientific understandings of the world to be possible.

Bhaskar corrects for constructivism by way of a transcendental argument, a specific method of argument that asks what conditions must be necessary for something to be possible. According to Bhaskar, transcendental arguments are “from a description of some phenomenon to a description of something which produces it or is a condition for it” (Bahskar 1986, 11). Most attribute this form of argumentation to the transcendental idealism of Immanuel Kant where he argued that our sense impressions construct knowledge only by imposing our categorical understanding of space and time on to them. Because, according to Kant, we can know the world only by making it fit to our categories of understanding, we can never know the world as it really is. Bhaskar’s transcendental argument, though, breaks with this and asks a realist question what the conditions of reality are necessary for our knowledge to be learned about it. Thus he begins his critical realist project not only by divorcing ontology from epistemology, but by prioritizing the former over the latter.

Bhaskar accomplishes this reprioritization through a distinction that he makes between the transitive dimension and the intransitive dimension. The transitive dimension refers to the social experiences of science and our changing knowledge-base that it produces. The intransitive

refers to those unchanging causal mechanisms that science attempts to explain (Bhaskar 2008, 21-24). This is an important distinction because, as Bhaskar acknowledges, science is inherently social where “objects of scientific knowledge” (facts, theories, etc.) are not independent from the processes that produce them. Bhaskar classifies these objects of scientific knowledge as transitive, a term which signals a directional relationship with those real subjects that transitive knowledge attempts to understand (Bhaskar 2008, 22). These real subjects, by contrast, are independent of our transitive understanding and, therefore, referred to as intransitive which marks the direction of this relationship (Ibid 23). In essence, these terms refer to Bhaskar’s realist attempt to divorce ontology from epistemology where empiricist science has only conflated them. Articulating the ordered relationship between the intransitive world and our transitive knowledge of it serves to prioritize ontology over epistemology. This is an important step in assuming a mind-independent reality.

Divorcing ontology from epistemology through the transitive/intransitive distinction implies that socially constructed transitive objects of scientific knowledge may not accurately portray their intransitive natural subjects due to the limitations of methodological observation. Bhaskar makes this point in order to maintain scientific fallibilism (Ibid, 43). We must assume a mind-independent reality in order for science to have any meaning, but we must also recognize the transitive dimension of our scientific knowledge regarding the nature of that reality. In other words, the transitive/intransitive distinction affirms the real world while recognizing the limits in understanding it.

An Argument for a “New Ontology” – Rejecting Empirical Realism

Bhaskar builds his “new ontology” by challenging the empirical realism of positivism. The positivist sciences reduce ontology to what can be observed and, thus, only explain the world in terms of our experience of it. In doing so, they assume a flat and closed social reality where causal laws can be identified on the same level as the regularities that they produce. Again, this reflects the Hume’s philosophy (the constant conjunction) which analyzes causal relations in terms of our experience of corresponding events. Bhaskar’s transcendental realism corrects for the assumptions of flatness and closedness by articulating both a vertical and horizontal dimension (Bhaskar 2008; Bhaskar 1979; Bhaskar 2016).

First, the vertical dimension organizes the world according to the transitive and intransitive dimensions. Because reality is comprised of both observable and unobservable phenomena, we cannot assume that all of reality operates on the same level of experience. Instead, reality is multilayered where different phenomena operate on different domains. Bhaskar refers to this as a “stratified ontology” where observed phenomena at the top are caused by unobservable mechanisms from below. This stratified ontology is comprised of three domains: the empirical, the actual, and the real. The empirical domain consists of our experience of the world, including the transitive dimension of knowledge. The actual domain consists of the observable phenomena which science attempts to explain. The real domain consists of the underlying mechanisms that generate observable phenomena in the actual domain. While our changing transitive knowledge rests on the domain of the empirical, intransitive enduring mechanisms function primarily on the domain of the real (Bhaskar 2008, 13-14)

	Domains of the Real	Domain of the Actual	Domain of the
Empirical			
Mechanism	X		
Events	X	X	
Experience	X	X	X

Figure 3: Domains in Bhaskar's Stratified Ontology

Second, the horizontal dimension “opens up” the sciences to study cause and effect in uncontrolled environment. It recognizes that the domain of the actual is generated by multiple and interconnected underlying mechanisms from the domain of the real. This is how it is possible for the diversity of phenomenal variations at the top to be produced by the same enduring underlying causal mechanisms from below (Bhaskar 2008, 33-35). Again, underlying generative mechanisms will produce observable behavior differently in one system of intervening variables than they would within another system with different intervening variables. In an attempt to isolate the direct effect of causal mechanisms, positivism studied phenomena in a closed and controlled environment. However, this is not how the social world operates; social phenomena at the top is generated by complex processes of multiple and interconnected causal mechanisms from below. Understanding how causal laws operate in the social world, then, requires that we “open up” reality to include these complex causal relationships.

Together, the vertical and horizontal dimensions of Bhaskar's transcendental realism rejects Hume's “constant conjunction” by framing causal analysis in an open and stratified ontology. The vertical dimension of causal relations refutes the idea that such conjunctions originate in the same domain as they are experienced, and their horizontal dimension refutes the idea that such conjunction are “constant” (Bhaskar 2008, 26-28). Instead, this multidimensionality implies that causal relations are, what Bhaskar calls, “transfactual” (ibid,

51). This means that the stratified complexity of cause and effect implicate natural mechanism that are always at work whether they actualized in the domain of the actual or not. Because causal relations do not occur purely as constant conjunctions, the social scientist must consider how these relations emerge from the unobservable mechanisms in an open system. A transfactual analysis, then, understands that causal laws are basic functions which are always at work whether they are actualized according to human experience or not.

This underscores an important concept in Bhaskar's philosophy: emergence. The concept of emergence refers to a process whereby unique objects arise from, but are not reducible to, the interactions of other more fundamental objects (Bhaskar 2008; Bhaskar 1979; Bhaskar 1989). This concept is often applied to explain how systems, which may appear to be designed or ordered, actually arise from the aleatory interactions of their smaller parts. For instance, economists are interested in emergence as a way to explain how the order of free markets arise from the chaos of self-interested actors. Neuroscientists are interested in it to explain how the psychological awareness of one's self arises from separate and unrelated parts of the brain. The concept of emergence is an important concept for Bhaskar because it explains how new and unique phenomena are generated in an open and stratified system. Specifically, it refers to how observed phenomena, while caused by underlying structures, are uniquely different and irreducible to those structures.

Critical Naturalism

Bhaskar's critical naturalism establishes a) how his transcendental realism can be used for the social sciences (including the psychological sciences), and b) why the social sciences must be interdisciplinary. First, Bhaskar agrees with the constructivist that social phenomena are

inherently different than natural phenomena and that they should be studied differently as well. However, he disagrees that this requires social phenomena be studied through an anti-naturalist form of science. For him, cause and effect still function the same in the social sciences as they do in the natural sciences, but the primary difference between the two is that social scientists must also research how the underlying causal mechanisms are also affected by the very phenomena that they produce (Bhaskar 1979). Critical naturalism, then, attempts to show how a stratified and differentiated ontology allows for this recursive relationship.

This recursive relationship creates something that Bhaskar refers to as the “prevalence of dualism” (Bhaskar 2016, 44). For Bhaskar, the social sciences involve several persistent debates, or dualisms. Examples include structure/agency, individual/society, mind/body, etc. These dualism arise because the social sciences struggle with explaining the recursive relationship between social phenomena and the causal mechanisms that generate them. He resolves this debate through his Transformation Model of Social Action (TMSA), which I discuss in the next sub-section. After that I discuss why it’s important for the social sciences to be interdisciplinary.

The Transformational Model of Social Action

The prevalence of dualism within the social sciences simply refers to the disagreements over philosophical/theoretical/methodological questions. The most obvious dualism within the social sciences refers to the naturalist/anti-naturalist debate between positivist and constructivist approaches. However, a number of others persist within the social sciences including facts/values, theory/practice, structure/agency, society/individual, materials/concepts, etc. (Bhaskar 1979). Applying transcendental realism to the social sciences, then, requires some

synthesis of the prominent dualisms that persists in social research. The major dualism that Bhaskar addresses is the structure/agency and society/individual dualism which he reconciles through his transformational model of social activity (TMSA) (Bhaskar 1979, 43-46; Bhaskar 1989, 73-77). Before I explain this, it is important to understand how the TMSA is a response to the limits of both Durkheimian and Weberian social theory.

Again, Durkheim's model assumes an ontologically real social structure that constrains and shapes the agency of social actors. Where Durkheim reifies social structure, Weber frames it as the product of the intentional behaviors of agents. Weber does this through an essentially individualist approach which places emphasis on the agent to build structure (Bhaskar 1979, 40).

Bhaskar refers to a third model which he attributes with the work of Peter Berger and associates. He refers to this as the "dialectical model" which attempts to correct for the linear relationship expressed in the previous two models. It's uncontroversial to recognize how the social structures that constrain our actions are also reaffirmed by those very actions. According to this third model, neither the individual nor society at large are completely independent of the other. Instead, there exists a circular relationship between the two where structure and agency co-constitute each other (Bhaskar 1979, 40-41).

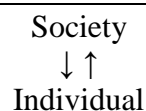


Figure 4: Dialectical Social Theory

This dialectical model doesn't actually solve the structure/agency and individual/collectivist dualisms though. This model refuses to recognize either the group/structure or the individual/agency as apart from the other. However, Bhaskar takes issue with this model.

According to him, “in seeking to avoid the errors of both stereotypes, Model III (the dialectical model) succeeds only in combining them. People are not, I shall argue, related ‘dialectically’. They do not constitute two moments of the same process. Rather, they refer to radically different kinds of thing” (Bhaskar 1979, 42).

Bhaskar’s comment that the individual and society are “radically different kinds of thing” is a reference to their place within the transitive/intransitive distinction. The historically contingent nature of the transitive dimension is comprised of the meaningful and intentional agency of individual behaviors. The relatively stable social structures that agency behavior within refers to the intransitive social reality that makes those behaviors possible. Society at large, then, comprises of those underlying transcendental structures that make individual behavior possible.

However, the produced behaviors at the top do, in turn, affect the underlying structures that produced them. This is what makes the social sciences inherently different from the natural sciences. How the agency of individuals in turn affects the structure of the group, though, is very different than how the structure of the group affects the agency of the individual. The reason that they affect each other differently is a matter of time. Social structure always preexists that actions taken within it. Agents, then, do not create social structure but, instead, either reproduce or transform it. Future iterations of social activity then depends on this reproduction/transformation. (Bhaskar 1979, 43-46; Bhaskar 1989, 73-77). Below is his model.

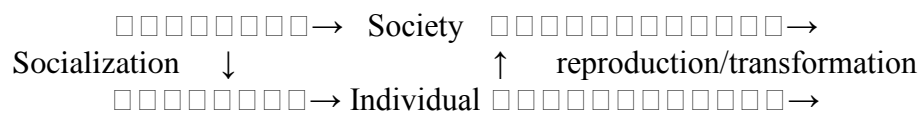


Figure 5: The Transformational Model for Social Activity

Following the graph from left to right, it illustrates how social structure and the individual are not co-constitutive. Society serves as the intransitive structures that either enables or constrains the individual's action through processes of socialization. The actions of those individuals, then, either reproduce or transform those parts of the society that constrained or enabled the behavior to begin with. Variations of behavior allowed by the structure may transform the system to allow future iterations of those behaviors, thus transforming the system over time. Thus, Bhaskar's TMSA properly reconciles the Durkheimian model with the Weberian model by framing social structure as the intransitive reality which allows for the transitive agency of individuals to either reproduce or transform it. Importantly, the reproduction/transformation stage of the TMSA demonstrates how the social sciences are different than the natural sciences (in agreement with constructivism) but do so in a way that does not resort to anti-naturalism (in agreement with positivism).

Laminated Systems and Interdisciplinarity

The TMSA frames society as the underlying (intransitive) mechanism which generates actor's behaviors (transitive) that reproduce/transform society. In this sense, the TMSA places society as the ontologically real structure which imposes its conditions for meaningful action on the individual. However, critical realism does not assume that social structure is the primary or ultimate foundation for social phenomena. Instead, social reality has its roots in the non-social world. According to Bhaskar "Ontologically, the social world is an emergent, concept- and activity-dependent, value-drenched and political contested part of the natural world" (Bhaskar 2016, 60).

Bhaskar's assumption that social life is built on top of more rudimentary natural facts (biology, chemistry, physics etc.) reflects his emphasis on stratification and emergence. Again, reality is multidimensional with top levels emerging from lower ones. For instance, the social level emerges from the psychological level, and psychology emerges from the biological level, and biology emerges from the physical level, etc.

He refers to this multi-tiered reality as a laminated system. According to him, this system, "is composed of a multiplicity of different levels, reference to each of which [is] necessary in order to understand, or give the adequate account of, the phenomena in question" (Bhaskar 2017, 44). There are a number of models illustrating Bhaskar's laminated system, but the seven scalar model below is the most common (Bhaskar 2010, 9-10; Bhaskar 2016, 83-84).

-
1. Sub-individual level (physical, chemical, biological, psychological, etc.)
 2. Individual
 3. Micro-level (small-scale, face-to-face)
 4. Meso-level (particular structures/cultures of society)
 5. Macro-level (large scale, society at large)
 6. Mega-level (geo-historic trajectories)
 7. Global trends
-

Figure 6: Bhaskar's Laminated System

What Bhaskar's laminated system attempts to do is illustrate a more comprehensive perspective of reality which recognizes how all phenomena (both social and non-social) relate to each other. Because lower levels of reality serve as the generative mechanisms that produce phenomena in higher levels, understanding one level of phenomena requires placing that phenomena in a perspective which relates it to other levels that have generated it. For this reason, Bhaskar calls for the social sciences to be interdisciplinary. The social sciences should not work to understand human behavior as their discipline narrowly defines it. All of human behavior is affected by a

variety of phenomena ranging from the political, cultural, and economic to the biological, psychological, and geological. The interdisciplinarity of critical naturalism adds new meaning to social change because change in a laminated system is not only a matter between social structure and individual agency, but also includes sub-individual structures as well (again, including physical, biological, psychological, etc.). Bhaskar attempts to account for this in his TMSA.

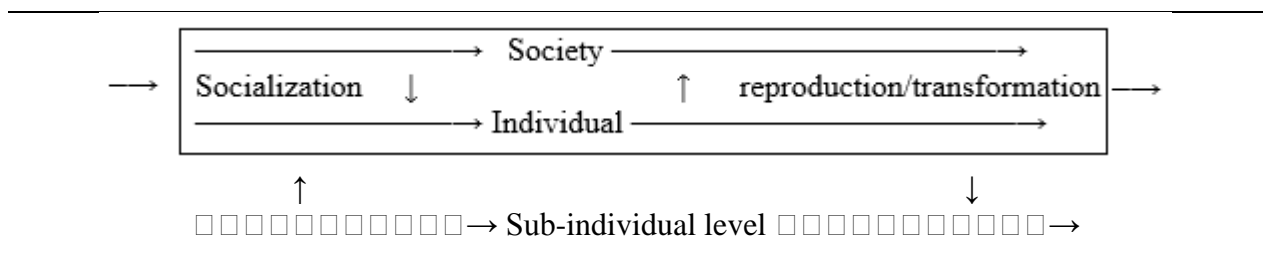


Figure 7: TMSA in Laminated System

Critical Realism of Human Rights

A human rights theory that adopts a critical realist frame of science would be able to correct for the limitations of the positivist and constructivist approaches to human rights. Both agreement theories and relativist perspectives build their argument for or against international human rights by framing them in terms of cultural experience and, therefore, never account for the ontological foundations of rights. Doing so would require identifying the underlying generative mechanisms that human rights phenomena emerge from (which I do with Bhaskar's stratified ontology) while simultaneously accounting for the variations of human rights over space and time (which I do via TMSA). In this second part, I outline how a critical realist approach (both the transcendental realist and critical naturalist components) accounts for the ontological foundations of human rights.

First, Bhaskar's transcendental realism outlines the stratified and open reality necessary for phenomena to emerge within. Stratification allows me to demonstrate how human rights emerge from those unobservable causal mechanisms that serve as human rights foundations (again, I argue in the next chapter that those mechanism are human emotion, but it is important in this chapter to first provide the framework to theorize how rights emerge from those emotive mechanisms). Openness allows me to explain why universal mechanisms produce the cultural diversity of rights (again, this occurs because human rights emerge in an open cultural system where the practice of rights is produced by multiple social structures interacting with each other).

Second, critical naturalism discuss the relevance and application of Bhaskar's transcendental reality to human rights. His TMSA model demonstrates how cultural change over space and time emerges from those ontological foundations. In other words, critical naturalism recognizes the social reality of cultural change/relativity but explains it as a product of the underlying ontological foundations manifesting in an open and stratified system. This is why it requires an interdisciplinary approach. This is important because it demonstrates why agreed-upon human rights standards may change over time.

Transcendental Realism and Human Rights

Again, Bhaskar's transcendental realism outlines the ontological conditions necessary for social reality to take place. Specifically, his stratified ontology provides the framework to theorize how phenomena, and our experience of it, emerge from underlying generative mechanisms in an open system. Emergence plays an important role in this framework as the observable phenomena that we wish to explain become something qualitatively different than the unobservable mechanisms that produce them. This transcendental realism provides the ontological framework to theorize

how human rights emerge from their unobservable ontological foundations but, importantly, also become something categorically different than those foundations. I demonstrate in this section how transcendental realism provides for this theorizing.

Human Rights in an Open and Stratified Ontology

Bhaskar's stratified ontology refers to the domain of the empirical as our experience of the domain of the actual, and the domain of the actual as emerging from the domain of the real. Because the empiricist human rights theories understand rights purely in terms of our cultural experience (relativist perspectives frame rights as an expression of cultural agency and agreement theories frame rights as legal or political agreements enabled/constrained by cultural structure), they locate human rights either in the domain of the empirical or of the actual. Specifically, the transcendental idealism of relativist perspectives reject the reality of objective human rights foundations leading them to locate human rights purely in the domain of the empirical, while the empirical realism of agreement theories reduce ontology to the observable structures of culture where they expand human rights to include the domain of the actual. In other words, their focus on culture prevents these theories from locating human rights in the domain of the real. If a human rights theory is to take the domain of the real seriously, then it must recognize culture as just another level of phenomena emerging from more fundamental layers within a laminated system.

Obviously human rights are shaped by culture, and I will explain this later when I discuss the transformational model for social action (TMSA). However, in a laminated system, culture itself is a level of reality that rests upon more fundamental natural laws (again, this dissertation will explain those more fundamental laws in terms of human emotion in the next chapter). None

of the theories above can explain this because they lack an understanding of how causality occurs in a stratified and open system. Again, agreement theories reject unobservable foundations of rights because they treat reality as a flat surface, while relativist perspectives fail to understand the foundations of rights in an open system.

Correcting for the limitations of both requires taking the domain of the real seriously by studying the culture/human rights relationship in an open and stratified ontology. This requires asking the transcendental question of what conditions must be necessary for both culture and human rights to relate to each other. A transcendental realism of rights corrects for this by framing human rights as emergent goods deriving from the universality of generative mechanisms within an open system. I first address stratification and then address openness.

First, in terms of stratification, the intransitive universal mechanisms from below (domain of the real) generate observable phenomena at the top (domain of the actual) as well as our transitive experience of that phenomena (domain of the empirical). According to this stratified ontology, an inquiry into the ontological foundations of human rights positions human rights practices in the domain of the actual so that we may theorize about their foundations within the domain of the real. At the top is our cultural experience of human rights. Such a stratified ontology looks like this.

Domain of the Empirical:	Observation of Human Rights Practices
Domain of the Actual:	Cultural/Human Rights Practices
Domain of the Real:	Universal Foundations of Human Rights

Figure 8: Human Rights in a Stratified Ontology

Second, in terms of openness, human rights practices vary between different groups of people. As Donnelly says, “cultural relativity is an undeniable fact” (Donnelly 1984). The

challenge, then, is explaining how the ontological foundations of human rights produce variations of their practices. This is explained in terms of open systems. Again, causal relations operate differently in opens social systems than then do in closed laboratory systems. Laboratory conditions isolate phenomena in order to control for intervening variables. Such control is absent in an open international system where social phenomena – in a globalized world – is often multivariated and interconnected. In other words, the universal foundations of human rights (domain of the real) produce differences in human rights practices (domain of the actual) because those foundations function in an open global system where they interact with other political, cultural, economic, historical, phenomena each produced by their own generative mechanisms.

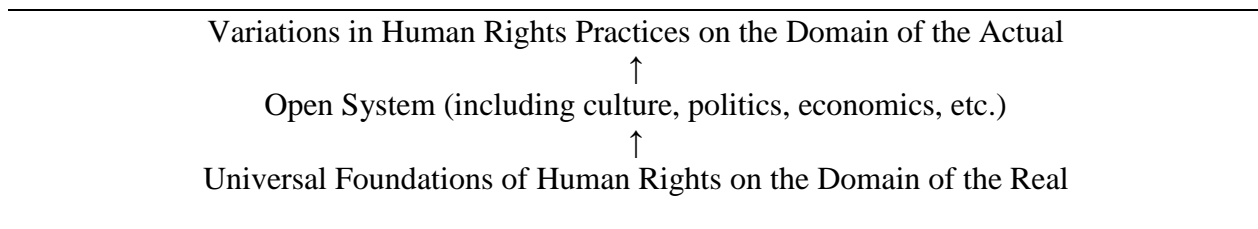


Figure 9: Human Rights in an Open System

Critical Naturalism and Human Rights

Again, Bhaskar recognizes (in agreement with transcendental idealism) that the social sciences must study phenomena differently than the natural sciences. Yet he still believes (in agreement with empirical realism) that social phenomena can be studied in naturalist ways. Bhaskar's critical naturalism discusses how to achieve this nuanced balance. Specifically, critical naturalism outlines how the social sciences can apply his transcendental realism to the social phenomena. This section discusses how critical naturalism makes sense of human rights. There

are two important points to make here when discussing critical naturalism and human rights. The first refers to the TMSA and the second refers to laminated systems.

Human Rights and Social Change

What makes the social sciences different from the natural sciences, for Bhaskar, is that underlying causal mechanisms in the social world not only produce observable phenomena, but also are affected by it as well. Again, this was the source of the “prevalence of dualism” within the social sciences concerning structure/agency, individualism/collectivism, materialism/idealism, etc. Both Durkheimian and Weberian social theory failed to understand the cyclical relationship between causal mechanism and the phenomena they produce, while the dialectical model failed to understand the role of time within that cycle. Bhaskar’s TMSA serves as a solution to this puzzle.

The TMSA is an important model to discuss human rights because it provides an explanation as to why human rights practices (both culturally contested and internally agreed upon) change over time. Again, taking seriously the idea of human rights foundations requires explaining why they change over time despite the relative stability of their generative mechanisms. Both agreement theories and relativist/postcolonial perspectives frame rights only in terms of cultural structure or agency (relativism/postcolonialism frames rights as an expression of cultural agency and agreement theories frame human rights as enabled by cultural structure). The TMSA shows how rights change over time due to its relationship to culture.

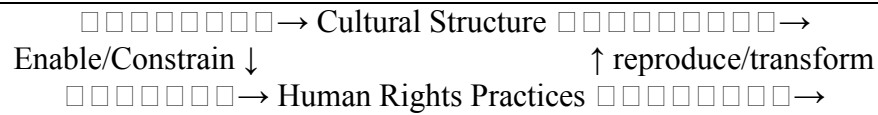


Figure 10: Human Rights, Culture, and Social Change

The TMSA demonstrates how culture and human rights do not have a linear relationship but instead a cyclical relationship. Culture does affect how human rights are practiced while the practice of those rights does, in turn, have the potential to change the culture that enabled it. Unlike the dialectical model though, the TMSA contextualizes social change in a dimensions of time. Again, what this means is that culture precedes human rights in that actors practicing rights behaviors do so within a pre-existing cultural structure. Thus, their actions only transform the culture rather than completely constructing a new one. However, this particular TMSA model of human rights illustrates only the domain of the actual (culture and human rights both on domain of the actual) and does not include those more underlying generative structure on the domain of the real. We need to recognize how social change occurs within a laminated system.

Human Rights in a Laminated System

Again, each layer of reality rests upon another layer of more fundamental natural laws. If we are interested in the ontological foundations of human rights, then we must recognize the deeper layers of reality undergirding human rights. In other words, accounting for the domain of the real means that generative mechanisms may be located in more fundamental levels in a laminated system. The dominant human rights theories study the meso-level and macro-level (relativist/postcolonial perspectives consider the meso-level because they consider culture within a closed system, while agreement theories consider the macro-level because they open it to

international level). However, these empiricist human rights theories ignore unobservable phenomena and therefore cannot understand the more fundamental levels undergirding the meso-level and macro-level.

My argument that emotion serves as the foundation of human rights necessitates that we incorporate the micro, individual, and sub-individual levels of analysis. The next chapter will discuss the literature on emotion in depth to justify why emotion serves this role, but it is important to situate emotion within the theoretical frame to articulate the relationship between emotion and human rights. Below is an illustration of how the relationship between culture and human rights rests upon more fundamental levels of reality.

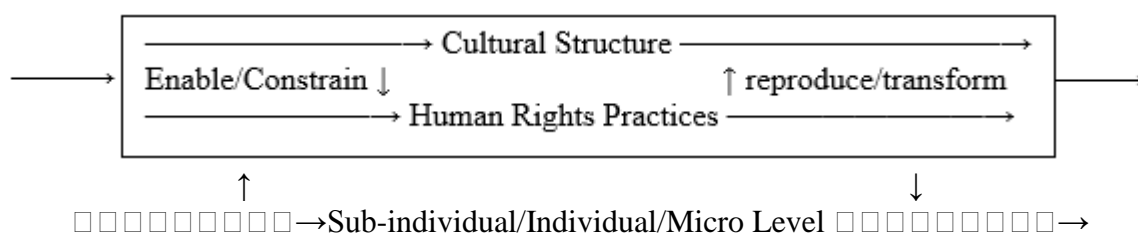


Figure 11: TMSA of Human Rights in a Laminated System

As the TMSA model above illustrates, culture does serve as a major structure that enables/constrains human rights practices while also recognizing how those practices, in turn, reproduce/transform culture. However, this culture-human rights relationship itself is enabled/constrained by more fundamental sub-individual, individual, and micro-level structures which, to some degree, are reproduced/transformed but it. Specifically, those more fundamental structures refer to human emotion (sub-individual levels refer to the neuroscience of emotion, individual levels refer to the psychology of emotion, and micro-levels refer to the social-psychology of the immediate local situation).

Chapter 3

Correcting for the Naturalistic Fallacy: How Emotion Explains both the Ontological and Normative Dimension to Human Rights

Introduction

The last chapter covered the first part of my two-tracked argument, namely that a critical realist approach to human rights can help us to theorize about their foundations. This chapter covers the second track which claims that those foundations can be understood in terms of emotion. Emotion relates people to their environment by appraising a situation and mediating our social interactions. In doing so, the felt experience of emotion informs us of our values and serves as judgments as to how people should be treated. These feelings constitute a sense of right – they inform us as to what people are due and the responsibilities we have to each other. This sense of right underpins how human rights are practiced, but it does not translate into a fixed set of human rights principles. Because emotion relates us to our environment, this sense of right is always culturally situated and reflects how social interactions are mediated within a group.

My focus on emotion challenges much of the natural law tradition which emphasizes the role that human reason plays in natural right. Naturalistic philosophies argue that people come to understand rights using the same faculties of reason that rights derive from. As discussed in chapter 1, however, these philosophies commit the naturalistic fallacy by arguing that knowledge

regarding what is right can somehow be derived from a rational understanding of nature. In essence, their rationalist ontology cannot support their normative claims to human rights.

I argue that emotion resolves this problem because it can support both the normative and ontological dimensions to human rights. Emotion supports the normative dimension because it functions to mediate our social interactions with others and appraise how others are treated. In doing so, they invoke visceral feelings which inform us of our values and incline our behaviors to conform to those values. (Haidt 2012; Greene 2013; Pinker 2003; Saver & Damasio 1991; Moll et al 2002). Emotion also supports the ontological dimension because it implicates real psychological structures underpinning these social interactions and appraisals. The values that arise from those appraisals reflect involuntary (and often unconscious) processes embedded in the biology of the human brain (Turiel, Hildebrandt, & Wainryb, 1991; Kunda 1990; Simone et al 2014; Haidt, Björklund, & Murphy 2000). Together, emotion corrects for the naturalistic fallacy because an emotional ontology can sustain the normative claims that arise from it. A normative understanding of rights are not dependent on a rational understanding of how values derive from nature. Instead, a sense of right is informed by the visceral experience of emotion which is nonetheless still grounded in nature by virtue of it deriving from ontologically real psychological structures.

My Emotional Framework

The emotional framework I use borrows from the field of social-psychology as a way to understand how the internal mechanisms of emotion relates a person to others in their social environment. While there is no agreed-upon definition of emotion, it is generally understood that it refers to inward physiological/cognitive changes that produce a felt experience and that

motivate outward behaviors in response to some environmental stimuli (Russell & Barrett 1999, 806; Nairne 2000, 444; Daniel 2011, 310; Schacter 2011, 373; Sternberg 1998, 542). These inward experiences of emotion motivate outward behaviors following an appraisal of the situation which inform the subject as to how to act within them (Lazarus 1991).

The social-psychology field uses a paradigm called *interactionism* to frame how behavior is produced by inward psychological factors interacting with one's social environment (Gazzaniga 1992; Houghton 2008; Bliss 1991; Endler 1976; Zimbardo 2007). In the past, social psychology studied the inward psychological factors and the outward environmental factors separately within their own respective paradigms. *Dispositionism* examined the internal mechanisms (e.g., personality traits, cognitive processes, neurobiological structures, etc.) while *situationism* focused more on how outward situations (e.g., one's immediate surroundings, family life, cultural norms, etc.) shape behavior. However, social-psychologists later developed interactionism as a way to understand how human behavior is produced by both dispositions and situations interacting with each other. (Houghton, 2008; Bliss 1991; Endler 1976; Zimbardo 2007). It frames these interactions as a process whereby situations select or "activate" certain dispositional factors of the person in order to produce behavior (Sabini, Siepmann, & Stein 2001; Bargh 1997; Kihlstrom 2008; Reynolds et al 2010).

I use this interactionist paradigm to theorize as to how inward emotive dispositions underpin and shape how people interact with their social environment. It allows me to frame social and cultural interactions as a 'situation' that is generated by, and interacts with, emotive 'dispositions' in order to produce human rights practices. In doing so, interactionism provides the framework to consider emotion as ontologically real mechanisms underpinning human rights activity. It is important to point out how this framework fits with the critical realist

understanding of cause and effect – emotive dispositions function on the domain of the real and interact with situations on the domain of the actual in order to produce behavior later to be observed on the domain of the empirical. Anchoring emotion within the social-psychology of interactionism, then, corrects for the epistemic fallacy because it divorces the ontological structures that generate a sense of right from the observable behaviors that they produce.

Chapter Structure

The chapter begins with some brief historical context of the psychology discipline in order to demonstrate its empiricist roots and its eventual shift away from it. Attempts to make the discipline more scientific in the 19th and 20th century pushed researchers to adopt experimental methods of observation. These experimental methods naturally explained human behavior in terms of the observable situations shaping it. Undergirding these experimental approaches was a tabula rasa theory of mind inherited from the Enlightenment philosophy of John Locke. Research built on this blank-slate philosophy rejected the role that dispositions play in human behavior. It wasn't until the cognitive revolution of the 1960s that scientists acknowledged the importance of both situational and dispositional approaches.

The second part discusses emotion within the situational and dispositional frameworks in order to demonstrate how it operates on both the observable and unobservable level. On the dispositional side, emotion implicates real physiological mechanisms inherited through a shared evolutionary history. This is important for two reasons because it affirms emotions as: a) ontologically real by anchoring them within the material nature of the person, and b) universal as those emotive mechanisms are commonly shared among all people. On the situational side, I discuss the fact that emotion serves as both a) reactions to observable events as well as b)

motivational forces driving behaviors in response to those events. This is important because it demonstrates that emotions mediate the person-environment relationship.

The third part discusses the relationship between emotion and our sense of right, as well as the dispositional and situational factors involved. On the dispositional side, I discuss the cognitive and psychological dimension to values and rights. The literature on this discusses how value-judgments have less to do with conscious reasoning and, instead, reflect the functioning of involuntary and viscerally felt emotion. Not only are notions of rightness and justice laden with emotion (Chebat and Slusarczyk 2005; De Cremer and Van den Bos 2007), but our ability to recognize the inherent dignity of others or empathize with their suffering is a purely emotional capability as well (Damasio 1994; Frith 2001). I also discuss, the importance that culture plays in situating emotion within a social context that gives rights and values meaning. Emotions are always culturally situated and, while they may generate a sense of right, they do so within a particular cultural context.

I conclude the chapter with a brief summary of its two major arguments so that the following chapter may integrate them into a critical realist frame of human rights. The social-psychology of emotion provides an ontological framework to theorize as to how human rights activity (on the domain of the actual) reflects how the real and value-laden emotive structures (on the domain of the real) react to human rights issues. Those emotive structures, while universal, motivate behavior in an open system to produce cultural variations of rights practices.

Situations and Dispositions in Psychology: A Brief Historical Context

This part provides a brief historical review of the psychology discipline. Before it developed theories to research internal psychological factors, it followed a strictly empiricist mode of

sciences. Some wanted to make the discipline more scientific and pushed researchers to adopt a more experimental/observation approach. This emphasized the role of the situation in shaping human behavior. Undergirding this rejection of unobservable phenomena was a tabula rasa philosophy of mind, popularized by John Locke, which rejected the role of dispositions.

It wasn't until the cognitive revolution of the 1960s that scholars challenged this empiricist dogma and overturned blank-slate philosophies. This shift towards a more cognitive approach aimed to identify the dispositional mechanisms necessary for behavior to operate. As a result, researchers today acknowledge the importance that both external situations and internal dispositions play in generating human behavior.

The Empiricist Roots of Psychology

Previous chapters discussed the role that empiricism plays in the political sciences, but the same is true for the field of psychology as well. Empiricism helped shape and develop much of psychology's modern history. As a scientific discipline, modern psychology begins with the research conducted by Wilhelm Wundt. Many would call him the founder of modern psychology (Hunt 2007, 141). In fact, he was the first researcher to refer to himself as a psychologist (Carlson and Heth 2010, 18).

Wundt wanted psychology to be seen as natural science, but there was no way at the time to study or measure unobservable cognitive processes. Because of this, most of the psychological writing was dominated by abstract methods of self-introspection. The problem with these methods is that they weren't seen as very rigorous. Attempting to make psychology more scientific, Wundt endorsed research to focus more on what can be observable and tested. In *Contributions to the Theory of Sense Perception*, he wrote "As soon as the psyche is viewed

as a natural phenomenon, and psychology as a natural sciences, the experimental methods must also be capable of full application to this science” (Wundt 1862, 70).

Wundt’s preference for empiricist methods was shared not only by his contemporaries, such as Hermann Ebbinghaus (1850-1909) and George Elias Muller (1850-1934), but set a trajectory for the radical behaviorism associated with John B. Watson (1878-1958) and later B.F. Skinner (1904-1990). Behaviorism, a scientific approach focusing solely on observable phenomena, holds that human behavior can be studied purely in terms of the social conditions shaping it. As Watson put it, the purpose of psychology is to, “predict, given the stimulus, what reaction will take place; or, given the reaction, state what the situation or stimulus is that has caused the reaction” (1930, 11).

However, behaviorism claims to be an objective scientific approach, it is predicated on a rather questionable philosophy which claims that all behavior really is determined solely by external stimuli. It assumes a *tabula rasa*, or blank-slate, theory of mind which rejects the idea of any innate structures that can shape behavior. According to this view, no one is predisposed to act one way or the other – dispositions are completely irrelevant or non-existent. In the words of B.F. Skinner, “the inside of the organism is irrelevant either as the site of physiological processes or as the locus of mentalistic activity” (Schutlz 2016, 318).

These empiricist and behaviorist approaches to contemporary psychology has its philosophical origins in the enlightenment thoughts of John Locke. Aside from his political writings, Locke is best known for his empiricist philosophy, which laid the foundation for modern psychology. He argued that all knowledge derives from sensory experience and, therefore, all science should be based on testable observation. This is most notably asserted in *An Essay Concerning Human Understanding* where he states:

Let us then suppose the mind to be, as we say, white paper, void of all characters, without any ideas; how comes it to be furnished? Whence comes it by that vast store, which the busy and boundless fancy of man has pointed on it, with an almost endless variety? Whence has it all the materials of reason and knowledge? To this I answer, in one word, from experience (Locke 1979).

Assuming that the mind is born a blank slate, Locke rejects the argument that ideas are innate and, instead, works to understand how thoughts and knowledge reflect our experience of the outward world. He reasoned that if knowledge is acquired solely through sense-experience, then scientific research must be based on methods of observation. Such a scientific focus on observation naturally limits the study of human behavior to the immediate situational conditions effecting it.

However, his empiricist philosophy of mind and science suffers from a serious contradiction. The primary problem is how a tabula rasa mind may acquire any information at all. If it is “void of all characteristics” and “without any ideas” how can experience alone furnish it without some preexisting cognitive framework to process it? Information must be received, appraised, categorized, stored, and recalled – none of this can be accomplished by a blank slate. Even the most simple of tasks (such as sensing a stimulus) requires some inherent cognitive structures to comprehend those senses. This was later acknowledged by Gottfried Wilhelm Leibniz who responded to Locke with,

[Locke] has not adequately observed that the ideas of being, of one and the same substance, of truth, of good, and many other things are innate in our mind because it is innate to itself, and that it discovers all these things in itself. For indeed, there is nothing in the intellect which was not in the senses, except the intellect itself (Leibniz 1765, 36).

In general, humans cannot be blank slates because, in the words of Steven Pinker, “blank slates don’t do anything.” Without a preexisting cognitive framework to process external stimuli, there would be no way to respond to it. There must be some pre-existing dispositional equipment in order for people to function as they do.

The Importance of Both Situations and Dispositions

The scientific interest in the internal psychology, or dispositions, of people was not popular until the cognitive revolution of the 1960s. This was led by the linguistic research of Noam Chomsky who argued that there is a genetic component to our language faculty. Specifically, Chomsky argued that all language follows certain structural rules that are innate to the human mind. This cognitive approach to language challenged the behaviorist approach popularized by Skinner who argued that language acquisition was a matter of positive reinforcement. Chomsky’s theory countered by saying that without innate cognitive structures, there would be no way to first acquire language, let alone translate one language into the other. In other words, Chomsky’s cognitive theory of language was one of the first realist explanations of behavior because it identified the generative and natural structures necessary for language acquisition.

Chomsky’s research sparked a paradigm shift in the discipline to recognize the importance of researching the unobservable dimension of behavior and thought. Challenging the empiricist orthodoxy, the cognitive approach works to understand the pre-existing dispositions that make behavior possible. Research in this approach has rigorously demonstrated that the mind is not born a blank slate and, instead, furnished with innate dispositional structures that make intelligible our surroundings in order to interact with them (examples of this research include: Dunbar 1992; Trivers 2002; Buss 2011; Deacon 1997; Cosmides & Tooby 2012;

Chomsky 1976; Pinker 2003; Gaulin & McBurney 2004; Wilson Freeman and Herron 2007; Wright 1994).

This is not to say that scholars assume that dispositions explain everything; eventually researchers developed interactionism, an approach that recognizes how behavior arises from dispositions and situations interacting with each other (see Endler 1976). This perspective aims to understand how human behavior expresses those internal (dispositional) factors of the body as they relate to the external (situational) pressures of its environment (Blass 1993; Norenzayan 2002; Caprara & Cervone 2000; Endler & Magnusson 1976; Snyder & Ickes 1985). It frames these interactions as a process whereby situations select or “activate” certain dispositional factors of the subject in order to produce behavior (Sabini, Siepmann, & Stein 2001; Bargh 1997; Kihlstrom 2008; Reynolds et al 2010). A complete understanding of human behavior, then, should consider how it arises from situation/disposition transactions. The next section discusses emotion from the dispositional side and then discussion the role that situations play as a necessary context to feel emotion.

Emotion is both Dispositional and Situational

This part reviews the literature on emotion to provide the reader with a basic understanding of the internal psychology of emotion and the important role that social situations play in order to feel emotion. The first section reviews the internal dimension. Here I discuss how emotion is embedded in the materiality of the human body. In the words of Antonio Damasio, “their content refers to the body of the organism in which they emerge. Feelings portray the organism’s interior – the state of interior organs and interior operations” (2018, 102). Specifically, emotion entails a number of internal processes such as physiological arousal,

cognitive appraisal, and behavioral changes. Furthermore, these internal processes refer to universal traits (Plutchik 1980; Eckman 1970; Tomkins 1962; Izard 1971). Their universality is a product of how emotion serves an adaptive function in our shared evolutionary history (Darwin 1872; Gaulin & McBurney 2003; Buck 1981; Bruce 1995; Plutchik 1980). Discussing these dispositional aspects is important because they affirm emotion as the ontological real and universal, an important task in arguing later that emotion serves as the generative structures within a stratified ontology of human rights.

The second section discusses the situational dimension of emotion. While emotions are embedded materially in the person, they are also about something in that person's environment (Lazarus 1991; Lazarus & Folkman 1987; Lazarus 1966). In the words of Richard Lazarus, "emotions are always about person–environment relationships that involves harms (for the negative emotions) and benefits (for the positive emotions)" (Lazarus 1991, 819). In other words, emotions are 'relational' which means that they function to mediate the person-environment relationship. This provides the person with the motivation to act in those situations.

Lastly, this section discusses how our internal psychology is also materially changed by the situations they respond to. New research into neuroplasticity demonstrates this recursive relationship between the brain and culture. Those neural structures responsible for emotion are changed by the very social interactions that they relate to (Wexler 2006; Barret 2017; Prinz 2014). As a result, different people emotionally appraise situations differently depending on their experiences. This social aspect creates a cultural dimension to emotion: not only are cultural situations generated by shared emotional experiences of the group, but those situations, in turn, also rewire the material structures of emotion. This is an important point for my

argument because it clarifies as to why rights emerge from universal mechanisms while simultaneously practiced differently relative to one's culture.

Emotion as a Real and Universal Disposition

Researchers in the early 20th century believed that emotions were learned solely through culture (Evans 2001, 3). According to this belief, emotion was similar to the empiricist understanding of language in that experience alone taught you how to properly emote. Because it was believed that emotion was learned through a framework of one's unique cultural experience, researchers considered emotion to be culturally specific. In fact, it was thought that different cultures would feel different emotions (Ibid, 5).

This cultural theory of emotion was challenged by Paul Ekman in the 1960s whose research argued that the cross-cultural experience of emotion is more similar than different. To prove this, Ekman researched the emotions of isolated groups far removed from Western culture (specifically, the preliterate groups of New Guinea). After telling group members stories that they can culturally relate to, he then showed them photographs of Americans making facial expressions and asked them to match the story with the photos. He found that they had no problem matching the facial expressions of a different cultural member with the stories of their own culture. This research demonstrated that two different and separate cultures expressed emotions in the same way, casting serious doubts on the theory that emotions were culturally relative.

Ekman concluded that there are "basic emotions" innate to all people and which all other emotions stem from. Scientists debate how many basic emotions there are (for instance, Mowrer argues that there are only two while Arnold argues that there are eleven) but most agree with

Ekman that anger, disgust, fear, joy, sadness, surprise should be on the list. It would be a mistake, however, to assume that the universality of our emotions is limited to the small list of basic emotions. Shaver et al show how a list of six basic emotions produces 25 secondary emotions and 143 tertiary emotions (2001, 26-56). In general, we all possess an incredibly extensive repertoire of emotions that all people, regardless of culture, can experience.

The reason why emotion is similar cross-culturally is because it is rooted in the shared dispositions of the human body. Specifically, emotion is produced by two primary parts of the nervous system – the brain and the autonomic nervous system. The brain is responsible for processing information for emotion. Important parts of the brain involved with emotion are the limbic system which includes the thalamus, hypothalamus, hippocampus, and amygdala. The autonomic nervous system controls bodily changes not associated with conscious thought. I discuss the functions of these parts here.

The thalamus serves as a junction which transmits information along two pathways to what researchers call the “low road” and “high road.” The low road sends information from the thalamus to the amygdala, a part of brain responsible for regulating emotion (such fear, anger, grief, etc.). The high road is less direct and sends information from the thalamus to the sensory cortex. There it is appraised before traveling to the amygdala (Gelder, Honk, and Tamietto 2011; Pessoa and Adolphs 2010). Emotion produced along the low road is automatic and results in reflexive behavior designed for self-defense while the high road undergoes more processing of the situation.

The hypothalamus plays a crucial role in activating the autonomic nervous system. It’s separated into two parts: the sympathetic nervous system and the parasympathetic nervous system (Kreibig 2010). The former is responsible for action while the latter keeps the body still.

The sympathetic nervous system is generally active during emotion and sends a signal to the adrenal gland which produces epinephrine and neuro-epinephrine. These prepare the body for action and result in changes in heart rate, blood pressure, perspiration, pupil dilation, etc.

The reason these physiological processes are universal is because they are a product of evolution. Evolutionary theories of emotion discuss the role that evolution has played in developing emotions. While Ekman's research was controversial at the time, he wasn't the first to challenge the cultural theory of emotion. Charles Darwin also rejected the idea that emotions are learned solely through culture observing that blind people emote the same way as everyone else. Darwin believed that emotions were innate to human nature and proposed an evolutionary theory of emotions in the 1870s. For him, the universality and innateness of our emotions implies that they serve an adaptive role in our evolutionary success. In fact, evolutionary theorists today point out that all mammals share the same neural architecture implicated in basic emotions.

Evolution by natural selection occurs when an organism survives long enough to propagate its genes. Simply put, when there is a hereditary variation of traits within a species, and when some of those traits are more conducive for survival and reproduction than others, then those traits will be sexually passed on to the next generation and become more widespread in the population. Organisms with traits not conducive for survival or reproduction don't survive long enough to mate and, therefore, don't pass on their genes. Those traits with no adaptive value perish with the unsuccessful organism.

Like any other physiological trait, emotion is also subject to the pressures of natural selection. Evolutionary theories of emotion discuss how it serves as a trait with great adaptive value. For example, fear drove us to flee from danger, anger caused us to fight for our survival,

disgust kept us safe from rotted food and feces, etc. In other words, emotions aided in our fitness by helping us respond to stimuli in the environment. Whichever emotions contributed to the fitness of our ancestors were sexually passed on to the next generation.

It's appropriate, then, to consider emotion as innate and universal faculties that tie us to a common ancestry. Our neurophysiological similarities are expressed in the language of our genes and evolved through our collective history. Scientists can trace everyone's mitochondrial DNA to a woman who lived in Africa 200,000 years ago (Cann, Stoneking, and Wilson 1987) as well as trace all of men's Y-chromosomes to a man that might have lived around the same time (Gibbons 1997). The discovery of both Mitochondrial Eve and Y-chromosome Adam confirm our shared evolutionary history. As a result, members of the human family are more alike than different – genetically speaking, we are all 99.9% the same (Rosenberg et al 2002). Furthermore, over a third of our genes, the highest proportion in human body, are expressed in the human brain, an organ that makes up only 5% of our body mass (NIH 2010).

The fact that emotion is rooted in the material makeup of the person speaks to two aspects of emotion – their ontological nature, and their universality. Emotion implicates material structures of the human body which makes emotion ontological real. Additionally, these emotive structures are a product of a shared evolutionary history which speaks to their universality. These two points are important because rooting rights in a stratified ontology requires identifying those real universal mechanisms.

Situations as a Necessary Framework for Emotion

The last section discussed how emotion implicates real psychological structures, but it is important to discuss how social situations are a necessary framework to feel and express

emotion. As mentioned before, emotion mediates the person-environment relationship, and some understanding as to how emotion arises from situations is important to discuss.

Most definitions of emotion emphasize the importance of a social context to feel emotion. For instance, Sternberg defines emotion as “a feeling comprising physiological and behavioral (and possibly cognitive) reactions to internal and external events” (1998, 542). Scherer defines it as “an episode of interrelated, synchronized changes in the states of all or most of the five organismic subsystems in response to the evaluation of an external or internal stimulus event as relevant to major concerns of the organism” (2004, 137-157). Paul and Mendl define it as “an emotion is a multicomponent response (subjective, physiological, neural, cognitive) to the presentation of a stimulus or event” (2018, 2). Even the Oxford dictionary includes both social and psychological dimensions by defining emotion as “a strong feeling deriving from one's circumstances, mood, or relationships with others.”

In general, researchers agree that emotion is a complex phenomenon in response to primarily some socially relevant event. However, theories as to how emotion arises from situations disagree over the process as to how this happens. One of the most well-known theories is the James-Lange theory which combines the independent work of William James and Carl Lange. Both argued that emotions arise by a physiological reaction to an event (Cannon 1927). Specifically, an external event will produce some physiological arousal (rise in heartrate, muscle tension, perspiration, etc.) and an emotional experience comes from how we interpret that response. This theory challenged traditional understandings of emotion. It was thought that we react to events because we feel something about it. For instance, we tremble at the sight of a bear because we are scared. However, the James-Lange theory proposes instead that we are

scared because we are trembling at the sight of a bear. According to James, “We feel sorry because we cry, angry because we strike, afraid because we tremble” (James, 1884, p. 190).

Walter Cannon and Philip Bard disagreed with this theory noting that people experience a range of physiological reactions linked to emotions without actually experiencing emotions. For instance, you may be trembling not because you saw a bear, but because your legs are tired or because the weather is cold. Additionally, emotions often occur quicker than the physiological states associated with them. They proposed an alternative theory in 1927 suggesting that physiological reactions and emotions are felt simultaneously without one necessarily causing the other (Cannon 1927). Their theory, then, gives very little attention to the role of thought or behavior and, therefore, less attention to the social aspect of emotion. According to this theory, the sight of a bear makes you tremble and feel fear at the same time.

In 1962, Stanley Schachter and Jerome Singer proposed the two-factor model which combines elements of the James-Lange and Cannon-Bard theories. The model suggests that the person must identify the reason for a physiological arousal to occur and then call it an emotion. In other words, external stimulus results in physiological responses that are cognitively interpreted as emotions (Schachter and Singer 1962). In this sense, they incorporated a social aspect of emotion. Like the James-Lange theory, people infer emotions based on their physiological responses. The difference is that people do so based on cognitive interpretation of the situation. This marks its similarity with the Cannon-Bard Theory because the situational context implies that physiological responses can produce varying emotions. In general, this model focuses on the role of cognition in identifying the reason for experiencing emotion.

New research from Joseph LeDoux suggests that biology plays a primary function while conscious thought has very little to do with it. For him, emotional reactions develop along the

low-road (from the thalamus to the amygdala) bypassing any conscious appraisal process (often considered the high road from the thalamus to the neocortex) (Ledoux 1998). This is because emotions are hard-wired into the brain. Most likely, the Amygdala reacts to incoming sensory input which activates the body's response system. This however, does not discount the importance of appraisal. Instead he argues that appraisals are also hard-wired into the brain.

While each theory discussed the important role that the dispositional level plays in interacting with situational factors, they differ in how they prioritize the importance of one over the other. This demonstrates a long debate between researchers over the role that neurophysiology versus environmental conditions play in emotion. Both the James-Lange and Schacter-Singer theory emphasize the role that our environment plays in emotion – this is especially true for the Schacter-Singer theory which argues that there is a separate stage for the contextual appraisal of emotion which emphasizes the role that our conscious interpretation of social conditions play. Both the Cannon-Bard theory as well as LeDoux emphasized the primary role that biology plays over conscious thought. Because physiological processes play a larger role rather than cognitive interpretation, the interpretation of social events reflect automatic reflexes.

The point of reviewing these theories is not to defend one over the other but, instead, to highlight an important point that they all agree on. Each of the theories affirm emotion as a psychosocial phenomenon – emotion not only entails both dispositional and situational phenomena, but that it is generated by both interacting with each other. Although these theories disagree over the exact interaction between situation and disposition, each understands both to be an important dimension to emotion. The fact that the observable and unobservable dimension of emotions interact with each other is an important point for my argument because it helps

establish a stratified ontology of rights where observable emotional phenomena (situations, behavioral responses, etc.) are produced by, and interact with, unobservable generative mechanisms (physiological arousal, cognitive appraisal, etc.).

Emotive Dispositions and Situations Change Each Other

The previous two sections discussed the inner psychology of emotion and the role that situations play in feeling emotion. Emotion reacts to situations and provides the motivational force for behavior to interact with the situation a certain way. In this sense, emotion serves as the generative mechanism underpinning social behavior. This fits with the stratified ontology outlined by critical realism – unobservable emotive dispositions constitute the domain of the real which react to and motivate behavior on the domain of the actual. This section, though, discusses the other side of that relationship – how the material structures of emotion are also physically changed by the situations they respond to.

This is best expressed in new research of neuroplasticity which studies how the brain changes. In general, neuroplasticity simply refers to changes in the brain's architecture. It was originally believed that the brain was more static (Cicchetti and Curtis 2006; Leuner and Gould 2010), but research now demonstrates that our neuroanatomy is continually reorganizing itself, often in response to some social situation. This may refer to changes in grey matter, synaptic rewiring, or reallocation of tasks to a different brain regions, etc.

Donald Hebb started research on neuroplasticity and demonstrated that learning leads to changes in our neural circuitry. Everything we do activates some part of the brain responsible for carrying out that task. When we learn new tasks, our brain makes new connections between neurons, and those connections are strengthened the more we practice those new tasks. His

research gave the rule that “neurons that fire together, wire together” which explains as to why repetition is so important in the learning process. Ultimately, Hebb showed us that our brain structures adapt, by way of cognitive and behavioral response, to incoming stimuli.

Much of the research on neuroplasticity has focused on its medical implications in response to brain trauma (Gerloff et al 2006; Nudo 2007; Li and Carmichael 2006) or psychological disorders (Kuhn et al 2014; Pittenger and Dumen 2008; Liu 2017). However, neuroplasticity should not be thought of as a purely medical phenomena. The fact that the brain changes in response to external stimuli speaks to a larger part of who we are as products of our culture. New research is now exploring the role of culture on the brain (Doidge 2007; Wexler 2006; Nisbett and Masuda 2003; Nisbett, Peng, Choi, & Norenzayan, 2001). This burgeoning research demonstrates that the material equipment we use to make sense of the world is, in turn, reshaped by it. In the words of neuroscientist Brian Wexler, “humans alone shape and reshape the environments that shape their brains” (Wexler 2010) which is to say that we are products of cultural reproduction. If ‘neurons that fire together also wire together’ then how we reiterate cultural norms and customs strengthens those neural circuits associated with those tasks. We physically change at the neural level to mirror the cultural norms that we reproduce.

How the brain is shaped by culture has important implications for emotion. Emotion is embedded in the material architecture of the brain – as stated earlier – and how cultural norms mold that neural architecture also molds how we appraise future iterations of those culture norms. Lisa Feldman Barrett has researched this complex relationship between culture and emotion and how emotions are constructed and reconstructed by our previous experiences – also known as the constructivist theory of emotion.

Barret is the not the originator of this theory. The idea that emotions reflect workings of culture more than biology dates back several decades (some of that research includes: Hochschild 1979; Averill 1980; Lazarus, Kanner, and Folkman, 1980; Kleinman and Good 1985; Harre, 1986). Averill provides a basic understanding of emotion:

[E]motions are viewed here as transitory social roles, or socially constituted syndromes. The social norms that help to constitute these syndromes are represented psychologically as cognitive structures or schemata. These structures -- like the grammar of a language -- provide the basis for the appraisal of stimuli, the organization of responses, and the monitoring of behavior (Averill 1980, 305-306)

Barret's contribution to the theory articulates how the construction of emotion changes the brain to adapt to culture. She argues that emotions are products of how we categorize and predict our social environment, the result of which alters the brain. According to her research, our emotional response to a situation is the result of how the brain predicts or anticipates emotions based on how those feelings have been categorized in previous similar experiences. I explain this below.

Categorization refers to how we organize information. Information is understood through mental representations called concepts. These concepts simply refer to our ability to think about an object such as a spoon or a pair of shoes. We later categorize these concepts into groups in order to better understand them. We understand that spoons are for eating after we categorize them as a utensil. We understand shoes are for wearing after we categorize them as an article of clothing. Categories help us understand the world by giving meaning to our concepts.

According to Barret, these categories do not refer to natural organizations of objects. Rather, they are socially constructed groupings produced by the need to share and exchange concepts between people via language and culture. Our ability to connect to others socially requires our understanding of that social reality so that we may be a part of it. This requires that

our personal categorization process conform to our cultural understandings. In other words, how we understand concepts through categorization is culturally contingent. In this sense, categorization is not a process of finding natural similarities between concepts but, instead, constructing those similarities in accordance with culture.

Barret argues that the categorization of concepts shapes our entire understanding of social reality, including the emotions we feel. Not only must the situations that we experience be categorized, but also how we feel in response to those situations in order for them to have any emotional meaning. Emotions, just like spoons and shoes, must also be put into concepts. How we make sense of those emotion-concepts, then, requires that we categorize them in order to give them social meaning. The categorization of emotion-concepts occurs throughout our social life where we are continually constructing similarities between common situations and how we feel about them. If the categorization of concepts is a social process whereby concepts may be socially shared and exchanged, then how we categorize our feelings are also done in accordance with how they can be socially shared and exchanged. How we construct emotion, then, is determined by the categories shared and exchanged via language and culture.

Given the plasticity of the brain, Barret argues that the construction and reconstruction of emotion through reiterated cultural experiences shapes the brain in such a way that informs how it will experience future iterations of similar experiences. Again, if “neurons that fire together also wire together,” then the emotional appraisal of future situations is conditioned by how those emotive dispositions have been shaped by previous cultural situations. In the words of Barret:

This kind of anatomical change, called plasticity, also occurs with experience. Your experiences become encoded in your brain’s wiring and can eventually change the wiring, increasing the chances that you’ll have the same experience again, or use a previous experience to create a new one (Barret 2017, 281).

In general, the emotions that we feel are, at least in part, culturally reproduced in ways that change the brain's architecture to anticipate and appraise future iterations of those culture experiences in similar ways.

Section Conclusion: Correcting for the Epistemic Fallacy

The previous three sections demonstrate as to why empiricist social sciences methods are not enough to study emotion and society. Their focus on observation reduces emotion to observable behaviors and ignores, or even rejects, the unobservable generative structures that produce them. As a result, the empiricist understands emotion in terms of the situation that they occur in. In so doing, they commit the epistemic fallacy by reducing the nature of emotion to what can be scientifically observed.

In reality, emotion operates on both the observable and the unobservable level. The social-psychology of interactionism recognizes this which corrects for the epistemic fallacy because it divorces the generative dispositions from the behaviors that they produce. As mentioned earlier, this fits with the stratified ontology outlined in critical realism where dispositions constitute the domain of the real which generate behaviors on the domain of the actual.

However, the discussion on neuroplasticity demonstrates that this relationship between situation and disposition is more complex because the material architecture of emotion is changed by the very situations they react to. How we appraise current situations is part of an ongoing processes of how previous experiences have rewired the brain. This recursive relationship between situation and disposition can be expressed through Bhaskar's critical naturalism. As discussed in the previous chapter, the social sciences are different than the

natural sciences in that social phenomena can in turn affect the generative structures producing it. This is best expressed through the Transformational Model of Social Action (TMSA) which illustrates the recursive relationship between two levels of phenomena. In this sense, the psychology of emotion not only produces behavior but, in turn, is either reproduced or transformed by the situations it reacts to.

Emotion Entails both Facts and Values

The last section discussed the ontological dimension in terms of the real unobservable structures that function to produce emotion. This part, then, discusses how emotion provides the epistemological dimension of rightness. Natural law philosophies argue that human reason serves as the foundation of rights but, as discussed earlier, human reason cannot logically sustain both the positive and normative dimension of rights without committing the naturalistic fallacy – claims about rightness cannot be rationally derived from facts about the natural world. Shifting attention from reason to emotion solves this problem because it explains both the normative and ontological dimension of rights without one contradicting the other: a) felt emotion constitutes our normative awareness of rightness which b) derives from the ontologically real emotive structures of body.

The first section discusses the popularity of rationalist assumptions in early to mid-20th century moral psychology. Researchers interested in understanding the psychology of rightness and values studied childhood development and how children come to learn pro-social behavior. This research relied on empiricist methods where researchers observed how children interact with their environment and then asked them questions in order to understand the reasoning behind their behavior. It was believed that probing the rationale behind the child's actions would

help researchers understand the thought process behind moral behavior. More recent research, however, casts doubts on this research by demonstrating how providing reasons for actions serve more as post-hoc justifications. It also demonstrates that most of what we do happens below the level of consciousness.

The second section discusses the link between emotion and rightness by considering the dispositional dimension of moral psychology. I discuss new research on the neurophysiology of value judgments and moral decision-making. Specifically, I review research on how brain injury and psychopathy affects antisocial behavior as well as new experimental fMRI research on pro-social behavior. Research on brain injury and psychopathy demonstrate the role that emotional deficits in the brain play in anti-social cognition and behavior, while neuroimaging research reveals how value judgments and moral decision-making activate the same parts of the brain responsible for emotion.

The third section discusses the role of emotional situations on value judgments. Again, emotion often serves to appraise events relevant to the person-environment relationship. New research in moral psychology demonstrates how changes in the situation often lead to changes in value-judgments. This research demonstrates the importance of an interactionist approach to social research – specifically, how value judgments of rightness are produced by situations interacting with emotional dispositions.

Ethical Rationalism in Modern Psychology

Previous chapters discussed the influence of rationalist assumptions in moral philosophy throughout history. Plato (424/423-348/347 BC), Augustine (354-430), Aquinas (1225-1274), Grotius (1583-1645), Locke (1632-1704), Kant (1724-1804), and Finnis (1940) each emphasized

the role that reason plays in moral understanding. Here I discuss how early 20th century research on moral psychology continued much of this rationalist tradition. Specifically, empiricist methods of observation framed right and wrong as a rational process of learning from our experience.

Psychological research in the early to mid-20th century assumed that pro-social behavior was a product of upbringing (Hoffman 1970; Baumrind 1971). This reflected the emphasis that empiricism placed on experience in shaping the individual. In this case, right and wrong was a learned process from one's parents and family life. This made child-development a popular site to research moral psychology. Other literature in moral development researched how children learn morals outside of the family. One of the most important psychologists in this area has been Jean Piaget who wrote *The Moral Judgments of a Child* in 1932. He argued that a child's friends and classmates play a more important role in shaping a child's moral learning than parents do (Piaget 1997). He researched this by observing how moral standards can manifest in children through interactions with their peers. He developed his theory by asking children a series of questions meant to probe their thought process (Singer 1978). He believed that understanding the reasons behind their actions would help develop an accurate theory of moral learning.

Lawrence Kohlberg, a student of Piaget, continued this approach by researching the reasons behind moral behavior. Kohlberg conducted a series of experiments asking children how they would respond to a moral dilemma and why. One of the most well-known dilemmas was a story about a man who couldn't afford medicine for his dying wife, so he broke into a drug store to steal it. The actual thoughts of the child were less important than the way that they were making decisions. For Kohlberg, this provided a way to view how we reasoned in moral dilemmas.

This was a popular approach in the field of moral development and was further developed by Elliot Turiel who constructed one of the most well-known theoretical models for moral development known as the ‘social domain model’ (Turiel 1987). Turiel administered a series of interviews which inquired as to how they evaluate social issues. He used these to understand why children act the way they do by asking them to explain their reasons (Turiel, Hildebrandt, and Wainryb 1991).

However, Turiel’s use of such devices assumes that information is used to evaluate the consequences of an action before one makes a moral judgment about it. This may seem like common sense, but recent research demonstrates how value-judgments have very little to do with methods of rational thought. Modern psychology has shown that much of what we think and do is unconscious. In fact, about 98% of reasoning occurs below the level of consciousness (Lakoff 2007, 68). It’s doubtful that the complex life of moral agents can be explained within the boundaries of that meager 2%. Rather, our moral sense reflects unconscious and emotional processes of the body.

In fact, psychological research now demonstrates how people search for a reason to justify an action that has already been taken (Kunda 1990). Recent research conducted by Haidt, Bjorkland, and Murphy demonstrate how the reasons people provide to explain their moral preferences usually serve as a post-hoc justification for their emotionally loaded biases (2000). The team asked test subjects during a laboratory experiment about a controversial topic that elicited a strong emotional response (incest) and the respondents were instructed to justify their belief as to why incest is morally wrong. Haidt and his team then would challenge the subjects by providing a rebuttal for each justification the subjects would give.

For example, if respondents said that a brother and sister getting pregnant would increase the changes of the child being born with birth defects, then the testers would claim that they were using contraceptives. Despite their inability to offer a reason with negative consequences, the majority of test subjects continued to hold their original opinion and believed that the act is simply wrong.

What such a study suggests is that to judge something as morally wrong is highly influenced by our emotions about it. In other words, our moral rationalizations often times begin with an emotional belief and in search of something to justify it. Rightness, then, has little to do with reason because value judgments are made prior to such justifications. Rather than using reason to reconcile different sides of a controversial topic, individuals are prone to certain biases where they either select reasons that support their personal emotional values or omit those that don't (Baron 1995; Keith et al 2013). In other words, people pick and choose the evidence that backs up their argument. In these contexts, reason does not advance the pursuit of rational moral discovery but serves as a strategic process to defend one's emotional biases. Given the role that bias plays in moral judgments, how are we to determine that the respondent's reasons recorded by Piaget, Kohlberg, and Turiel are not mere attempts to post-justify their emotionally loaded opinions. Simply put, there is more to our moral judgments than pure human reason. I discuss this below.

The Insufficiency of Reason

To illustrate the insufficiency of reason in moral cognition and behavior, this section briefly reviews literature on the role of emotional deficits in moral decision-making and antisocial tendencies. Specifically, the literature on brain lesions and psychopathy demonstrate how a lack

of emotionality, not rationality, inhibits prosocial behavior. Research regarding both psychopaths and those with damage to particular brain regions exhibit emotional deficits that lead to harmful or malicious behavior, even when they rationally understand the moral weight behind their actions. This literature serves as a paradigmatic shift in moral psychology which reveals how reason and knowledge alone are insufficient components for moral behavior. Instead, the research into psychopathy highlights the importance of emotion in orienting the individual towards appropriate moral behavior.

Brain Lesions

Several studies have demonstrated how brain trauma causes personality changes. The most well-known case is the Nineteenth Century railroad worker Phineas Gage who suffered head trauma and serious damage to the Ventromedial Prefrontal Cortex (VMPFC). He survived the accident, but the trauma led to major personality changes in the form of immoral/criminal behavior. Recent research by neuroscientist Damasio reported on an individual named “Elliot” who suffered a brain tumor in the same part of the brain of Gage’s damage (Damasio 1994). Both Elliot and Gage represented very similar cases as they both maintained their cognitive abilities (In fact, Elliot scored above average on intelligence tests). Despite the fact that their cognitive abilities were unchanged, they both suffered the same personality changes towards immoral and criminal behavior.

Damasio performed tests on Elliot to understand this. For examples, in a laboratory experiment showing Elliot gory pictures, Elliot reported to experience no emotional response but noted that he would have felt differently (more in line with healthy people) before the tumor (ibid 1994). In a follow up study, Saver and Damasio asked Elliot a series of questions regarding

moral judgments which revealed no deviations from normal behavior (Saver and Damasio 1991). Elliot's answers reflected normal moral knowledge, but his antisocial behavior demonstrated an intellectual disconnect. According to Damasio, this reflects Elliot's inability to judge his everyday behavior due to the loss of his emotional faculties. While he could rationally discriminate between behavior that was either right or wrong, Elliot lacked the emotional orientation to recognize the moral weight of those behaviors.

Recent studies have continued Damasio's research studying those with similar brain damage to further understanding the role that these areas play in moral behavior. Several of these brain damage cases have evidenced the role of emotional functions with moral judgments. For instance, Anderson et al demonstrate how those with damage to the ventral, medial, and polar prefrontal cortex tend to engage in antisocial behavior (such as lying and stealing) with no negative affect to IQ (Anderson et al 1999, 211). Other research conducted by Grafman et al also correlates antisocial behavior with frontal damage (Grafman et al 1996).

Psychopathy

In addition to the literature on brain lesions, research on the psychopath's tendencies for antisocial behavior has also advanced our understanding on the role that emotions play in moral judgments. Such antisocial behavior associated with psychopathy comes from deficits of cognitive structures or processes imperative for moral judgments. Specifically, the literature highlights the psychopath's emotion deficits with their inability to experience empathy (Hare 1991). According to Blair et al, who study antisocial behavior in psychopaths, the "clinical and empirical picture of a psychopathic individual is of someone who has some form of emotional deficit" (Blair et al 1997, 342). Such emotional deficits are not related to IQ or socioeconomic

status (Hare, Hart, and Harper 1991, 1003) again demonstrating how moral judgements have less to do with reason and more to do with emotion.

Researchers have studied the emotional indifference in psychopaths by testing their ability to recognize emotional expressions of other people (Blair 2001, 716; Blair, Colledge, and Mitchell 2001, 296). Most of these studies illustrate that psychopaths lack the ability to detect certain emotions in the facial expressions. To illustrate this, Blair et al used a series of photographs of people expressing different emotions. Testers showed pictures of neutral expressions and displayed more emotionally intense photographs but increased the level of emotional intensity over time. The subjects had to record when they could identify emotional changes and psychopaths had a harder time doing this than emotional normal subjects (Blair, Colledge, and Mitchell 2001, 491-498). Others have replicated these findings, such as Kosson et al whose research demonstrates how psychopathic subjects were unable to understand fear, sadness, and disgust (Kosson et al 2002, 398-411). Both of these studies demonstrate how psychopaths are impaired regarding the recognition of disgust. Blair et al also found that psychopaths experience pain and distress less intensely (Blair 1997, 342). Their inability to experience negative emotions further suggests that it is difficult for them to experience empathy or feel guilt. In fact, Mitchell et al found, like the subjects with brain lesions, that psychopaths also perform the Gambling Task poorly which further corroborates their emotion deficits (Mitchell, Colledge and Leonard 2002, 2013-2022). Additionally, Kiehl et al (2001) conducted a study demonstrating that psychopaths process emotionally salient words differently. While healthy individuals process such tasks through the posterior cingulate gyrus (which showed increased activity in healthy subjects), different brain regions for psychopaths were used in order to compensate for their emotional deficit.

While psychopaths fail to demonstrate proper emotions, they still have the knowledge of their actions being wrong. Checkley first studied psychopathy in 1941 and his work, *The Mask of Sanity*, compared it to colorblindness (Checkley 1988). According to him, psychopaths may say that they understand, but there is no way for them to tell that they do. This idea of a disconnect between healthy individuals and psychopathic individuals in regards to moral understanding was further researched by Blair who found that psychopaths conceptualize ‘wrong’ only in terms of norms which can be enforced (Blair 1995, 571). They may fear getting punished, but they do not understand the moral weight behind their actions. Blair further evidenced this in his work which showed how psychopathic criminals differed from others in their interpretation of the “moral/conventional distinction.” In this distinction, Blair describe morals as rules that right in their own way while conventional rules are instituted by some authority in society. For example, cheating is not illegal but many judge it as morally wrong, while jaywalking is not morally wrong but is against the law. Blair found that psychopaths have a hard time distinguishing between the two because of the emphasis that they place on enforcement. Further research in the area of legal rules by Gray et al demonstrates how psychopathic murderers do not associate violent behavior in a negative light (Gray et al 2003). Instead, psychopaths see violence in terms of how it serves their interests (Blair 2001, 716).

It should be noted that research into psychopathy shows no relation to parenting style (Wootton et al 1997, 292-300). Again, psychopathy does not reflect a lack of knowledge or proper upbringing. These studies demonstrate that those unable to process emotions normally are more prone to antisocial behavior and make improper moral judgments. Their emotional deficit is tied to their propensity for antisocial behavior because they lack the emotional literacy for properly making moral judgments.

What these studies do illustrate is that a rational understanding of moral standards does not necessarily lead one to act in accordance with them. In fact, those with an emotional deficit are likely to act in ways that run counter to them. For them, standards of morality are simply social rules with no real natural standard of rightness. This demonstrates the necessity of emotion in moral cognition.

Emotive Dispositions in Moral Decision-making

Other psychological research into the morality concerns research focused on the neuroanatomy of moral cognition and works to identify the parts of the brain associated with moral judgments. Neuroscience has introduced new methods and instruments into the study of moral psychology, specifically the functional magnetic resonance imaging (fMRI), which highlights brain regions associated with observed behavior. Much of the research interested in moral cognition involves the use of fMRI while subjects perform some task, such as responding to hypothetical moral dilemmas, during brain scans

Moll et al were one of the first to compare moral with non-moral stimuli using fMRI and identified several parts of the brain responsible for moral judgments (Moll, Oliveira-Souza, Eslinger 2003; Moll et al 2005; Moll, Oliveira-Souza, and Eslinger 2002). They asked subjects to respond to moral sentences (for instance, “we can break the law when necessary” or “the elderly are useless”) in contrast to factual sentences (“stones are made of water” or “telephones never ring”) (Moll, Oliveira-Souza, Eslinger 2003). The team used neuroimaging to measure the brain activity of the subjects who were instructed to respond with either “right” or “wrong” to either the moral or factual sentence. They found different kinds of sentences activated different parts of the brain. Specifically, moral sentences activated complex emotional functions and

witnessed more neural activity. Other neuroimaging studies by Moll et al used morally salient photographs (Moll et al, 2002). This kind of research evidences the emotional structures underpinning of our understanding of rightness. The following are more detailed examples of such studies.

The Ultimatum Game

Other brain imaging experiments have shed light on moral judgments in areas of fairness and reciprocity. Reciprocity reflects an ancient ideal held in the golden rule that you treat others fairly and as you want to be treated. Every religious text has stressed some form of the golden rule in their teachings. Some have even argued that a sense of reciprocity served as an evolutionary adaptation upon which social behavior has evolved (Gintis 2008, 241-253). The Ultimatum Game is a common game employed in experiments with two players and is used to explore our sense of fairness. One of the test subjects plays as the proposer, is given a certain amount of money, and is told to split it with the other player. The other subject plays as the decider who can either accept or reject the amount of money. While the proposer can offer any amount of money to the decider, they have to still consider as to whether the decider will accept or reject the amount. If they accept in, both players keep the money, but if they reject it or to reject the offer than neither player gets any money.

If a moral sense of fairness played no part, then the decider would say yes to every offer because something is always better than nothing. However, research conducted by Sanfey et al demonstrates how players don't do this – proposers tend to offer half of the money while deciders reject most of the proposals that offer only a quarter of the total money (Sanfey et al 2003). In other words, the results of the game demonstrate some expectation of reciprocity.

Specifically, the decider's decision to reject the proposer's unfair offer reflects a willingness to punish the greedy player rather than gain materially.

Sanfey et al conducted these experiments while scanning players in fMRI machines and found that several parts of the brain are activated during unfair play. The specific brain regions activated were the bilateral anterior insula and the anterior cingulate cortex (ACC), regions often associated with emotional responses. Sanfey's team suggest that these brain regions associated with negative emotion suggests that fairness and reciprocity are emotionally laden.

This is not to say that emotions play the only part of such exchanges. The team also saw increased activity in the dorsolateral prefrontal cortex (DLPFC) which is responsible for higher thinking such as planning. The team interprets this as a cognitive conflict between the rational considerations of reward on one hand and the emotional concerns of fairness on the other. Ultimately, the game illustrates how individuals judge the fairness using both rational and emotional processes – reason allows individuals to judge the point at which the an offer is worth accepting while emotion provides the individuals with the will to punish players who fail to act fairly. The fact that players are willing to make material sacrifices from unfair offers suggests that the emotional basis for judging fairness and reciprocity, and that they are powerful enough to overwhelm the rational interests of rewards.

The Trolley Problem

Harm is one of the most basic moral foundations. Most religious or philosophical traditions have vilified intentionally harming someone else. One of the most well-known standards is John Stuart Mill's 'harm principle' which has influenced not only moral thought but has served as a basic tenet for much of Western legal scholarship as well. The rule is simple

enough and states that one should be free to do as one pleases as long as it does not harm someone else. According to him, harming someone else is the ultimate moral transgression.

One of the most cited experiments using the fMRI to observe moral cognition regarding harm was conducted by Greene et al who researched the cognitive and emotive processing involved in a moral dilemmas. His study employed the runaway trolley problem, a moral dilemma that distinguishes between personal and impersonal harm (Greene et al 2001). According to the dilemma, a runaway trolley will kill five people if it continues on its present course. You have the ability to change that course, however, by flipping a switch which will change the trolley's direction onto an alternate set of tracks. On this set of tracks is only one person who will likely get killed instead of five. The dilemma then involves the decision to flip the switch where your action results in the killing of one person to save five. Greene et al demonstrates that most people decide to save the five people by sacrificing one. However, this dilemma only measures moral judgments in an impersonal way (by way of flipping a switch).

To capture how emotion changes our moral judgments, Greene et al added a similar second question with a twist. Again, a runaway trolley threatens to kill five people on its current course, as you and a stranger are standing on a footbridge next to the tracks about to witness the disaster. However, there is no switch to redirect the trolley to an alternative set of tracks. Instead, the only way to save them is to push the stranger onto the tracks thus derailing the trolley and saving the five people. While the consequences are the same, compared to the previous questions, most people say that this scenario is not moral.

Greene et al offer an explanation related to the role that emotion plays. They asked their subjects these questions while in an fMRI. They came up with a personal/impersonal distinction to measure the emotional salience of the situation. They believed that the “up close and

personal” nature of the situation determines moral judgments. Their results demonstrate how the decision requiring personal judgment calls produce increased activity in the areas of the brain responsible for emotion and social cognition, specifically the posterior cingulate cortex, the medial prefrontal cortex, and the superior temporal sulcus. The decision for an impersonal moral judgement saw increased activity in the parts of the brain responsible for higher cognitive tasks in the inferior parietal lobe and the dorsolateral prefrontal cortex. Greene et al performed this experiment with a much larger sample size and found that personal judgment calls also saw increased activity in the amygdala.

Since this experiment, other experiments have focused on mapping moral activity in the brain to determine where and when moral judgments occur. Green et al were not the only ones to suggest that moral reasoning occurs in the VMPFC. Moll et al also witnessed increased activity in this area while conducting fMRI experiments on subject engaged in moral judgments, while viewing morally salient photographs (Moll et al 2002; Moll et al 2007). Waldermann and Dietrich have also evidence the role the role of the VMPFC which implies its importance for responding socially to directly harming someone or in invoking negative emotion in directly harming someone (Waldermann and Dietrich 2007).

Moral Judgments Adjust to Situational Changes

If our moral judgments do reflect our emotional biases, than how constant and fixed are our values? Because they believed that knowledge and learning served as the key sources to moral cognition, previous thinkers assumed that our values systems were relatively stable and changed only due to our exposure to new information. However, how we make moral judgments is highly influenced by our easily manipulated emotional state. Specifically, research suggests that

emotions influence moral judgments in a way where a preexisting negative emotion may increase the emotional salience of a moral transgression. Schnall et al demonstrates the relationship between disgust and moral judgments by asking test subjects to rate moral actions. To measure the role of preexisting emotion (disgust), they had half of the subjects answer the questionnaire sitting in either a disgusting room or were told to recall a disgusting personal event before-hand. Their results demonstrated that those cued with disgust rated moral transgressions more severely than the control group. They found that subjects who scored higher on body consciousness rated moral judgments more severely. According to them, “since the effect occurred most strongly for people who were sensitive to their own bodily cues, the results appear to concern feelings of disgust, rather than merely the primed concept of disgust.” In general, negative feelings intensify negative moral appraisals (Schnall et al 2014). What this demonstrates is that not only may our reasons function as post-hoc rationalizations for our emotional biases, but how easily manipulated emotions may change how we evaluate morally salient situations. Such research challenges the tradition of moral psychology advanced by Piaget, Kohlberg, and Turiel which assumed that knowledge and learning functioned as key sources of moral judgment. Research demonstrates, though, the effect that emotional situations play in shaping our moral behavior.

Milgram’s Shock Experiment

One of the most well-known studies into the situational role of ethical behavior is Stanley Milgram’s 1963 research into obedience. Milgram was personally curious about the German holocaust and how normal people could permit and engage in horrible acts of cruelty. At the time, many argued that Germans somehow harbored tendencies towards an “authoritarian

personality” (Adorno et al 1950). Milgram, however, was disgusted by these dispositional explanations and wanted to show that Americans were just as capable of committing acts of cruelty.

Milgram designed an experiment to observe how far psychologically ‘normal’ people would harm others in following the orders from an authority figure (Milgram 1963). Under the pretext that they were participating in a study regarding the role of punishment in learning, test subjects were appointed the role as either “teacher” or “learner.” A man in a laboratory coat, the “authority figure,” ordered the teacher to administer electrical shocks to the learner if the learner answered a question incorrectly. The learner, in fact, was a confederate to the study and received no actual shocks, but persuasively acted as if he did. The teacher, however, expressed a great deal of anxiety from the authority’s orders to increase the voltage which conflicted with their concern for the learner. Despite their worries and moral convictions, every test subject administered some level of shock and two thirds increased the voltage to the maximum degree.

Milgram’s shock experiment does yield significant conclusions, both dispositional and situational, regarding the power of authority to compromise our moral inclinations. On the dispositional side, the anxiety expressed by the test subjects in response to the authority figure’s orders demonstrates that people do have inclinations to behave one way despite what the situation is demanding from them. In other words, people do possess certain dispositions that preexist each situation they interact with. Milgram’s experiment evidenced two of them – on one hand is the inclination to do no harm (as also discussed in the trolley problem) evidenced by the feelings of stress and anxiety expressed by the test subjects. On the other hand is the inclination to obey authority, evidenced by the subject causing harm on the learner against their judgement.

However, Milgram's experiment yields important situational conclusions as well. The fact that an authority figure's presence can induce one's behavior to betray their inclinations demonstrates the power of situations. Again, situations can influence behavior by 'activating' the dispositions of the subjects interacting with them. Two dispositions can be activated at once, but how the situation activates them relative to each other determines how people behave within those situations. How we behave in moral contexts, then, is not just a matter of our moral dispositions, but how the situational design of those contexts activate moral dispositions. Milgram's experiment demonstrated this. He designed a specific situational context which can induce harmful behaviors from people who are inclined to do no harm.

Milgram conducted follow-up experiments to further explore the role of the situational design on behavior (Milgram 1965). In each, he changed specific situational factors in order to test how they change behavior. For instance, he removed the "authority figure" (a scientist in a lab coat) from the room and witnessed a drop in obedience by 20.5%. The absence of an authority figure changes the situation in such a way that people are less inclined to betray their moral dispositions. In another example, the teacher had to force the learner's hand down into a shock plate, rather than simply flipping a switch. As a result, obedience dropped dramatically to 30%. People are less likely to obey an authority figure when the design of the situation places more emphasis on the harm of the learner. Milgram's experiments demonstrate is how a situation, adjusted for activating certain emotional dispositions, affects moral behavior.

Zimbardo's Prison Experiment

Another well-known situational experiment is Phillip Zimbardo's 1971 Stanford Prison experiment. While the aim of the study was to explore how public roles and identities shape

social behavior, the experiment yielded important results regarding moral behavior as well. Like Milgram's shock experiment, Zimbardo's prison experiment demonstrated how normal people put into extreme situations can behave in ways that betray their moral dispositions (Zimbardo 2007).

Zimbardo wanted to explore as to whether the commonly reported instance of violent behavior reflect personality disorders of the guards or the environmental conditions of the prison. He tested this through an experiment which simulated a prison environment for several days where test subjects were assigned the role of guard or prisoner. Twenty four test subjects deemed to be both physically and mentally healthy were randomly assigned to play one of these roles.

To simulate the real-world experience of prison, the experiment was designed to ensure that each role received a certain kind of treatment from the other. Those who played prisoners were arrested, given prisoner's clothes and placed in a jail cell for the experiment. Those who played guards were given uniforms and weapons to represent their authority and granted the authority to maintain order as long as they didn't use physical violence.

Both prisoners and guards adopted their roles within a matter of hours. Guards began asserting their authority over the prisoners while the prisoners quickly became more submissive. Guards pushed the boundaries of their authority by relying on more abusive tactics until the prisoners thought they have gone too far. In response, prisoners organized a rebellion which was put down by guards who then felt justified in using even harsher forms of punishments. The experiment was terminated early on day six due to the cruel behaviors adopted by the guards and the psychological and physical distress suffered by the prisoners.

It is important to remember that the test subjects were psychologically and physically healthy. The physically abusive nature of the guards cannot be explained by pre-existing deviant behavior, nor could the psychological trauma experienced by the prisoners be explained by any disorders either. The biggest contributing factor to their behavioral changes were the situational designs which reinforced the kind of behavior that was expected of the role they would play. In fact, once the experiment was done, subjects who played guards were both surprised and ashamed of the kind of behavior that they adopted.

Zimbardo argues in his book, *The Lucifer Effect*, that the prison experiment evidences how, given the right conditions, moral people can commit acts of cruelty. He refers to this as moral disengagement (ibid, 307) where an individual's moral standards lose their ability to influence or appeal to an individual's behavior or decision-making. This occurs when the design of a situation disables a person's capacity for empathy and caring, etc. As in the prison experiment, the guards' situational experience emphasized their need to maintain order over the wellbeing of the prisoners. In essence, the experiment activated dispositions associated with authority and obedience, as opposed to those associated with compassion and clemency, which explains the moral disengagement of test-subjects.

Section Conclusion: Correcting for the Naturalistic Fallacy

Earlier scientific research, relying on empiricist methods of observation, assumed the role of reason in moral psychology. As discussed in the previous chapter, empiricist methods assume that causal laws can be identified on the same level as the observable behavior they produce. As a result, moral psychology (spearheaded by the work of Piaget, Kohlberg, and Turiel) believed that methods of observation can identify the source of a child's moral understanding.

Specifically, they treated the reasons children gave for their actions as the causal laws governing their behavior. However, language functions on the level of observation, and researchers made the empiricist mistake of treating children's answers as somehow expressing the unobservable mechanisms governing their behavior. As a result, they fail to understand the psychological source underpinning moral behavior.

In general, empiricist methods of moral psychology continued to commit the naturalistic fallacy by conflating right with reason. Speculative reasoning cannot serve as a premise for practical knowledge without conflating "ought" with "is." Therefore, the ethical rationalism of empiricist moral psychology cannot logically sustain both the normative and positive dimensions of rights without internal contradiction. These internal contradiction become apparent, as research conducted by Haidt reveals, when one fails to change their moral decisions in the face of new information. Reasons serves more to post-justify moral actions after they have already been decided on. In other words, empiricism's focus on rationality fails to fully understand both the ontological and epistemological dimension of right.

The research reviewed here demonstrates how emotion, not reason, underpins our moral decision-making. Studies researching the structure of the brain concluded that moral cognition requires some capacity for emotion. Additionally, studies researching the situational side of morality concluded that efforts to disengage a person emotionally may result in immoral behavior. In general, this demonstrates how emotion can sustain the normative side of human rights.

In general, emotion serves a necessary function underpinning our moral behaviors and thoughts. corrects for this because the unobservable side of emotion carries both a positive and normative dimension which doesn't rely on the former to rationally justify the latter. Our

normative sense of rightness is informed by the visceral experience of an emotional appraisal, while its positive nature is affirmed in the materially real psychological structures that produce them. The normative dimension of rightness, then, is not dependent on a rational understanding of how values derive from nature, but is nonetheless still grounded in nature by virtue of these felt experiences deriving from ontologically real emotive structures of the human psyche.

However, emotive dispositions don't explain everything. Again, emotions are relational, which is to say that they are always about something – they serve to appraise the situations that we are in. Social psychology has demonstrated that how they appraise a situation is, in large part, shaped by how the situational design activates them. Rightness, then, is not only a matter of emotive dispositions but, also, how those dispositions interact with situations. In general, rightness is complex product of emotion and society interacting with each other.

Chapter Conclusion: Emotion, Right, and Change

This chapter argued an emotive approach to right resolves both the epistemic fallacy and the naturalistic fallacy. I briefly review some of those points here.

First, my focus on emotion resolves the epistemic fallacy because I frame it within a social-psychological framework that divorces the generative mechanism from the behaviors that they produce. In doing so, I can discuss how the dispositional and situational dimension of emotion fit into a stratified ontology. Ontologically real emotive dispositions operate on the domain of the real which generate behaviors on the domain of the actual. It is also important to emphasize the other part of this relationship, namely how the situations that emotion reacts to can materially change the cognitive architecture that generates emotion. This fits with Transformation Model of Social Action which illustrates how social phenomena can change the

generative structures underpinning this. This is the case with emotion as the situations that we appraise make changes to how the brain reacts to future situations. In general, the social-psychology of emotion functions in a way that coheres with critical realism.

Second, my focus on emotion resolves the naturalistic fallacy because an emotional ontology can sustain the normative dimension to human behavior. Normative behavior is produce by an emotional motivation, but does not require a rational understanding of how those emotions work or where they come from. Instead, a sense of right is informed by the visceral experience of emotion which is nonetheless still grounded in nature by virtue of it deriving from ontologically real psychological structures. It is also important to emphasize that a sense of right underpins how human rights are practiced, but it does not translate into a fixed set of human rights principles. Because emotion relates us to our environment, this sense of right is always culturally situated and reflects how social interactions are mediated within a group. Additionally, the idea that emotion and culture are recursively related (as discussed with reference to the TMSA) means that our sense of right evolves over time with cultural changes.

Chapter 4

An Emotional Ontology of Human Rights: Proposing a Combined Approach

Introduction

The primary argument of this dissertation – that international human rights are founded on the emotional foundations of the people they serve – is premised on very particular ontological and psychosocial perspectives. Chapters two and three discussed what those perspectives are and how they address the limitations in the human rights literature. Chapter two discussed the first track of my argument which claims that critical realism can address the limitations of empiricist approaches. Chapter three discussed the second track which argues that the social-psychology of interactionism can address the limitations of rationalist approaches.

Up to this point, each of these broad perspectives have been discussed as separate tracks without a clear explanation as to how they relate to each other. The aim of this chapter, then, is to piece these tracks together into a combined approach to human rights. Specifically, this combined approach integrates the ontological framework of critical realism with the psychosocial framework of interactionism in a way that relates emotion to human rights. In doing so, I arrive at two human rights models – the first builds on transcendental realism and the second builds on critical naturalism. The transcendental realist model illustrates how international human rights structures emerge from the emotional interactions of rights bearers. The critical naturalist model illustrates the recursive relationship between human rights

structures and rights bearers as a way to explain cultural differences and historical change in human rights practices.

Chapter Argument/Aims

By integrating critical realism and interactionism into a combined approach, I resolve a puzzle as to how something as personal as emotion relates to the collective nature of human rights. After all, human rights involve macro-scaled structures (political, legal, cultural, economic, historical, etc.) that operate on different socio-spatial levels than emotion. Because emotion is subjectively experienced on the individual level, the argument that it serves a foundational role for collective human rights requires a justification that resolves the micro/macro dualism. This dualism refers to a distinction between phenomena on different socio-spatial scales (small phenomena on micro scales versus larger phenomena on macro scales) and how they relate to each other.

This puzzle as to how the subjective experience of emotion generates public goods has a temporal dimension as well. The reason for this is that causal relations resolve much faster on micro levels than they do on macro levels – large structures emerge over an extended period of time, but their ability to affect people’s behaviors occurs rather quickly. I demonstrate in this chapter how integrating critical realism and interactionism into a combined approach can resolve the spatiotemporal dimension to the micro/macro dualism as it relates to emotions and international human rights.

I arrive at this combined approach by building on the similarities between critical realism and interactionism, while allowing the differences of each to inform the other. The primary similarity between the two is that they both discuss the individual-society relationship. In this sense, they both address how micro- and macro-scaled phenomena relate to each other, though

they model it in different ways. Critical realism uses structure-agency models to theorize how the recursive relationship between the individual and society is governed by time. Interactionism uses situation-disposition models in order to theorize as to how our inward psychology shapes and molds interpersonal and intercultural relations. Together, they paint a portrait of how the emotional interactions of agents shape, and are shaped by, the situational design of the social structure they interact with. In general, this basic framework that relates dispositioned agents to structural situations helps resolve the micro/macro dualism as it pertains to emotion and international human rights.

This basic framework allows me to construct the two models mentioned above. The first is a transcendental realist model that corrects for agreement theories by establishing a stratified ontology of human rights. It illustrates how international human rights structures emerge from the emotional interactions of human rights bearers. The second is a critical naturalist model that uses the transformational model of social action (TMSA) to correct for the relativist theories. It illustrates the recursive relationship between human rights structures and human rights bearers in order to explain cultural differences and historical changes in human rights practices.

While both models discuss the same relationship (how emotions and rights relate to each other) they discuss different spatiotemporal dimensions of it. The transcendental realist model discusses how large structures emerge over time, while the critical naturalist model demonstrates how the recursive relationship between structures and agent occurs on a shorter timeline. Because they speak to different spatiotemporal dimensions of human rights, they should be seen as separate models from each other. Below is a brief explanation of the two models.

A Transcendental Realist Model

As discussed in chapter 2, agreement theories argue that human rights reflect international structures of ‘core commonalities’ or ‘overlapping consensus’ (Beitz 2009, 73-95). Again, these theories are built on an empirical realist philosophy which assumes a flat and closed system. This leads the empiricist to observe causal relations in a spatially controlled environment. As a result, agreement theorists search for the foundations of international human rights on the same socio-spatial level that they are practiced on. Because these theories argue that rights apply to all cultures, they argue that international agreement serves as the foundation of human rights.

Because closed systems lack stratification, however, these theories are unable to explain as to what gives rise to international agreement – they are simply presupposed. A transcendental realist model corrects for this because it assumes an open and stratified ontology which can address how phenomena on larger spatial scales emerge from smaller ones. In doing so, it is able to link the emotive dispositions mediating the micro relations between rights bearers to the macro human rights structures that emerge from them. Because the model focuses on how larger structures emerge, its causal/constitutive relations resolve much slower than they do in the critical naturalist model.

A Critical Naturalist Model

As discussed in chapter 2, relativist theories are critical of international human rights because they argue that rights reflect the cultural agency of the members practicing them. Like agreement theories, they do assume a closed system where their search for the foundations of rights takes place on the same socio-spatial level that they are practiced on. Unlike agreement theories, though, relativism is built on transcendental idealism which affirms the role that our

interpretation of social reality plays in constituting it. As a result, relativist theories hold that the constitution of rights are founded on the cultural agency to construct and interpret them.

Because relativist perspectives assume a closed system, like agreement theories, they too suffer from certain limitations – specifically they take cultural agency for granted. While agreement theories are unable to explain what gives rise to *intercultural* structures of agreement, relativist perspectives are unable to explain what makes *intracultural* agency possible. A critical naturalist model corrects for this because the Transformational Model of Social Action (TMSA) illustrates the recursive relationship between structure and agency while, simultaneously affirming the ontological primacy of structure. Specifically, it establishes the dispositional structures that allow/constrain cultural agency while recognizing how the cultural situations that emerge, in turn, reproduce/transform those dispositional structures. Because this model discusses how those micro causal mechanism (emotional interactions between rights bearers) are changed by the macro-structures they generate, causal relations resolve much faster than they do in the transcendental realist model.

Chapter Structure

The chapter is organized into three parts. The first part outlines the transcendental realist framework that models the causal/constitutive relationship between human rights and emotion. It begins by discussing how critical realism can resolve the micro/macro dualism. This discussion focuses on the importance of open systems (uncontrolled environments) and the role they play in relating units of research on different socio-spatial levels (micro versus macro). Following that, I outline the two critical realist models mentioned above and how they relate human rights structures on the macro level to their foundations on the micro level. The

transcendental realist model of emergence outlines how larger human rights structures arise from their foundations. The critical naturalist model of social change outlines the recursive relationship between those structures and the foundations that generate them.

These models serve as the ontological support for which, in the second part, I build my interactionist framework on in order to specify the role that emotion plays as the foundations of rights. To set this up properly, this part begins with a discussion on ‘microfoundations,’ a theoretical term that refers to the smaller parts that comprise larger structures. By anchoring my argument in the discussion of microfoundations, I locate the foundations of rights on a separate socio-spatial level underneath the human rights structures they generate. This allows me to outline the relationship between emotion and rights in interactionist terms: larger human rights structures serve as the situations in which emotive dispositions generate behavior. I build this interactionist framework on the two critical realist models outlined in part one. The first illustrates how human rights structures emerge from emotional foundations. The second illustrates how social change results from how those human rights structures affect, in turn, the very emotional foundations that gave rise to them. Overall, this serves as a combined approach which outlines the causal relationship between human rights structures to their emotional foundations.

The third part discusses how this combined approach contributes to a practical understanding of contemporary human rights issues. In illustrating this, it is important to state that my approach is not meant to rationally justify a list of specific human rights items – attempting to do so would only reproduce the errors of rationalist approaches. Rather, I focus on the social conditions necessary for the recognition of human rights. If people realize rights and responsibilities through their emotional interactions with others, then the social and political

conditions that protect these emotional interactions are required for the recognition of human rights. The need to guarantee these conditions constitutes a right on its own, a special kind of right which Amartya Sen and others have called “meta-rights.” In general, meta-rights are rights that protect other rights. In the words of Sen, “a meta- right to something, x , can be defined as the right to have policies, $p(x)$, that genuinely pursue the objective of making the right to x realizable” (1982, 345). Meta-rights, then, do not refer to the rights that arise from the emotional interactions of people but, rather, ensure that such interactions can take place.

As a way to provide a practical illustration of this, I discuss the rights of immigrants and refugees and how recent ethno-nationalist efforts to strengthen state borders threaten those rights. Specifically, the recent move by western governments to strengthen their national borders function to inhibit their citizens from interacting with immigrants and refugees. Immigrants and refugees, then, are deprived the ability to make meaningful emotional connections with other groups of people and, as a result, their rights are never realized. Instead, western governments manipulate the emotions of their citizens using ethno-nationalist sentiment which stoke fears and anger towards immigrants and refugees. This undermines the social conditions necessary for the rights of immigrants and refugees to be realized by inducing an emotional disengagement (similar to that evidenced by the work of Milgram and Zimbardo in their situational studies). The rights of refugees and immigrants, then, can never be realized under such conditions. I argue that certain meta-rights (such as the right to belong and the right to free movement) can protect the conditions necessary for immigrants and refugees to relate to U.S. and European citizens in emotionally meaningful ways.

Part 1: Resolving the Micro/Macro Dualism

The main argument of this dissertation – that international human rights are based on the emotional foundations of the people they serve – implies that structures of international human rights are related in some way to the individuals that comprise them. This introduces a puzzle as to how collective public goods can be founded on the privately felt emotion of the people they serve. Resolving this puzzle, then, requires asking the question as to how smaller parts give rise to a larger whole. This question implicates the micro/macro dualism which refers to a distinction between phenomena occurring on small spatial scales versus that of larger ones. As Wight says, the distinction “is concerned with the analysis of face-to-face conduct (everyday activities, diplomatic exchanges) and more impersonal phenomena such as institutions and distribution of power and resources” (Wight 2006, 104-105).

Traditionally, the IR discipline resolves issues of scale by locating its units of research on a levels-of-analysis framework. This framework was first introduced by Kenneth Waltz in *Man, the State, and War* where he painted a portrait of international politics as occurring on three levels or “images” – the system, state, and individual levels of analysis (Waltz 1959). The micro/macro dualism is similar to Waltz’ levels-of-analysis framework in that they both refer to different spatial levels of social reality. It is different, though, in that the micro/macro dualism refers to *units*-of-analysis at which a level may be specified. Once the researcher identifies their units of analysis, they decide as to which level is appropriate for their research. As David Singer put it, they can choose to focus “upon the parts or upon the whole, upon the components or upon the system” (Singer 1961, 77).

Recognizing the difference between *units*-of-analysis and *levels*-of-analysis is important because my argument specifies two units on different socio-spatial levels (human rights is one

unit and the emotional interactions of rights bearers is the other). Arguing that human rights emerge from the emotional interactions of the people they serve specifies a causal/constitutive relationship between units on the individual level (emotional interactions between rights bearers) and units on the international and cultural level (emergent human rights structures). In short, my analysis of how macro human rights structures emerge from the micro parts constituting them necessarily traverses multiple socio-spatial levels.

This poses challenges for empiricist methods which prefer to conduct research on a single level of analysis. Again, empiricist research assumes a closed system (controlled environment) where researchers may observe how causal relations manifest in the form of constant conjunctions (if A then B forms of relations). Manufacturing such a closed system is usually done by restricting research to a single level-of-analysis in order to control for intervening variables from other levels. In fact, Waltz argues in *Man, the State, and War* that causal principles for any research question may rest on all levels-of-analysis. As a result, researchers treat each level as separate and independent and, therefore, traditionally restrict causal analysis to a single socio-spatial level.

This may sound like an orderly way to conduct research, but it does not accurately portray how causal relations resolve in the social world. Social relations rarely manifest as constant conjunctions because social reality operates as an open system where units on all levels are interrelated in complex ways. As a result, a causal mechanisms on one level-of-analysis rarely generates the same consequent on a different level (this is why it is possible for universal emotional foundations to give rise to different human rights practices). In other words, the lack of a constant conjunction does not mean that micro-leveled units and macro-leveled units do not interact with each other. It is obvious that they do. For instance, human rights laws do affect the

behavior of rights bearers and, conversely, the behaviors of rights bearers may change those same international laws. These kinds of causal relationships are difficult to research, however, when scholars assume a closed system.

This tendency to assume a closed system is evident in the empiricist human rights approaches. Both agreement and relativist theories place the foundations of rights on the same socio-spatial level as the human rights practices they endorse. For instance, agreement theories search for cases of core commonalities and overlapping consensus on the same socio-spatial level as international human rights. Relativist theories do the same by locating the foundations of rights in the in-group practices of particular cultural. Both of these perspectives claim to understand the nature of rights, yet they restrict their analysis to a single level. This illustrates the limitation of empiricist human rights theories – their assumption of a closed system prevents them from exploring how *units-of-analysis* on different *levels-of-analysis* are interrelated.

Open systems correct for this because they allow me to model the micro/macro relationship as it relates to human rights and their foundations. There are two specific dimensions that open systems allow me to model: a socio-spatial dimension and socio-temporal dimension. As discussed above, the socio-spatial dimension refers to causal relations specified on a level-of-analysis. It is additionally important to account for the socio-temporal dimension where the speed at which these relations resolve depends on their socio-spatial level – causal relations between large structures occur much slower than causal relations between people. This is an important dimension to model because human rights structures emerge over an extended period of time while their ability to affect individual behavior occurs rather quickly. In general, modeling the micro/macro relationship between human rights structures and their foundations requires accounting for both dimensions of space and time.

Critical realism allows me to model both of these dimensions of the human rights-emotions relationship. Specifically, I arrive at two models: a transcendental realist model which illustrates a stratified ontology of human rights and a critical naturalist model which illustrates how human rights change through the TMSA. While both portray the same relationship (that between emotion and human rights) they each model different dimensions of it. The transcendental realist model explains how larger human rights structures emerge from their smaller foundations over an extended period of time. The critical naturalist model explains the spatiotemporal dimensions of the recursive relationship between rights and rights bearers. I provide the two models below.

A Transcendental Realist Model of Emergence

This section models how human rights structures emerge from their foundations. Bhaskar's transcendental realism provides the philosophical framework to illustrate both the ontological and spatial dimensions to this. Generally speaking, transcendental realism establishes a stratified ontology where observable phenomena emerge from their unobservable generative mechanisms. While the levels in this stratification are ontological in nature, it nonetheless recognizes that the observable and unobservable phenomena on those ontological levels likely function on different socio-spatial levels as well. Transcendental realism was discussed in length in chapter 2, but it is important to provide a brief review of its tenets here so they may be applied to human rights.

As discussed previously, transcendental realism aims to correct for the epistemic fallacy committed by empiricist sciences by divorcing ontology from epistemology. It does this by distinguishing between the transitive (the social experience of science) and the intransitive (the real phenomena science attempts to explain). This distinction between the intransitive world and

our transitive experience of it emphasizes that there are dimensions of the world not accessible to scientific methods of observation. This exposes the limits to empiricist approaches to human rights which assume that human rights are completely observable phenomena.

Transcendental realism corrects for this by proposing a structure of reality which includes both the transitive and intransitive dimensions. The inclusion of the intransitive dimension provides a more multidimensional portrait of causal relations because it introduces two new ontological conditions – stratification and openness. These two conditions are critical for understanding the unobservable dimension of human rights and why the observable dimension does not always follow the logic of the constant conjunction. I briefly discuss these two conditions and then explain how they fit into my model.

The first is stratification which adds multidimensionality to social reality by establishing different ontological levels. These ontological levels place the transitive dimension at the top (domain of the empirical) and the intransitive dimensions below (domain of the real and of the actual). Occupying the intransitive dimensions are the unobservable generative mechanisms (domain of the real) and the real causal phenomena that they produce (domain of the actual). This stratification is important because it illustrates how human rights practices on the domain of the actual are generated by the unobservable mechanisms on the domain of the real.

The second condition (openness) characterizes the uncontrolled environment in which these causal relations resolve. While stratification stretches reality to establish multiple dimensions vertically, openness stretches it horizontally to recognize that there are always multiple causal phenomena interacting with each other on each ontological level. The condition of openness, then, explains as to why causal relations do not resolve as constant conjunctions. Because causal phenomena resolve in an uncontrolled environment with multiple interacting

relations, causal mechanisms typically do not reproduce the same consequent. The effects produced by a causal mechanism in one system is likely to vary from the effects of the same causal mechanism in a different system. This explains as to why the universal foundations of rights on the domain of the real produce cultural differences in human rights practices on the domain of the actual – because the domain of the actual consists of other causal phenomena (social, historical, political, economic, etc.) which human rights phenomena interact with.

Both of these conditions (stratification and openness) paint a complex portrait of causal relations which introduces the concept of emergence – an important concept for understanding how human rights arise from their foundations. As discussed in chapter 2, emergence refers to the production of wholly new phenomena that is irreducible to, but still dependent on, the mechanisms that produced it. In an open system, multiple causal mechanisms interact in ways that produce new phenomena that is qualitatively different and quantitatively greater than the sum of its generative parts. While the production of this new emergent phenomena still depends on the generative mechanisms underpinning it, it nonetheless functions as a completely separate and independent thing that constitutes its own ontological level.

The domain of the actual emerges in this manner from the domain of the real. It is qualitatively different and quantitatively greater than the domain of the real given the mere fact that it reveals itself via human experience, but it still depends on the domain of the real for its production. The practice of human rights (which occurs on the domain of the actual) constitutes a small part of this experience and, therefore, is understood as an emergent phenomena that must arise from some mechanism on the domain of the real.

A Critical Naturalist Model of Social Change

This section models how those emergent human rights structures affect the very dispositional foundations that generated them. Bhaskar's critical naturalism provides the causal framework to illustrate this. As discussed in chapter 2, the primary difference between the natural sciences and social sciences is the prevalence of dualisms present in the latter. Bhaskar corrects for this through the Transformational Model of Social Activity (TMSA). It illustrates how the recursive relationship between the generative mechanisms and the phenomena they produce are governed by time. This is important for illustrating how the human rights structures (domain of the actual) affect the emotive dispositions (domain of the real) that generate them.

Again, the prevalence of dualisms refers to the many of the philosophical, theoretical, and methodological, problems that the social sciences are unable to resolve. Such dualisms include agency/structure, individual/society, theory/practice, facts/values, etc. The reason behind these problems is that, unlike the natural sciences, the structures produced on the domain of the actual in turn affect the causal mechanisms that produced them on the domain of the real. For the social sciences, then, the causal arrow points in both directions. This is the case in matters of human rights because the same reiterated behaviors that constitute larger human rights structures eventually become constrained by them.

A prominent IR theory that works to understand the recursive relationship between cause and effect is constructivism. It assumes a reciprocal relationship between the ideational world and the material world – ideas affect our behaviors and our behaviors affect our ideas. This serves as a basis for constructivist to argue that agency and structure are co-constituted (relativist research to human rights is often associated with this constructivist approach). The problem with

assuming this co-constitutive relationship, however, is that two objects cannot both cause and effect each other simultaneously. As Bhaskar argues in his critical naturalist philosophy, there must logically be an ontological starting point which first makes the recursive relationship possible. In other words, the relationship must be governed by time. He corrects for this by establishing the ontological primacy of structure which makes it possible for the actualization of agency to in turn effect it.

This recursive relationship is illustrated in the TMSA which is designed to solve for the problem of dualism. It builds on the stratified ontology articulated in transcendental realism in order to establish the ontological primacy of structure. While these structures serve as the generative mechanisms that produce phenomena, that phenomena can either reproduce or transform the mechanisms that gave rise to them. Once those mechanisms are either reproduced or transformed, they can impose their power that either allows or constrains future phenomena to affect them again.

The TMSA, then, can understand the recursive relationship between human rights practices and their foundations. The foundations of human rights generate human rights practices which can, in turn, affect those same foundations that gave rise to them. Specifically, the foundations of rights generate human rights behaviors and allow/constrain the agency of those behaviors to, in turn, reproduce/transform those foundations. Once reproduced/transformed, those foundations have new causal powers to generate different human rights practices which, again, will either be allowed/constrained continuing the same cycle. This explains as to why human rights structures change over time.

Part 2: A Combined Framework for Emotion and Human Rights

While the last part provides a critical realist outline to theorize the relationship between human rights structures and their generative foundations, this part builds on those models with an interactionist framework in order to specify those foundations in emotional terms. Interactionism provides the disposition-situation outline to theorize about the foundational role that emotion plays in generating human rights practices. By establishing emotion as the foundation of human rights, interactionism specifies the smaller units that constitute larger human rights structures. It is important to begin, then, with a brief discussion on how the discipline addresses questions of how smaller units give rise to larger one.

Smaller units of analysis are often neglected in the IR discipline. Not only do IR scholars tend to limit research to a single level-of-analysis, as discussed in the previous part, but ‘higher’ levels are often favored over ‘lower’ ones. This is not surprising given that much of the substantive issues discussed in IR (armed conflict, global poverty, the environment crisis, etc.) reach across large spaces of the globe which makes them more easily researched at higher levels, such as states and systems. This has led the discipline to develop a rigorous understanding of those higher-leveled actors, but it has left our understanding of lower-leveled actors (such as the individual) greatly underappreciated.

This is unfortunate because states and systems are ultimately constituted by the interactions of people, and the social-psychology that shapes those interactions. As Valerie Hudson argues, “all that occurs between nations and across nations is grounded in human decision makers acting singly or in groups” (Hudson 2005, 1). For this reason, it is important for the IR discipline to consider the social-psychology of people and the role they play in

constituting larger structures in world politics. Because the social-psychology and behavior of people function as the parts that constitute larger human rights structures, it is important for IR scholars to take these units on lower levels-of-analysis seriously. Specifically, it is important for scholars to take seriously how these smaller units give rise to larger structures.

The study of how larger scaled phenomena arise from smaller ones is a relatively new interest for the IR discipline which studies those smaller parts under the term ‘microfoundations.’ Daniel Little defines microfoundations as “detailed accounts of the pathways by which macro-level social patterns come about.” They “provide an account of the circumstances of individual choice and actions that give rise to aggregate patterns” (Little 1998, 4). In general, microfoundations refer to the smaller or lower-leveled units at work in larger or high-leveled phenomena. These smaller units are what John Elster calls “the nuts and bolts, the cogs and wheels of the internal machinery” (Elster 1983, 24-25). For Joshua Kertzer, microfoundations are important when “one explains outcomes at the aggregate level via dynamics at a lower level” (Kertzer 2016, 83). Microfoundations, then, are an important concept for my research which considers how international structures of human rights are constituted by the rights bearers on the lower level.

While higher levels of analysis have enjoyed a privileged status in IR, recent trends are now recognizing the importance of microfoundational explanations in social science research. In fact, Kertzer has commented on this trend declaring that the discipline is witnessing a “microfoundational moment” (Kertzer 2014, 82). The theoretical and scientific discussion aimed at developing microfoundations began with the work of Collins (1981), Elster (1989), and Coleman (1990) but is being developed more recently by Hedstrom and Swedbert (1998),

Gerring (2007), Hedstrom and Ylikosko (2010), and Kertzer (2014). To quote John Gerring, this trend demonstrates that “macro is out, and micro is in” (Gerring 2007, 176).

The need for scholars to consider microfoundations is especially true for human rights research because rights implicate people on the individual level. While this is true for most international issues (conflict, poverty, and environmental collapse are all felt by individuals), human rights are distinct from other issues because they are meant, at least in theory, to specifically target the values of people. As discussed in previous chapters, these values arise from the complex relationship between dispositions interacting with situations. Therefore human rights scholars should consider the microfoundational role that dispositions play in generating these values.

This illustrates a limitation for human rights approaches that do not consider microfoundations – they research international structures of human rights without understanding how they relate to the interests of rights-bearers. This is particularly true for agreement theories which research human rights in terms of international structures of ‘core-commonalities’ or ‘overlapping-consensus’ (Beitz 2009, 73-95). They ignore the microfoundations of rights-bearers and, instead, frame rights in terms of the *macro*foundations of international agreement. Agreement theories, then, assume a top-down approach which subordinates the rights of people to the powers of international structure. As a result of this framing, rights do not reflect the values and interests of rights-bearer but, instead, structures of international politics.

A human rights approach that does take microfoundations seriously are naturalistic philosophies, particularly the derivationist forms given their ontological focus. They assume the microfoundational role of human rationality from which human rights emerge; specifically, rights arise as common goods from the values of rational actors. However, derivationism is a

form of moral philosophy and it eschews scientific questions of causality. For this reason, it cannot elaborate on the causal process by which rights arise from reason (it is also important to remember that their presumption of rationality also commits the naturalistic fallacy).

I aim to correct for these limitations in the next two section by specifying which microfoundations serve as the generative mechanisms and by modeling how human rights emerge from them. Interactionism allows me to do this by building its situation-dispositional framework on top of the critical realist models outlined above. Dispositions serve as the microfoundations that generate human rights. As discussed in chapter 3, dispositions refer to a person's internal mechanisms which are responsible for their tendencies to behave a certain way. These dispositions can become "activated" (Tett et al 2013) by the person's social environment, also known as a situation. The specific dispositions that I refer to in the following models are the emotive mechanisms discussed in previous chapters. Again, I specify emotion not only because they motivate behavior (Spielberg et al. 2008; Pessoa 2009; Chiew and Braver 2011; Roach, 2016; Damasio 2018) but also because they serve as appraisals in moral situations (Damasio 1994; Moll, Oliveira-Souza, Eslinger 2003; Green 2001; Haidt 2003). By facilitating for moral judgments that motivate behavior in response to a situation, emotive dispositions serves as the microfoundations that generate human rights.

The next subsection discusses this within a transcendental realism framework in order to explain the emergence of human rights. The subsection following that discusses this in a critical naturalist model in order to explain how human rights change over time. While they both refer to the same microfoundations – emotive dispositions – they each refer to different aspects of them. The transcendental realist model emphasizes the fact that emotion is universal and relational in order to explain how different human rights practices emerge from the same

common emotional nature, while the critical naturalist model emphasizes the fact that these emotive dispositions are subject to change in response with experience in order to explain why human rights practices change over time.

Interactionism, Transcendental Realism, and Human Rights

This section builds on the transcendental realist model discussed earlier with an interactionist framework in order to discuss how the observable and unobservable dimensions of emotion are related to human rights. The causal relationship between emotion and human rights is made possible by the ontological framework (openness and stratification) outlined in transcendental realism. I discuss how this ontological approach to interactionism can explain the relationship between emotion and rights.

I specifically make two points: The first is that ontological stratification is a necessary condition for theorizing how dispositions appraise situations. By rooting our sense of rightness within these dispositions, I establish the reality of human rights as part of this ontological stratification. In this sense, my argument functions as a naturalistic approach to human rights by framing them as emerging from nature. The second is that an uncontrolled open system is a necessary condition for resolving the micro/macro dualism. Open systems allow for people to share their experience where one's situation intersects and overlaps with others where those events enter the public consciousness. While an open systems allows for these situations to be shared with others, it is also likely that those situations are going to be appraised in different ways consistent with larger cultural/political/economic/historic structures. In this sense, my argument recognizes how the practice of rights are relative to culture.

Stratification and Natural Rightness

Ontological stratification is a necessary condition for theorizing disposition-situation transactions. As discussed in previous chapters, situations serve as the external forces of a person's environment that impose social expectations, norms, roles, etc., while dispositions serve as the internal mechanisms which may become 'activated' in order to appraise a situation and motivate behavior in response to it. The interaction between the two assumes that the social-psychology of behavior operates on a stratified ontology similar to that of transcendental realism. Because dispositions refer to the internal (unobservable) characteristics necessary for generating behavior, they function as the transcendental mechanisms on the domain of the real. The behaviors they produce, as well as the situations they respond to, constitute the domain of the actual. In this light, disposition-situation transactions functionally affirm an ontological stratification.

This stratified ontology provides for the emergence of human rights. As discussed earlier, emergence refers to actual phenomena constituting something wholly new and irreducible to, while still dependent on, the real mechanisms that generate it. Specifically, emotion functions to appraise situations and motivate behavior, but this dual function produces something greater – a sense of rightness, an epistemological understanding of what someone is due as well as the responsibilities we share with others. The fact that this sense of rightness reflects real dispositional mechanisms of human emotion affirms human rights as a real part of this stratified ontology.

In this sense, my argument serves as a naturalistic approach to human rights in that I anchor them within the nature of reality. Specifically, rights reflect our epistemological sense of rightness, but stem from real ontological mechanisms that generate them. The next sub-section

discusses as to why these real mechanisms, while they are real, do not translate into universally shared practices.

Open Systems and Behavioral Differences

Disposition-situation transactions occur in an open system, which is to say that they occur in an uncontrolled and complex social environment. This means that situations are rarely removed from other situations and, instead, they overlap and intersect with others. Many times, a situation is narrowly defined as a specific event – it could be a banal event like buying a newspaper, or it could be a very serious event like an officer shooting an unarmed teenager. In an open social system, however, these two events are likely to intersect where buying the newspaper leads to you reading about the shooting. In other words, situations intersect and overlap with others in an open social system where they are shared and spread.

It is also important to note that situations are not always narrowly defined as specific events. They could be more broadly construed as general social factors as well. (Norenzayan, A.; Choi, I.; Nisbett, R. E. 2002). For instance, your racial and ethnic background, your socioeconomic status, or your gender all constitute situations because they refer to broader social factors that shape your experience. In fact, situations usually combine elements of both the specific events with broader social factors. Take the example of the cop shooting the teenager. Research into implicit racial bias has shown that police appraise the threat-level of black people differently than that of white people. Whether the teenager was black or white may have been a determining factor as to why the cop decided to shoot him. The race of the teenager may also shape how the story is appraised by those reading it in the newspaper. This is especially true as the American public becomes more aware of the how police use violence disproportionately

against the black community. In general, situations can operate on multiple levels of analysis (Khilstrom 2015) and they may be understood as specific events or as broader social factors.

These two features of situations – the fact that they a) operate on multiple levels and b) that they occur in an open system – aids in resolving the micro/macro dualism. First, the fact that actual events on a lower level intersect with higher-leveled structures within the same situation demonstrates how macrostructures affect micro-situations (for example how structures of racism affect specific events of police use of violence). Second, these situations occur in an open system where they intersect and overlap with other situations. This intersection and overlapping allows for the situation to be shared and grow into the public consciousness.

The Emergence of Natural Rights in a Complex World

The two ontological conditions of stratification and openness provide a framework to theorize about how the observable and unobservable dimensions of emotion relate to human rights. Emotive dispositions on the domain of the real appraises situations and inclines behaviors, both of which constitutes an epistemological sense of rightness. This sense of rightness emerges from how situations on the domain of the actual interact with (activate) those dispositions. This advances a naturalistic approach to human rights by rooting them in an ontological stratification. These emotive dispositions allow for people to interact with their situation. Again, these situations occur in an open system where they intersect and overlap with other events. Emotive dispositions, then, not only relate us to our own direct situation, but to those of others where they enter the public consciousness. It is through these publicly shared emotional experiences that we recognize the rights of others. This is how larger human rights structures emerge from the microfoundations of human rights.

However, just because people are related to each other in an open system, does not mean that our emotional appraisals of situations translate into universal rights practices. The very nature of an open system entails a plurality of political, cultural, economic, historical, etc. situations at both the micro and macro level. Each of these situations are complex and lend themselves to appraisals that, while they reflect universal dispositions of emotion, are translated into different behavioral responses given the details of the situation. For this reason, my argument also recognizes that human rights are culturally relativist. Rights reflect the same ontological foundations on the domain of the real, but how they are translated into practice depends on the social contexts of the domain of the actual.

Interactionism, Critical Naturalism, and Human Rights

While the previous section used a transcendental realist model to discuss how human rights emerge from their microfoundations, this section uses a critical naturalist model to discuss how human rights change over time. I build an interactionist framework on top of this critical naturalist model in order to illustrate how the source of change comes from the very microfoundations that gave rise to them. The main tenet of interactionism is that dispositions not only produce behaviors in response to a situation, but are also changed by that same situation. In this light, the emotive dispositions that incline behavior towards a sense of right, are also reshaped by the cultural situation they appraise and respond to. This recursive relationship accounts for gradual shifts in human rights practices over time. Critical naturalism is particularly equipped to illustrate this by way of its Transformation Model of Social Activity (TMSA). I build an interactionist framework on top of the TMSA in order to illustrate the recursive nature of disposition-situation transactions as they relate to human rights.

The Recursive Relationship between Disposition and Situation

As discussed previously, critical naturalism's TMSA is designed to resolve the prevalence of dualisms in the social sciences. This typically refers to debates over structure/agency or individual/society. However, the fact that interactionism assumes a recursive relationship between people and their environment reveals dispositions and situations as another dualism. On one side, interactionism assumes that dispositions produce behavior in response to an appraisal of some situation. Those behaviors change the situations by becoming part of it. On the other side, that situation responds to the produced behavior which changes how those emotive dispositions appraise future situations. In short, interactionism assumes a reciprocal relationship where both dispositions and situations shape the other. However, two objects cannot both cause and effect each other simultaneously. The challenge, then, is to unpack how this relationship unfolds in time.

The TMSA provides the framework to illustrate this recursive relationship between situations and dispositions. Specifically, it articulates the order of which this recursive relationship unfolds. It first establishes observable phenomena as a causal product of unobservable mechanisms. Again, this fits with transcendental realism which assumes the ontological primacy of the domain of the real. Once those observable phenomena are produced, they in turn reshape the generative mechanisms that produced them. In the context of interactionism, the situations that are changed by behaviors produced by disposition can, in turn, reshape those dispositions that responded to them.

This kind of change where situations affect one's dispositions can occur through neuroplasticity, which was discussed in previous chapters. New research in neuroplasticity

demonstrates that our cognitive structures do not only affect how we behave in society, but those social interactions do make physical changes as to how those cognitive structures work (Doidge 2007; Wexler 2006; Nisbett and Masuda 2003; Nisbett, Peng, Choi, & Norenzayan, 2001). In other words, our social experiences change our brain. While can we accept the ontological reality of the body's dispositions, we must also accept that they change according to the social situations that they respond to.

Emotional Experience and Change

Emotion is one of those dispositional attributes that is changed by our social experience. How the brain is shaped by culture has important implications for emotion. Emotion is embedded in the material architecture of the brain, and how cultural norms mold that neural architecture also molds how emotive dispositions appraise future iterations of those culture norms. Emotion not only prompts behavior in response to a situation, but the experience of those situations also make material changes to the emotive dispositions responding to them. New research into neuroplasticity demonstrates this recursive relationship between emotion and culture (Wexler 2006; Barret 2017; Prinz 2014). As a result, people emotionally appraise situations differently depending on their personal experiences. This dynamic evidences a cultural dimension to emotion: not only are cultural situations generated by shared emotional experiences of the group, but those situations, in turn, also rewire the material structures of emotion.

As discussed earlier, our emotional response to a situation is the result of how the brain predicts or anticipates emotions based on how those feelings have been categorized in previous similar experiences. These categories do not refer to natural organizations of objects. Rather,

they are socially constructed groupings produced by the need to share and exchange concepts between people via language and culture. Our ability to connect to others socially requires our understanding of that social reality so that we may be a part of it. This requires that our personal categorization process conform to our cultural surroundings. In other words, how we understand concepts through categorization is culturally contingent. In this sense, categorization is not a process of finding natural similarities between concepts but, instead, constructing those similarities in accordance with culture.

Human Rights and Social Transformation

How we appraise a situation occurs through an emotional process that has been shaped by how we have appraised previous situations. This recursive cycle of turn taking between dispositions and situations explains how the relationship between emotion and rights produce behavioral variations over time. If emotion provides us with our sense of rightness, and those same material mechanisms are changed by the same situation they appraise, then our sense of rightness is a product of our cultural surroundings just as much as it is related to our nature. Issues of human rights, then, reflect not only our universal emotive dispositions but, also, how those dispositions have been shaped by previous situations. This explains as to why people appraise situations differently using the same universal inventory of emotion. This explains not only why human rights are culturally relative but, also, as to why human rights within a culture change over time. In other words, human rights are real in the sense that they reflect ontological structures of the human mind but, because those structures change by interacting with our cultural environment, so too does our sense of rightness.

Part 3: Human Rights in a World of Borders: An Illustration

This section uses the combined approach outlined above in order to demonstrate the kind of contributions it can make to a practical understanding of human rights issues. I do this by considering a particular human rights context as an example of how this combined approach analyzes real world problems. The context I consider is the human rights of immigrants and refugees as well as the role that political structures (such as citizenship and border security) play in threatening their rights. Specifically, I argue how the right to belong and the right to free movement constitute meta-rights which can protect the social and political conditions necessary for people to realize the rights of others through emotional and meaningful interactions. This is becoming increasingly important with the rise of ethno-nationalist movements pushing for stricter border security which prevents immigrants and refugees from engaging in those emotional interactions with citizens of the country they are moving to.

The first section discusses how rights, generated by our emotive dispositions, constitutes the domain of the real. The second subsection discusses how these rights, while they ontologically rooted in the domain of the real, may not be actualized (or may even be violated) on the domain of the actual. This may occur because the domain of the actual functions as an open system where other political, economic, cultural, and historical structures may work to undermine or weaken the conditions necessary for the realization of rights. The third subsection discusses the role that science plays in transforming those structures. Here I bring in the TMSA to demonstrate how an ontological approach not only explains the foundations of human rights, but produces an emancipatory impulse to transform the structures that violate those foundations.

Domain of the Real: The Nature of Emotion and Human Rights

The argument put forth in this dissertation is that human rights emerge from the emotional mechanisms that generate them. They invoke visceral feelings which inform us of our values and incline our behaviors to conform to those values. (Haidt 2012; Greene 2013; Pinker 2003; Saver & Damasio 1991; Moll et al 2002). Emotion provides us with the sense of right – what people are due and the responsibilities we have to each other. Not only are notions of rightness and justice laden with emotion (Chebat and Slusarczyk 2005; De Cremer and Van den Bos 2007), but our ability to recognize the inherent dignity of others or empathize with their suffering is a purely emotional capability as well (Damasio 1994; Frith 2001).

This sense arises from the social interactions we have with others where emotion appraises the situation and mediates how we relate to it. These social interactions form emotional bonds through which a sense of rights can arise. The reason for this is because emotion communicates ideas and feelings to others by facial expression, verbal cues, body gestures, etc. (Adolphs 1999). In fact, those who observe our expression are likely to feel similar emotions (Eisenberg et al., 1989; Ohman & Soares 1998). This refers to another important phenomena known as mirroring or contagion where people feel the same emotion that they observe from someone else. This is true for facial expressions (Dimberg et al. 2000), vocal messaging (Pickering & Garrod 2004), and body movements (Chartrand & Bargh 1999). In other words, people relate to each other on such an emotional level that their feelings and thoughts may be replicated in others.

Emotion doesn't just mediate interpersonal relations, it also facilitates the cultural transmission of ideas and maintains social cohesion (Matsumoto, D., & Juang, L., 2013). In other words, social interactions occur in an open system where people are continually interacting

with others within larger cultural structures. What emerges from all of these interactions is a larger cultural sense as to how people should be treated and the public rights and responsibilities they share with others. As stated before, emotions are universal and it is this universality that allows for people to relate to each other through which we can recognize everyone as possessing the same rights. The fact that real psychological structures underpin this shared sense of right affirms the idea that human rights are ontological goods reflecting natural parts of our shared humanity.

However, in a stratified ontology, those ontological mechanisms on the domain of the real may not always actualize on the domain of the actual. The reason for this is that the conditions necessary for the realization of human rights may not present themselves. In fact, there may be other structures that work to undermine those conditions. The specific condition necessary for the realization of human rights are opportunities for people to form emotional connections through social interactions. In an open system, however, behavior is always shaped by other causal structures (cultural, political, economic, etc.) which shape how rights are recognized, practiced, and enforced. This means that the conditions necessary for emotional interactions may never appear in the presence of those other structures if those structures assert more causal power within the open system. As a result, the rights on the domain of the real may never actualize on the domain of the actual.

For this reason, I argue that the conditions necessary for the realization of rights be protected. In doing so, I refer to another special kind of right called meta-rights. Essentially, these are “rights that protect rights” (Garden 2014, 855). Amartya Sen introduced the concept of meta rights in “The Right to not be Hungry” where, according to him, “a meta- right to something, x , can be defined as the right to have policies, $p(x)$, that genuinely pursue the

objective of making the right to x realizable” (1982, 345). Meta-rights, then, do not refer to the rights that arise from the emotional interactions of people but, rather, ensure that such interactions can take place.

As a way to provide a practical illustration of this, the next section discusses how ethno-nationalist efforts to strengthen state borders function to inhibit the interactions that immigrants and displaced people have with citizens. Specifically, governments rely on these nationalist sentiments in order to manipulate the emotions of their citizens in negative ways. I argue that the right to belong and the right to free movement constitute meta-rights that can protect the conditions necessary for all people to relate to one another in emotionally meaningful ways.

Domain of the Actual: States and Human Rights Violations

Sovereignty is an organizing principle of international relations, which is to say that the nation-state serves as the core structure that shapes world politics. States, then, exercise a great deal of power over issues of human rights, and those claiming a right must do so within the framework of sovereignty. The most common requisite for the enjoyment of human rights, then, are forms of civic belonging/inclusion – citizenship or nationality. Those who do not belong, or those who are not allowed entry into a community, are denied the social interactions from which an emotional connection with other citizens can take place. Their inability to establish emotional and meaningful relations with others means that their rights and humanity are never realized. This is a growing problem today with more people on the move and with governments responding with harsher immigration policies and border closures.

However, the problem itself is not new, and a human rights critique of sovereignty was first put forward by Hannah Arendt’s 1949 work *The Origins of Totalitarianism*. Here, she

expressed skepticism towards the idea of a human rights system that relied on the state to guarantee them. In such a system, people do not enjoy rights by virtue of their humanity but, rather, because they belong to a state. In other words, it is not enough to be human – you have to be a citizen. She referred to this as the “right to have rights.” In her words:

[T]he right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible [...because] the present sphere of international law [...] still operates in terms of reciprocal agreements and treaties between sovereign states (Arendt 1973, 298).

Even though Arendt wrote this over sixty years ago, the dilemma is still very real today. The ability to recognize, protect, and enforce natural rights still relies on socially constructed mechanisms of civic membership. This poses challenges for those who have no citizenship, whose citizenship is under question, or are seeking new citizenship. In general, a human rights system organized principally around sovereignty actually serves as a form of discrimination against those without state-recognition.

Those likely to suffer from this kind of discrimination are refugees and the forcibly displaced, immigrants, and stateless groups of people. The situation of these people is defined by their lack of civic belonging/inclusion which encourages them to move across borders in search of it. The challenges that these groups face has only grown in contemporary politics. The total number of people forcibly displaced from their homes worldwide has hit a record high of 68 million as of 2017. 25 million of these people are refugees, the biggest group of which are Syrians fleeing from conflict. There are an additional 10 million stateless people denied citizenship for reasons other than forcible displacement. The rising number of people fleeing

their homes or looking for refuge represents a large portion of the people on the move (UNHCR 2018).

Immigration also explains a large portion of people whose rights are under threat. Immigration rates are on the rise. In 2017, 58 million international immigrants lived in the U.S., 78 million lived in Europe, and 80 million lived in Asia (United Nation, 2017). Immigration takes on many forms, and one kind likely to suffer from some kind of rights violation are irregular, or undocumented, immigrants. There were 11.3 million undocumented migrants living in the U.S. in 2016, (Fazel-Zarandi, Feinstein, and Kaplan 2018) though the number of irregular migrants to the U.S. has dropped precipitously in the past decade. Other countries host a large number of undocumented migrants as well – there are between 2 to 4 million in Europe, and several million in India and China (though government data is rarely current or accurate for these countries) (Migration Data Portal, 2019).

In general, more and more people are on the move in search for membership and belonging. This movement, however, makes them vulnerable to other forms of discrimination. The reason for this is that it challenges traditional sovereign structures which have grown accustomed to controlling who crosses over state-borders. In response to this increased flow of refugees and immigrants, states have erected barriers to entrance. For instance, European countries responding to the Syrian refugee crisis of 2015 began tightening border control. In 2016, the EU made a deal with Turkey to prevent people from crossing into Europe (if anyone in Turkey tried to cross into Greece they would be sent back. For every one Syrian sent back to Turkey, the EU would accept one refugee) (Rankin 2016). In 2017, Europe made a deal with Libya to stem increased flows from Africa. In exchange for stopping boats from leaving Africa and entering Italy, the EU gave money to Libya and give money and training to Libya coast

guard (BBC 2017). Probably the most drastic and surprising move was Great Britain's decision to exit the EU, a decision shaped by rising fears of the influx of immigrants and refugees.

The United States has exhibited the same response to flows of immigrants and refugees entering through its southern border. Despite the fact that illegal crossings of the southern border have decreased (Krogstad, Passel, and Cohn, 2018), illegal immigration has become one of the most salient political topics in American politics. In fact, it defined the platform of Donald Trump who won the 2016 presidential election with the promise that building a border wall would prevent future illegal crossings. This wasn't the only move of the Trump administration to target immigrants and refugees. After Trump won the election, he quickly instituted a "zero tolerance" immigration regime defined by strengthening the authority of ICE, instituting a "Muslim ban" that barred the entrance of immigrants from Arab countries, and separating refugee and migrant children from their families at the border.

These are just some examples of how the Western world has responded to increased refugee and immigration flows. The methods that states use to do this – through militarizing the border, banning groups of people, turning rescue boats around, arbitrarily arresting people, deportation etc. – are designed to prevent refugees and immigrations from interactions with citizens. Specifically, they deny outgroups the right to belong and to move to the ingroup. Immigrants and refugees are deprived of the social interactions that build emotional connection. As a result, the rights and humanity of these groups of people are never recognized. The efforts of nation-states to control who crosses their borders, then, effects the rights of tens of millions of people.

Sovereignty, then, serves as a core structure in the open global system that exerts a great deal of causal power on issues of human rights. Governments not only deny refugees and

immigrants the right to belong and to move, but they garner support from their citizenry to do so. They do this by shaping the emotional appraisals of their citizens. The very act of controlling who belongs to, and moves into, the country facilitates this goal. By denying who enters into the state, governments regulate the interactions of their citizens and, in doing so, shape how they emotionally appraise refugees and immigrants. Governments, then, manipulate the emotions of their citizens to portray them in negative ways. This demonstrates the control that governments have in controlling how the situation of immigrants and refugees are appraised by citizens.

For instance, many of the political forces behind Europe's border politics have shaped how people perceived people crossing their borders. They did this through methods of emotional manipulation to stoke fears over the rise of refugees and immigrants. The best example of this is the pro-Brexit politicians which campaigned on a false narrative immigrants and refugees increase crime and that granting them citizenship somehow leads to an erosion of 'European values.' These methods proved to be successful because they resulted in British voters deciding to leave the EU (Zavala, Guerra, and Simao 2017; Clark Goodwin, and Whitely 2017). This illustrates how the state shaped how its citizens appraised the refugees and immigrants.

Other examples include Viktor Orban's Hungary who has relentlessly scapegoated immigrants and refugees as a way to explain the country's problems. He has used emotionally charged language to demonized refugees (for instance, "Muslim invaders") and he has recently proposed a law to criminalize helping refugees (Wallen 2018). Austria's Sebastian Kurz has done the same by proposing anti-immigrant laws. These have included denying immigrants access to public welfare programs, banning women from wearing the veil, and mandating that all migrants speak German. These kinds of policies are popular in Italy as well. Italy's coalition government, made up of the Five Star movement and far right league, has made it a priority to

cast immigrants and refugees in a negative light. Their first move was to turn away a migrant rescue boat. The rise of far-right movements is present in other countries as well. For instance, government officials in Poland's applauded a white-nationalist march of 60,000 people back in 2017. In France, Marine le Pen lost her election, but still gave voice to social conservatives who are applying pressure on Macron to take a harder stance on immigration.

All of these efforts display how governments shape how their citizens appraise the situation of immigrants and refugees. This demonstrates a great deal of power that governments have in manipulating the emotions of their citizens. This kind of manipulation requires that governments shape the environment (or situation) in a specific way as to actualize some emotions over others. Instead of empathy and compassion, governments have relied on fear and anger in their framing of immigrants and refugees. This reflects how the situational designs in Milgram's and Zimbardo's experiments resulted in a moral disengagement (by masking the emotional salience of a situation, test subjects in Milgram's and Zimbardo's experiments become morally disengaged). This same phenomena occurs within the context of immigrants and refugees. When governments prevent their citizens from interacting with immigrants and refugees, they prevent them from forming social and emotional ties necessary for realizing the rights of immigrants and refugees. Citizens then become morally disengaged with the plight of others, especially after governments negatively manipulate the emotions of their citizens. In other words, states control the interactions of their citizens on the domain of the actual as a way to prevent them from recognizing the rights of others on the domain of the real. Preventing this requires that some protections be put into place that ensure immigrants and refugees the ability to interact with others in emotionally meaningful ways.

Domain of the Empirical: Science and Social Transformation

The previous two sections demonstrated the contributions an ontological approach can make to human rights research. They did this by discussing the situations of refugees and immigrants in order to demonstrate the rights of people (the domain of the real) and how states violate those rights (on the domain of the actual). While those two sections discussed the scientific contributions an ontological approach can make to human rights, this final section discusses the emancipatory contributions that such an approach can make. I discuss the role that science plays in social transformation, and how an ontological approach to human rights may provide insights as to how people's rights may better be protected. Specifically, I discuss the dualism between knowledge production and social action in terms of the TMSA and how this may underpin an emancipatory impulse to protect human rights.

As discussed before, critical naturalism works to resolve the prevalence of dualism in the social science through the Transformational Model of Social Action (TMSA). This particular model demonstrates how the recursive relationship between two entities is governed by time. Critical realists use the TMSA to discuss the relationship between cause and effect, structure and agency, individual and society, and so on. But the TMSA is also used to resolve the dualism between theory and practice as well. This expresses the recursive relationship between the knowledge produced by science and the social action that science attempts to explain. The scientific effort to understand the generative structures underlying social action also informs the transformative efforts to change them. In turn, those transformative efforts to change social structures results in a new scientific understanding as to what those structures are. In other words, critical realism exposes the blurred line between theory and practice and, more importantly, demonstrates the emancipatory role of science in social change.

According to critical realism, then, the scientist is part of social change whether they acknowledge it or not, and the empiricist standards for value-neutrality are misinformed. After all, social science does not take place in a closed system – as researchers, we are very much embedded in the social reality we work to explain. Without acknowledging this, our theories meant to understand the facts of the world serve merely to reproduce them. In particular, the theory/practice dualism plays out in a way where theory serves as the structure which constrains the practice of our agency. In this sense, actually serve as a form of oppression – theories meant to objectively explain society later inform society as to what is possible and/or right.

This is best illustrated with empiricist theories of human rights, in particular agreement theories. Again, agreement theories argue that human rights reflect international agreements, consensus building, or core similarities between states. By assuming states as the unit of analysis through which human rights are constructed, they unwittingly reaffirm sovereignty as a natural principle of world politics. A popular term in reference to this is “methodological nationalism” (Beck 2000; Wimmer and Schiller 2002; Chernilo 2006; Amelina, et al, 2012). This refers to assumptions within the social sciences that presuppose the state as the natural form of social organization and uncritically accepts and reifies it as the ordering principle within world politics. By privileging the status of the state, agreement theories advance a methodological nationalism which frames human interest and values in terms of the state. In doing so, they fail to recognize the role that the state plays in undermining the social conditions necessary for realization of human rights (as discussed in the previous section). In this sense, agreement theories serve as a form of oppression – they uncritically reify the state without recognizing its role in violating human rights.

Scholars interested in a more emancipatory IR discipline should envision a new portrait of world politics where the structural constraints that condition our agency are not simply given. Instead, the scientist should keep in mind that underpinning social transformation is the recursive relationship between the theories they propose and how social agents put them into practice. An ontological orientation towards world politics can correct for this because it not only exposes the structures responsible for our oppression, but it also yields an emancipatory impulse that informs society how to transform those structures.

This couldn't be more important for issues of human rights. If states have the power to violate human rights partly because sovereignty is assumed as a naturally occurring principle in world politics (an assumption in which the empiricists are complicit) then science bears some responsibility for those whose rights have been violated by state power. If human rights are naturally occurring goods by virtue of our emotional nature, then acknowledging our emotional connection to the human rights systems that we study provides us with an emancipatory impulse to research alternative visions of world politics – visions that understand human rights as emerging from the unobservable part of humanity rather than states.

Conclusion: Implications, Limits, and Future Research

I conclude this dissertation with a brief summary of its central themes, their implications for human rights, and the limitations of my argument. The first section quickly summarizes my argument around its major themes in order to reiterate how it address the limitations of previous human rights approaches. It is important to reiterate these themes as they set up the rest of the chapter to discuss the implications and limitation of my research. I focus specifically, on the how the ontological theme of my argument corrects for the epistemic fallacy committed by the empiricist approaches, and how the emotional theme corrects for the naturalistic fallacy committed by the rationalist philosophies.

The second section discusses the major implications of these themes and why they matter for human rights. First, the ontological dimension to my argument resolves a paradox as to how human rights are both naturally real and culturally contingent. Traditionally, these two concepts have been seen as mutually exclusive – empiricist approaches focus on contingency, while naturalistic approach focus on nature. However, a stratified ontology illustrates how human rights activity, while culturally contingent, still reflects the natural structures underpinning them. Second, the emotional dimension features new ways to think about human rights. Rationalist approaches have traditionally emphasized the importance of individual rights, personal autonomy, self-determination, etc. but an emotional approach places focus on community and social change.

The third section discusses the limitations to the ontological and emotional dimensions to my argument and how future research can correct for them. The major weakness to my ontological approach is methodological/scientific. While my critical realist approach provides a more satisfying theoretical understanding of the causal nature of human rights, the knowledge it produces does not lend itself to falsifiability. The major weakness to my emotional approach is theoretical/psychological. While my emotional approach provides a more convincing case for rights than rationalist approaches, emotion alone does not explain the emergence of rights. My aim for this dissertation was justify an emotional approach and to firmly situate it within the debate, but future research needs to elaborate on the complex relationship between emotion and reason.

Summary of Argument

The central argument of my dissertation is that human rights are real public goods that reflect the emotional foundations of the people they serve. Because this argument has two dimensions to it – an ontological and psychosocial – it is organized into two tracks in order to discuss how they each address the limitations of previous human rights theories.

The first track argued that the ontological nature of human rights reflect their foundations underpinning them. Taking ontology seriously corrects for the empiricist approaches to human rights (agreement theories and relativist approaches) which commit the epistemic fallacy. By framing human rights merely as the expression of a common core or overlapping consensus, agreement theories reduce human rights superficially to their practices with no deeper understanding as to the nature of rights. Relativist approaches, while they disagree politically with agreement theories, are nonetheless guilty of the same thing. By reducing human rights to

culturally reiterated behaviors and discourses, relativist approaches frame rights as socially constructed with no understanding of the ontological building blocks they are constructed from.

I correct for this through a critical realist approach which assumes a stratified and open system where unobservable causal structures generate observable human rights activity. This critical realist approach corrects for empiricist theories because it does not conflate the foundations of human rights with the activity they produce. While agreement theories base the universality of rights on internationally agreed upon norms, my critical realist approach identifies the universal causal mechanism that make possible such international agreement. Additionally, while relativist approaches argue against universality of rights based on the cultural variations of their practice, my critical realist approach recognizes how such cultural variations derive from universal causal mechanisms generating them in an open cultural system.

The second track of my argument argued that emotion serves as those causal mechanisms that generate human rights activity. My focus on emotion corrects for the rationalist approaches to human rights (derivationist and inclinationist philosophies) which commit the naturalistic fallacy. Derivationist approaches focus on the ontology of our rational nature as the source from which our understanding of rights derive. In doing so, however, they attempt to draw a practical 'ought' from a speculative 'is.' Inclinationist philosophies try to overcome this problem by focusing on the epistemology of our rational understanding of rights which, they argue, are non-derivable. With no ontological basis, however, inclinationist approaches fail to anchor human rights within a naturalistic framework.

I correct for this through an emotional approach which assumes an interactionist framework between dispositions and situations. Our understanding of human rights emerge as emotional appraisals from dispositional-situation transactions. Basing human rights on emotion

overcomes the naturalistic fallacy because it does not base our practical understanding of right on speculative knowledge about the world. In this sense, my argument is similar to inclinationist approaches – emotion simply inclines us towards right action. It is different than traditional inclinationist approaches, however, in that it specifies the ontological basis from which these inclinations derive. They derive from real emotive dispositions interacting with, and appraising, social situations.

Implications for Human Rights

Both the ontological dimension and the emotional dimension to my argument provide new ways to think about human rights that challenge traditional perspectives. First, by arguing that actual human rights activity emerge from their ontologically real foundations, I demonstrate paradoxically how rights are both natural occurring and socially contingent. Second, by arguing that emotion serves as those real foundations, I demonstrate how human rights reflect the human need for social interaction and community. I discuss both of these below.

Both Natural and Contingent

My argument provides new ways to think about human rights beyond the views expressed by empiricists and naturalistic approaches. These two approaches are often seen as irreconcilable – naturalistic approaches view human rights as real goods that reflect basic and universal laws, while empiricist approaches recognizes how rights are culturally and historically contingent. However, my argument demonstrates how it is possible to theorize about rights as both natural and contingent based on the assumption of a stratified and open system.

Ontological stratification allows me to theorize how human rights activity is founded on universal natural laws. The domain of the real represents the universal laws which naturalistic approaches focus on, while the domain of the actual represents the human rights activity that empiricist approaches focus on. The former underpins the latter which illustrates that human rights activity reflects the natural structures generating them. Despite the cultural and historical variations in human rights activity, they are nonetheless generated by the same universal structures that underpin them.

How is it possible for universal structures to produce cultural and historical variations of human rights practices? The answer lies in the fact that human rights activity occurs in an open system. As human rights activity emerge from their natural foundations, they interact with a multitude of other structures (cultural, political, legal, economic, historical, etc.). Each of these shape how human rights activity emerges and the forms in which they are practiced. In other words, how human rights foundations on the domain of the real are translated into the human rights activity depends on the social conditions of the domain of the actual.

This paints a picture of human rights that merges aspects of empiricist approaches with aspects of naturalistic approaches. Empiricist approaches are correct to assume that the contingency of human rights implies their social construction. However, they ignore the ontological building blocks that rights are constructed from. Naturalistic approaches correct for this, but they argue that these natural foundations necessarily translate into fixed universal human rights laws. This is incorrect given that such natural foundations on the domain of the real serve merely as causal potentials rather than hard laws per se.

Generally speaking, human rights reflect the natural foundations of the people they serve and, for this reason, these public goods should be taken seriously as a responsibility we have to

each other. Yet rights are culturally and historical contingent depending on how rights bearers appraise and interact with their social environment. Taking human rights seriously, then, requires that we reject fixed and absolutist views of human rights. A truly just human rights project, then, should understand rights as naturally occurring goods that reflect the complex relationship we have with our social environment and with each other.

Community and Social Transformation

My argument that emotion serves as the foundations of human rights highlights new dimensions of rights ignored by rationalist approaches. The first is that an emotional approach emphasizes the importance of social interaction and community. This breaks from traditional rationalist approaches to human rights which have focused on the rights of the individual and personal autonomy. Second, an emotional approach can understand social changes in human rights activity while rationalist approaches have traditionally thought of human rights as fixed and absolute. I discuss both of these here

Rationalist approaches, especially those rooted in enlightenment philosophy, have traditionally focused on the individual's right to personal autonomy and self-determination. An emotional approach does not dispute these rights, but it emphasizes the importance of sociality and community. Emotion functions to mediate our social interactions and inclines us to build relations with others. The same emotional foundations that mediate our social interactions also underpins our sense of rightness. Human rights, then, emerges from our interactions with others and, as a result, reflects our needs for social connection and community. The fact that rights are built on social interactions reveals the reciprocal relationship rights bearers have with each other.

The role that emotion plays in mediating our social relations, then, serves as the basis for envisioning a just human rights project built on mutual respect and reciprocity.

The second implication of an emotional approach is that human rights change and evolve over time. Rationalist approaches traditionally assume human rights as historically fixed laws, but an emotional approach recognizes how the relationship between emotional beings and their social environment is defined by change. Not only does our environment change, but how we appraise our environment changes as well. Again, the science of neuroplasticity demonstrates how gray matter and the neural circuitry of the brain change due to the situations it appraises and experiences. As a result, our sense of rightness changes and adapts to the historical conditions of our social environment. This is an important point to make because it implies that society can make changes in human rights thought and practice. The fact that our emotive dispositions adapt to new experiences serves as a basis for thinking about how society can foster positive changes for a respectful global human rights project.

Limitations and Future Research

Each of the thematic dimension to my argument correct for various limitations of other human rights approaches. The strength of my argument, then, rests on both of these two tracks because they each provide a more convincing case of human rights by addressing the fallacies committed by other approaches. It is worth noting, however, that each of these tracks has limitations of their own and that the biggest strengths of my argument may also pose the biggest weaknesses.

The major limitations to my critical realist approach is that a) its rejection of empiricist philosophy does not produce knowledge that lends itself to methods of falsifiability and b) its focus on open systems prevents it from making judgments on specific human rights issues. The

major limitations to my emotive approach is that a) it does not yet articulate the role that human reason plays in the emotional process of generating rights and b) emotions can easily be manipulated and does not yet explain how to overcome this. I discuss them here and how to address them in future research.

The Ontological Dimension

My ontological track corrects for the epistemic fallacy by using a critical realist framework to articulate the causal relations between human rights and their foundations. This is a major strength to my argument because it provides a more convincing theoretical understanding of causal dynamics than what empiricist approaches offer. This strength, however, is also a major weakness – critical realist methods are purely transcendental and inquiry into the theoretical structures that make human rights possible. This does not produce knowledge which can be tested according to hypothetico-deductive methods of science. There is no way to falsify my argument that human rights reflect the emotional foundations of the people they serve. As a result, my argument remains purely theoretical.

While this may be a major limitation for those wishing to conduct empirical experiments, critical realist methods are necessary for producing knowledge that empiricist approaches cannot. Specifically, we must assume the transitive/intransitive distinction if we are to ask transcendently what makes human rights possible, even if such assumptions cannot be falsified. The only alternative is to assume a flat system which reduces ontology to epistemology. Additionally, restricting knowledge to that which can be falsified prevents us from asking how such intransitive structures produce transitive phenomena in an open system. In no way could a falsifiable experiment understand the how the relationship between emotion and rights intersects

with culture. Researching these relationships as constant-conjunctions fails to understand how they really work in uncontrolled environment.

It is important to note the limitation a critical realist argument can make about specific claims to human rights. Because my argument assumes an open system, it does not serve as stable basis to arrive at conclusions about specific human rights issues. Again, the claim that emotion serves as the foundations is a transcendental argument (as opposed to empirical argument), so any specific claims about particular human rights issues must follow the same method. For this reason, my approach can only make arguments for specific human rights claims based on the knowledge of how emotion works. Even then, knowledge on the nature of emotion does not translate into specific human rights. Instead, it serves as a theoretical tool for thinking about meta-rights, as I discussed in the previous chapter.

The Psychosocial Dimension

This dissertation spent a lot of time explaining how emotion works and its relationship to human rights. This was a necessary task in order to demonstrate how an emotive approach corrects for the limitations of the rationalist approaches. However, my focus on emotion does not deny the importance of human reason. Cognitive processes are rarely void of executive thinking, and our sense of rightness should not be seen as any different. In fact, most cognitive activity is a complex of both emotional and rational processes which cannot be disentangled from each other. My review of the theories on emotion emphasized this point and a great deal of other research has discussed the relationship between the two. Future research should explore the complex relationship between emotion and reason and how they fit into human rights.

Specifically, future research should work on explaining the role that rationality plays in appraising human rights situations. As stated throughout the dissertation, our understanding of human rights emerge from how emotion relates us to our social environment and appraises situation. An emotional appraisal of some activity may inform us that someone's rights have been violated, but this does not always inform us as to what should be done. Again, rights are not only those goods that we are due but, also, the responsibilities we have in providing those goods for each other. There is little value in claiming something as a human right if it cannot reasonably be provided. Claiming a human rights then, requires some rational knowledge as to what can be reasonably done to prevent or address a rights violation. Future research can explore how the production and delivery of human rights goods, while they reflect an emotional sense of rightness, are informed by a rational understanding of what can be done.

Another important limitation to point out is that emotion, while it does serve as the real causal structure that generates human rights, is also easily manipulated by other political situations they interact with. In this sense, the feelings that emerge from an appraisal of a situation may not reflect an unbiased sense of rightness but, instead, the power of political forces in manipulating the situation to their advantage. I actually discussed this in the last chapter's illustration on how states manipulate our feelings towards outgroup people. This dissertation has not fully developed an explanation in how to best address this, but understanding how it works helps to explain as to why human rights violations continue to occur. Specifically, my interactionist approach provides a framework to think about how human rights situations are shaped by larger political structures in a way to mask the emotional salience of human rights victims. Future research on this provides promise in explaining as to why human rights violations persist.

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