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National and International Value Systems, Fundamental Human Rights and Law

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1. Introduction

This article argues that national and international value systems are the bedrock principle underlying the concept of human rights. It uses the term "national and international (universal) value system" to describe the core/minimum value system common to all communities and which has been embedded in the positive law in a variety of forms for its enforcement. It is argued that the rights, norms and values present in the international value system historically stem from national legal orders and state actions. For example, the Universal Declaration of Human Rights came about as a result of states' "internationalising" already existing national norms and values.

This approach locates the minimum fundamental human rights standards in the essential minimum of the values of human dignity, equality and freedom, which most communities around the world share a consensus on. The value system includes fundamental human rights which have a strong moral and ethical underpinning and have been integrated by states and other participants in the international community into norms of a particular importance, with these having acquired a high standing through national and international jurisprudence. National, regional and international orders together form the embryo of an international constitutional order, where not only states but also other actors have obligations to respect, protect and fulfil fundamental human rights.[2] The international value system can be defined in a geographical way as it is universally applicable.

[1*] Jernej Letnar Černič is a Max Weber Fellow at the European University Institute.
[2] E. de Wet, The International Constitutional Order, International & Comparative Law Quarterly (55) 2006, pp. 51-76, arguing for an emerging international constitutional order consisting of an international community.

The balance of this section is devoted to exploring three main issues. First, national and international value systems will be examined. Second, the concept of fundamental human rights will be analysed. Thirdly, the final section briefly investigates the Lockean understanding of an individual's rights to effective remedy.

2. National and International Value Systems

This article argues that fundamental human rights derive from national and international value systems. They derive from the importance attached to values of human life and human dignity. Those values are absolute and inherent to every human being, do not have to be acquired and cannot be lost. They may provide the foundations for normative claims in the form of human rights and they acknowledge that every human being should be recognised as an inherently valuable member of the human community. Respect for human life and human dignity is a precondition for the respect and enjoyment of other fundamental human rights, whereas fundamental human rights are a *conditio sine qua non* for the enjoyment of other human rights. In a similar vein, the second reason concerns the importance the international society confers on the observance of fundamental human rights norms. Violations of fundamental human rights can never be resituated or remedied. As a first step, the loss of human life, for example, cannot ever be recovered and cannot be compensated for in any other ways. Acts of torture or genocide can only be overturned in memory but not on the ground. In this regard, it is necessary to recognise that violations of some human rights may still enable individuals to pursue their goals but, in contrast, fundamental human rights violations cannot be easily remedied, if at all.

Fundamental human rights may pave the normative foundations of each and every human society. Similarly, another point to make is the correlative relationship between rights and obligations. In this context, "correlative" means that, for each fundamental human right of individual X, there must be a corresponding obligation of individual Y, and vice versa. If this were true, then it would be easy to say that a right of X exists if, and only if, the obligation has been imposed on Y. In this regard, it appears possible to tie the existence of a right to the existence of an obligation in a way that signifies the logical priority of the obligation.

It appears that if the concept of fundamental human rights could not be applied in every human community, it would dilute and distort the perception that individuals can live peacefully with each other. Although the corporation is an artificial creation – *a persona ficta* – behind the legal fiction there are individual human beings who take part in a human society. What is also relevant is that legal positivism by itself, however effective, cannot formulate a well-founded condemnation of human rights violations if it does not resort partially to a *jus naturalistic* perspective.[3] It is not a problem for adherents to legal positivism that legal positivism does not enable them to condemn human rights violations by or involving non-state actors — it is simply beyond the scope of theories of legal positivism.[4] Without basing any fundamental rule of positive law on inherent values, the whole exercise may end up in shreds and pieces. In this way, an integrated theory based on the *jus-naturalistic* perspective has to be theoretically solid. It is not enough to reject positivistic legal concepts as it is necessary to oppose them with something theoretically firm. National and international normative orders need to be sensitive to the new realities if they are to retain their normative power, but cautiousness is needed as to the degree of modification. Its potential adaptation seems to be more a matter of a careful re-interpretation of the existing rules rather than dropping their imposition altogether. To this end, it is also crucial that victims of human rights violations shall have "equal access to an effective judicial remedy as provided for under international law."[5] Against that background, the next section examines the means by which the invocation of fundamental human rights breaks *Hadrian's Wall* of state sovereignty.

This section has argued that national and international value systems derive from common and shared values such as digni-

[3] Ibid.

[4] A number of positivist accounts fall into the category of normative or prescriptive positivism (represented by authors like Bentham, MacCormick, Waldron, Schauer, Tom Campbell). Such theories explicitly rely on moral principles that allow for condemning what is morally appalling. See e.g. Neil MacCormick: A Moralistic Case for A-Moralistic Law. 20 Valparaiso University Law Review 1 (1985), arguing "that a proper moral concern for the quality of law is one which restricts law's moral sphere to that of duties of justice, and that we only take morality seriously by cutting the other segments of moral duty and moral concern clear of the coercive apparatus of the law." 41. Tom Campbell: The Legal Theory of Ethical Positivism. Aldershot, Dartmouth Publishing (1996).

[5] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/ L.10/Add.11 (19 April 2005). 12.

ty, equality and freedom. It contends that these values substantiate fundamental human rights. In this regard, there are different ways to justify the observance of fundamental human rights, not only by corporations, but by any actor in a given society. Dignitarian foundations of human rights are recognised in national legal orders and international documents from the UDHR onwards.[6] The preambluar paragraphs to the ICCPR and ICESCR recognise that "these rights derive from the inherent dignity of the human person".[7] All fundamental human rights have a particular moral dimension. J. Locke notes that "men are by Nature all free, equal and independent".[8] Similarly, I. Kant notes that that "each human being is owed "by virtue of his humanity" the right to equal individual liberties".[9] I. Kant further developed this in his categorical imperative, which reads as follows: "act in such a way that you treat humanity, whether in your own person or in the person of any other, always at the same time as an end and never merely as a means to an end."[10] I. Kant appears to argue that the right to individual liberties suggests the establishment of a normative order that is based on the principles of universality and generality, and it is this universality that gives the law its legitimacy.[11] Likewise, J. Rawls notes that "each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all".[12] In this respect, one approach is based on a belief that all people share a common humanity and therefore have a right to equitable treatment, support for their human rights, and fair treatment. In this regard, the most clearly drafted proposition may be found in the work of John Finnis.[13] J. Finnis derives fundamental human rights from the "existence of fundamental valuable human goods that can be discovered sim-

[6] Universal Declaration of Human Rights, preamble; American Declaration of the Rights and Duties of Man, OAS Res XXX, International Conference of American States, 9th Conf., OAS Doc. OEA/Ser.L./V/1.4 Rev. (April 1948) (beginning with: "The American peoples have acknowledged the dignity of the individual . . . ."; followed by preamble, beginning: "All men are born free and equal, in dignity and in rights . . ."); African Charter on Human and Peoples' Rights, art. 5, June 27, 1981, OAU Doc. CAB/LEG/67/3/Rev. 5, 21 I.L.M. 58 ("Every individual shall have the right to the respect of the dignity inherent in a human being . . . .").

[7] Preamble, paragraph 2.

[8] J. Locke, Second Treatise, para. 95.

[9] Quoted in D. Moeckli, Human Rights and Non-Discrimination in the "War on Terror", OUP, 2007. 60.

[10] I. Kant, translated by James W. Ellington [1785] (1993). Grounding for the Metaphysics of Morals 3rd ed.. Hackett, 30.

[11] D. Moeckli, Human Rights and Non-Discrimination in the "War on Terror", OUP, 2007. 57.

[12] J. Rawls, A Theory of Justice, 1999, 266.

[13] J. M. Finnis, Natural Law and Natural Rights, Oxford, Clarendon Press, 1980, pp. 81-90.

ply by grasping what means to be human".[14] J. Finnis identifies seven basic fundamental human values, namely life, knowledge, play, aesthetic experience, sociability, practical reasonableness and religion[15], which are "all equally fundamental".[16] The exact basis of his views on the normative status of human rights derives, however, from his doctrine of the nine principles of practical reasonableness, most notably principle seven.[17] Principle seven of the nine principles of practical reasonableness argues for respect for every basic value in every act. In sum, it is from these values that the rights of individuals are derived.

In this regard, it is impossible to deny the concept of value.[18] P. De Brito, for example, argues "[w]hoever denies value is attributing value to its denial".[19] Values included in fundamental human rights norms stand in the centre of national and international value systems. Value systems are therefore a platform on which normative principles and rules are built. Value is in itself a concept that describes the beliefs of an individual or culture. Values may be described as subjective, but respect for fundamental human rights nevertheless lies at the centre of the national and international value system, which presents those values in a common system. The validity of any national legal order rests upon fundamental principles of dignity, equality and freedom which are enshrined in the many rules in national legal orders but essentially belong to the categories of ethics, morality, justice and fairness. Fundamental human rights as rules of national and international law belong concurrently to morality and ethics, and must have a greater chance of being observed. Notably, every legal rule derives from an ideological, political or moral basis. Similarly, it is observed that the universal values and fundamental human rights overlap and that such an overlapping of values and fundamental human rights captures the fundamental unity between the language of law and that of morality.

The recognition of fundamental human rights norms requires a discussion of a series of problems which traditional doctrines

[14] F. Leverick, A critical analysis of the law of self-defence in Scotland and England, unpublished PhD thesis, University of Aberdeen, 2003, 78.
[15] J. M. Finnis, Natural Law and Natural Rights, Oxford, Clarendon Press, 1980, pp. 86-90.
[16] Ibid. 93. He notes that "none is more fundamental than any others, for each can reasonably be focused upon, and each, when focused upon, claims a priority of value." Ibid.
[17] J. Finnis, 1980, 100-127.
[18] P. De Brito, 2007, 117.
[19] Ibid.

of law, particularly international law, do not even dare to pose. Positivism does not pass a judgment upon the valid law's ethical value or question its practical appropriateness. It merely accepts them. Considering this definition, it is necessary to move beyond the positivist's box so as to find a valid crux of our hypothesis that states individuals and corporations have obligations in relation to fundamental human rights. It is suggested that there are valid rules on fundamental human rights that can be found outside those included in written national and international law documents. What this theory does is to prepare the ground for satisfying the greater ethical and political desire to improve national and international societies' regulations of state and corporate behaviour. It is necessary to clarify not how law ought to be (Sollen) and how the law is *de lege lata* (Sein) but it is also needed to examine the fundamental issues**.**

Law, ethics, and mores support each other. When law contradicts those criteria it will not be law anymore. If positive law is to be recognised as a legitimate set of rules, they must, at least, partially derive from external set of fundamental values. These principles constitute the foundation of an integrated theory of law, which include both formal and substantive dimensions of law. Arguably, such a theory may serve as a legal basis for fundamental human rights. To this end, fundamental human rights derive from a priority of the national and the international value systems cutting across cultural, religious and political borders and which can be described as acceptable to all individual consciences and cultural sensitivities in the world. In other words, this chapter has argued that fundamental human rights derive from the national and the international value system. In this regard, R. Dworkin argues that a legal system should be predicated upon a broad and a moral reading of law based on some objective values such as liberty and equality.[20] R. Dworkin bases his theory of principles on moral rules and submits that interpretations of positive law are not only dependent on what current legal rules stipulate but also on what morality requires them to be. All in all, R. Dworkin understands the legal system as consisting of rules as well as principles, the latter being of moral nature. In this regard, values support individual fundamental human rights. A significant number of legal princi-

[20] See generally R. Dworkin, Law's Empire, Harvard University Press (1988); and R. Dworkin; Taking Rights Seriously, 1977, Duckworth.

ples, including fundamental human rights, must be in practice to be accepted as nearly universal; otherwise the functioning of national and international law would not be tenable.

In sum, the national and international value systems derive from fundamental values common to all communities in the world. These communities arguably share consensus about these fundamental values. This section has attempted to show that natural law is a concept of foremost moral principles that is common to all participants in the international community and, as is generally posited, is recognisable by human reason alone. Fundamental human rights norms are part of that reason. For these reasons, fundamental human rights obligations derive from the national and international value system.

3. Fundamental human rights

The protection of fundamental human rights is a fundamental value and reflects not only individual interests but the interests of society as whole. It appears that everyone has minimum demands on the rest of humanity. Fundamental human rights constitute a normative minimum or normative floor which states, individuals and corporations have to observe.[21] The human rights that can be considered "fundamental" for the purposes of this study are those rights that are protected by constitutional norms in national legal orders and international human rights treaties that have been widely ratified by the international community, specifically, the international bill of rights. Taking the value, the consensual and pragmatic point of view this section argues that states, individuals and corporations are asked to comply with fundamental human rights norms. This article places the lowest common denominator in the minimum consensus surrounding values embedded in fundamental human rights.[22] Such an understanding integrates values and consensus approaches to identifying the fundamental human rights.

[21] See, for example, D. Kinley and Tadaki, 2002, 968-969 noting that "in delineating certain essential, minimum categories of international human rights duties that may be appropriately placed on TNCs, we have separated our consideration of such rights into two basic categories: 'core rights' and 'direct impact rights', with each being further divided into particular rights." Also see N. Jaegers, 2002, 51-74.

[22] See generally A. Cançado Trindade, International law for Humankind: Towards a new Jus Gentium, General Course on Public International Law, Hague Academy of International law, Martinus Nijhoff Publishers, 2006, part V.

This article takes the view that every human being is entitled to the full enjoyment of his/her human rights, in respect of which states, corporations and other non-state actors must not act in a way that would harm the individual's human rights in question. This is true, in particular, with respect to those rights within the category of fundamental human rights. All human beings have equal and inalienable rights by virtue of their inherent dignity and are entitled to enjoy these rights fully. The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) noted in *Prosecutor v. Tadić* that:

[T]he impetuous development and propagation in the international community of human rights doctrines, particularly after the adoption of the Universal Declaration of Human Rights in 1948, has brought about significant changes in international law, notably in the approach to problems besetting the world community. A State-sovereignty-oriented approach has been gradually supplanted by a human-being-oriented approach. Gradually the maxim of Roman law *hominum causa omne jus constitutum est* (all law is created for the benefit of human beings) has gained a firm foothold in the international community as well.[23]

This study argues that fundamental human rights derive from essential minimum standards. Our approach places the lowest common denominator in the minimum consensus surrounding values embedded in fundamental human rights.[24] Fundamental human rights are here categorised as fundamental human rights preserving the safety of persons, fundamental human rights preserving fundamental labour rights and fundamental human rights preserving non-discrimination.

Fundamental human rights are generally rights that include values common to all individuals. Fundamental human rights are legal rights to the extent they are included in positive law.[25] Fundamental human rights are also moral rights as they protect the fundamental dimension of the lives of right holders. J. Ruggie correctly observes that "any attempt to limit internationally recogni-

[23] ICTY, Prosecutor v Tadić, Decision on the defence motion for an interlocutory appeal on jurisdiction, 2 October 1995, para. 97.

[24] The present article employs such a line of approach due to value, consensual, pragmatic reasons and space constraints.

[25] See generally L. Zucca, Constitutional Dilemmas: Conflicts of Fundamental Legal Rights in Europe and the USA, OUP, 2007; and I. Seiderman, Hierarchy in International Law – The Human Rights Dimension, Intersentia, 2001, attempting to argue that there exists hierarchy in international law.

sed rights is inherently problematic".[26] Nonetheless, fundamental human rights are rights all persons enjoy at all times, in all situations, and in all societies. This article does not attempt to give an exhaustive list of the rights that individuals have independently.[27]

Three preliminary notes have to be made. First, some judicial and academic commentators have observed that fundamental human rights may amount to a breach of *jus cogens*.[28] A. Brundner notes that *jus cogens* represents "a transcendent common good of the international community, while *jus dispositivum* is customary law that embodies a fusion of self-regarding national interests".[29] Without going into specifics, it suffices to note that *jus cogens* forms a body of higher rules of public international law binding on all subjects of international law from which no derogation is possible.[30] It appears that the main objective of *jus cogens* is to protect the interests and values of the international community as a whole and not only the interests of individual states.[31] R. Higgins, however, notes that "neither the wording of international human rights instruments, nor the practice there under, suggests that all human rights are *jus cogens*".[32] In this light, G. M. Danilenko argues that there exist common interests that rest upon a widely shared and deeply felt and often expressed humanitarian conviction.[33] What this means is that standards of the protection of fundamental human rights are lowered to the minimum possible degree, which may appear to be in compliance with the rule of law in national legal orders. The concept of peremptory

[26] See J. Ruggie's 2008 report. 53.
[27] Joseph Raz, for example, notes, "there is no closed list of duties which correspond to the right . . . . A change of circumstances may lead to the creation of new duties based on the old right." J. Raz, The Morality of Freedom 171 (1986).
[28] A. Orekhelashvili, Peremptory Norms in International Law, OUP, 2006, 53. Judge Tanaka observes that "surely the law of human rights may be considered to belong to the jus cogens". ICJ Reports, 1966, 298. Jus cogens remains a very a vague and ill-defined concept in international law. The following fundamental human rights violations may amount to jus cogens violations: prohibition of slavery, of torture, of genocide and of racial discrimination. See M. Evans (ed.), International law, 138, 167-173, OUP, 2007.
[29] A. Brudner, The Domestic Enforcement on International Covenants on Human Rights: A Theoretical Framework, 35 University of Toronto Law Journal (1985), 219, 249-250.
[30] See generally A. Bianchi, Human Rights and the Magic of Jus Cogens, European Journal of International Law, 2008 19(3):491-508.
[31] A. Orekhelashvili, 2006, 46-47. C. L. Rozakis, The Concept of Jus Cogens in the Law of Treaties, 1976, 2.; L. Hannikainen, Peremptory Norms in International Law (1988), 2-5; D. F. Klein, A Theory for the Application of the Customary International Law of Human Rights by Domestic Courts, 13 Yale Journal of International law (1988), 332, 351.
[32] R. Higgins, Derogations under Human Rights Treaties, British Yearbook of International Law (1976-77), 282.
[33] See, for example, G. M. Danilenko, International Jus Cogens: Issues of Law-Making, 2 European Journal of International Law (1991).

norms of international law as a body of rules vitally important for the international community as a whole requires the creation of fundamental principles binding not only all states but also non-state actors in the international arena. It reflects the deeply felt need of our increasingly interdependent global community for a public order for all mankind.[34] A. Orekhelashvili observes that "peremptory norms, although often criticised and even more often approached with sceptical nihilism, nevertheless attract growing doctrinal and practical attention and have increasing importance in determining the permissible limits on the action of State and non-State actors in different areas."[35] In the *South West Africa Case* before the International Court of Justice (ICJ), the applicants, Ethiopia and Liberia, contended that South Africa "may not claim exemption from a legal norm which has been created by the overwhelming consensus of the international community, a consensus verging on unanimity."[36] It may arguably appear that some fundamental human rights also have the status of peremptory norms of international law. If the approach is taken is that some fundamental human rights have a peremptory character, the relevance of fundamental human rights increases. If one concludes that peremptory norms do not include fundamental human rights norms, then the relevance of the concept of peremptory norms of international would be significantly reduced.

Second, the fundamental human rights of individuals may appear implied within the correlative obligations of other individuals. The former UN Special Rapporteur M.A. Martinez noted in his final report that "every right, in one way or another, is linked to some obligation or some responsibility, and every time that a duty is fulfilled, it is very likely that the violation of some right is prevented."[37] This appears to suggest that human rights obligations are correlative. Similarly, the preamble of African Charter

[34] G. M. Danilenko, International Jus Cogens: Issues of Law-Making, 2 European Journal of International Law (1991), 49–56; Also see P. Klein, Responsibility for Serious Breaches of Obligations Deriving from Peremptory Norms of International Law and United Nations Law, European Journal of International Law (2002), 1241-1255.
[35] A. Orekhelashvili, 2006, 2.
[36] ICJ, 38 ICJ Pleadings, South West Africa Cases 305 (Vol. 9) (statement by E.A. Gross, agent for the Governments of Ethiopia and Liberia), p. 351.
[37] UN Commission on Human Rights, Promotion and Protection, Human rights and human responsibilities, Final report of the Special Rapporteur, Miguel Alfonso Martínez, on the Study requested by the Commission in its resolution 2000/63, and submitted pursuant to Economic and Social Council decision 2002/277, E/CN.4/2003/105, 17 March 2003, <http://www1.umn.edu/humanrts/instree/z1afchar.htm>, 43.

provides that "the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone."[38] It would follow from this language that human rights obligations are horizontal and "correlative, even though the text of the Charter suggests otherwise".[39] Finally, the fundamental human rights obligations here can offer solid foundations for higher standards for protection and promotion of human rights. The next section attempts to explain why this study focuses on fundamental human rights.

Deriving from national and international value foundations, fundamental human rights belong to a genus of "heavyweight" rights beneficial to society as a whole. In this sense, this section focuses on fundamental human rights as opposed to ordinary ones. H. Shue notes that "[r]ights are basic ... if enjoyment of them is essential to the enjoyment of all other rights."[40] This section therefore argues that states, individuals and corporations must primarily observe the enjoyment of fundamental human rights as the lowest common denominator. Fundamental human rights protect predominant and overriding values that are arguably common and shared in all societies all across the world. Fundamental human rights are grounded in the essential minimum of the values of human dignity, equality and freedom which most communities around the world share a consensus on. This study argues that fundamental human rights derive their legitimacy from the inherent values of the value system, which form part of positive law in most national legal orders. It may therefore appear that a lowest common denominator can be drawn in relation to the fundamental human rights of individuals. To sum up, any legal responsibility must start with the observance of fundamental human rights.

There exists a significant universal interest and consensus in protecting fundamental norms to prevent shocking and egregious conduct by individuals and corporations. Some fundamental human rights arguably amount to rules, which are "accepted and recognised by the international community of States as a whole as norms from which no derogation is permitted."[41] It is argued

[38] African Charter on Human and Peoples' Rights, June 27, 1981, 21 ILM 58 (1982).
[39] J. Knox, 2008, 40.
[40] H. Shue, Basic Rights: Subsistence, Affluence and the U.S. Foreign Policy 23 (2d ed. 1996). 19. It appears that interests safeguarded by one human right can be also protected by another human right.
[41] The Vienna Declaration on the Law of the Treaties, 23 May 1969, 1155 U.N.T.S. 331; 8 I.L.M. 679

that such prohibition applies also in relation to non-state actors. Most of those norms derive from national legal orders, but some of them also represent rules of customary international law and possibly peremptory rules of international law.

Taken together, it appears that this approach has the advantage of preventing or reducing challenges to the proposition that states, individuals and corporations have minimum fundamental human rights obligations. It does so by advancing the philosophical and moral foundations of fundamental human rights which are common to cultures and societies in different parts of the world. Such arguments are backed by acknowledgments that normative orders must first ensure the protection of the most fundamental human rights as their enjoyment appears *condition sine qua non* for the enjoyment of all other rights. The focus on fundamental human rights does not attempt to question that all human rights are interconnected and interdependent of human rights, but attempts to argue that a concentration on fundamental human rights is appropriate from the practical point of view.

4. The Lockean understanding of an individual's rights to effective remedy

This section investigates the philosophical foundation of access to justice. J. Locke's understanding of the state of nature refers to a situation without a common legislator and without a common impartial arbitrator.[42] Each individual's own reason rules the state of nature, where a fundamental norm is aimed at the preservation of mankind. The social contract is an agreement between individuals and the state, which J. Locke explains in the following way:

...the end and measure of [political] Power, when in every Man's hands in the state of Nature, being the preservation of all of his Society, that is all Mankind in general...'; and "when any number of

(1969), Article 53: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character".

[42] It must be noted that J. Locke and J. Finnis belong to different traditions of the Natural Law Doctrine and that Finnis totally rejects the school of modern natural law of which Locke was a classic representative. See J. Finnis: Natural Law: The Classical Tradition. In: Jules Coleman – Scott Shapiro (eds.): The Oxford Handbook of Jurisprudence and Philosophy of Law. Oxford: Oxford University Press, 2002.)

men have, by the consent of every Individual, made a Community, they have thereby made that Community one Body, with a Power to Act as one Body...[43]

The above section reflects the idea of a social contract. The right to effective judicial protection and the right to access to an impartial judge fall in the Lockean perspective within the main foundations of every society. Translating his position to the context of fundamental human rights of individuals, it appears that individuals should have access to an effective remedy against human rights violations. Without effective remedies in normative legal orders, societies cease to exist as individuals and are not able to protect their natural rights, which also exist in the state of nature. It is for the protection of their nature, and the preservation of mankind, that individuals signed a social contract. Without legal remedies to protect individuals' rights, the individuals are left with only an appeal to heaven, which permits the right to revolt. The appeal to heaven is a consequence of:

No Body being secure, that his Will, who has such a Command [of 100000 Men], is better than that of other Men, though his Force be 100000 times stronger.[44]

According to Locke, the only way to ensure the rights of man is to make the government subordinate to the laws of society. Thus, the protection of fundamental rights is ensured in the constitution of every society which, however, appear yet to provide effective remedies for fundamental human rights violations.

5. Concluding observations

The preceding discussion has attempted to shed light on the underlying rationale concentration on fundamental human rights. This chapter argues that fundamental human rights oblige not only states, but also corporations and other actors. Laws represent the codification of society's moral views. All individual and communities have morality, a basic sense of right or work concerning particular activities. For the present purposes, the definition of law must be founded not only on formal normative sources, but also on inherent values from which international fun-

[43] J. Locke, Two Treatise of Civil Government, The Second Treatise of Civil Government, 5th edition, 1764, para. 171.
[44] Ibid. Chapter XI, para. 137.

damental human rights can derive their legitimacy. This chapter argues that the only appropriate conception of law in the context of responsibility for human rights violations is an integrated conception that includes both the formal and the substantive dimensions of law. The positive normative framework has to be effective and legitimate. The integrated theory of fundamental human rights may provide formal certainty in the allocation of rights and obligations that correspond to the chosen conception of justice within the national and international environment.

In this respect, law based on fundamental values continues to be law, even if is not in its entirety translated into positive law. Notably, inherent values and fundamental human rights overlap to form a unity of minimum standards of the international community. To this end, it appears that despite the strong theoretical and moral arguments for extending responsibility for fundamental human rights violations. For this part, philosophical or moral conceptions of the nature of the human person (*jusnaturalist*) offer a solid complementary point of departure. States and corporations may have limited positive legal obligations to respect, protect and fulfil fundamental human rights, but it may appear that they cannot absolve themselves from complying with such obligations. As noted earlier, fundamental human rights have much deeper foundations than positive law does itself. If society were to live in a complete vacuum from the way law works with and in its context, law sooner or later loses its reality and falls into desuetude. States, individuals and corporations have wider responsibility, moral and legal, to use their influence to promote respect for fundamental human rights in respective communities. Valid laws must be effective and legitimate. They have to determine rights and obligations and employ a conception of justice which reflects the characteristics of the community.

S. Blankenburg and D. Plesch observe that "if equality before the law is to have any meaning, it would have to apply to human beings, not fictitious persons, and organizations must not be handed blanket exemptions from accountability simply on the grounds that they can thrive through privilege."[45] Faced with the reality of power balance in national and international arenas, the diffi-

[45] S. Blankenburg and D. Plesch, Corporate rights and responsibilities: restoring legal accountability, Open Democracy, < http://www.opendemocracy.net/globalization-institutions_government/corporate_responsibilities_4605.jsp>.

culties with fundamental human rights cannot be reduced to distinction, between *is* and *ought*, *Sein* and *Sollen*, or problems with enforcement. Given these conundrums, it may be no coincidence that regulation and enforcement, even through indirect enforcement methods, has proven tortuous. However, national and international law based on the national and international value system may not approve that states would allow individuals or corporate actors to violate the fundamental human rights of individuals, since then the *raison d'être* of states would disappear with the disappearance of their constituent multiplicity. These are mandatory obligations that international law imposes on states and national legal orders.

That brings us to the conclusion that the theory of fundamental human rights can be argued in relation to natural law and positive law, and relating to the protection of basic values of national and international value systems. What is more, it requires the state to recognise the *jusnaturalistic* foundations of fundamental human rights and to ensure that in their activities states, individuals and corporations do not interfere with the fundamental human rights of individuals.

Some would argue that an ideal society would not allow states, individuals or corporations to be involved in fundamental human rights violations. In other words, the overall objective of any society is to find harmony between all of its participants. In an ideal situation, all could perhaps agree on what one comprehends as being a harmonious society. However, even in this case, the international community is compelled to come up with an answer in relation to the protection of fundamental human rights. Also, there is an answer that is inherently more rational than others. From this it follows that states, corporations and individuals can, without any doubt, be asked to respect fundamental human rights which have their basis in the national and international value system, and which can be *de lege lata* primarily enforced in national legal orders. Although the fundamental sources for fundamental human rights are, arguably, relatively clear in national legal orders, their application and practical use to the circumstances of a specific case may appear more contested at the international level.

This article aimed to identify the philosophical foundations of fundamental human rights. It addressed the issue of *why* states, individuals and corporations should comply with fundamen-

tal human rights obligations. It identified the international value system as a foundation for the concept of fundamental human rights. This conclusion was reached on the basis of the central philosophical argument of this study: that all human beings have certain fundamental human rights, and that the dignity of human life must be preserved. In chapter three, two types of philosophical approaches (natural and positive law) to the justification of for fundamental human rights were discussed and rejected. A type of approach, based on integrated *modus operandi*, was found to be a convincing justification for the concept of fundamental human rights.