



Human Rights Obligations of Non-State Actors in Areas of Limited Statehood

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Abstract

The idea of a natural duty of justice expresses our cosmopolitan duty to ensure that everyone's human rights are institutionally protected and promoted. The state system is one way to specify this duty: Within a moral division of labor, states have an obligation to protect their citizens' human rights, and the community of states as a whole has subsidiary obligations if states fail to do so. In areas of limited statehood, however, both the remains of the state and the international community often do not fulfill their obligations. Without relieving them of their obligations, this raises the question as to whether it is possible to assign human rights obligations to non-state actors operating in areas of limited statehood, such as TNCs or NGOs. Our core argument is that these non-state actors do indeed have specific human rights obligations, which can be specified by examining their special relations to their social environment. Making use of criteria prominent in the global justice debate, we propose to distinguish four types of special relations: membership, cooperation, negative impact, and power. The relation between a non-state actor and society, then, determines the social scope of its human rights obligations.

Zusammenfassung

Die Idee einer natürlichen Gerechtigkeitspflicht erfasst unsere kosmopolitische Verantwortung, allen Menschen Zugang zu Institutionen zu sichern, die ihre grundlegenden Menschenrechte schützen. Das Staatensystem spezifiziert diese Verantwortung: Im Rahmen einer globalen moralischen Arbeitsteilung haben Staaten die Verpflichtung, den Schutz der Menschenrechte ihrer Bürger zu gewährleisten. Die internationale Gemeinschaft hat die subsidiäre Verpflichtung zum Menschenrechtsschutz, falls einzelne Staaten ihren Verpflichtungen nicht gerecht werden. In Räumen begrenzter Staatlichkeit funktioniert diese Arbeitsteilung jedoch nicht. Ohne die Staaten oder die internationale Gemeinschaft aus ihrer Verantwortung zu entlassen, stellt sich die Frage, ob unter diesen Bedingungen nicht-staatlichen Akteuren spezifische Menschenrechtsverpflichtungen zukommen. Wir vertreten die These, dass nicht-staatliche Akteure tatsächlich solche Verpflichtungen haben. Diese ergeben sich aus dem Verhältnis zu ihrem sozialen Umfeld. Dabei bedienen wir uns verschiedener Typen sozialer Beziehungen, die prominent in der Debatte um globale Gerechtigkeit diskutiert werden: Mitgliedschaft, Kooperation, starke negative Auswirkungen (*negative impact*) und Macht. Die Bestimmung der Beziehung eines nicht-staatlichen Akteurs zu seinem sozialen Umfeld entlang dieser vier Kriterien ermöglicht es dann zu spezifizieren, wem gegenüber der Akteur Menschenrechtsverpflichtungen hat.

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1. Introduction¹

Governance as defined by the SFB 700 is an institutionalized mode of social coordination “to produce and implement collectively binding rules, or to provide [other] collective goods.”² Governance in this sense entails that every governance actor A must have at least an implicit awareness of the collective entity C for which it provides some “collective” goods G. In order to produce collectively binding rules, for instance, A needs some idea about the C for which it produces these rules. Very often, however, the scope of C remains vague.

One way of framing the question “Governance for whom?” is to analyze empirically for whom an actor A provides or produces some good G. In this paper, however, we tackle the question from the perspective of normative political theory, asking for whom A *should* provide or produce G, where G is highly relevant or even indispensable for the realization of basic human rights. In other words, we discuss how to define the scope of the governance collective (Benecke et al. 2008: 19-22) from the perspective of political morality.

The answer to this first question implies the answer to a second: “Governance by whom?” In fact, we hold these answers to be two sides of one coin. Neither the scope of C nor the role of A as a governance actor should be taken for granted. Rather, it is necessary to define which types of social relations, or which forms of connectedness, generate obligations of a particular A towards a particular C, thereby turning A into a governance actor and C into a governance collective.

A well-known paradigm can answer both questions at once. According to the concept of the modern state, the government is responsible for, and accountable to, all of its citizens.³ “State” and “citizen” are complementary concepts. This is true at least in ideal theory and with regard to the core responsibilities of any state. To be sure, states bear some responsibility towards all people under their jurisdiction, citizens as well as foreigners. Moreover, under non-ideal conditions they also have a part in the subsidiary responsibility of the international community to secure basic human rights in foreign countries. In principle, however, being a citizen of a state S is a sufficient condition for being entitled to some of the goods and services the government of S has to provide.

¹ This working paper is a slightly revised version of the paper presented at the SFB 700 conference, which took place in Berlin from the 26th to the 28th of May 2011. For very helpful feedback we want to thank Christopher H. Wellman, who served as our discussant on this occasion, as well as the other participants in the panel.

² In this paper, we use the terms “governance” and “areas of limited statehood” as understood in the context of the Research Center (SFB) 700 “Governance in Areas of Limited Statehood.” For a comprehensive discussion of these terms and the underlying concepts, see Tanja Börzel and Thomas Risse (2010).

³ It should be noted, though, that the notion of citizenship itself is the subject of a growing philosophical debate. See Jürgen Habermas (1990), Will Kymlicka (1995), and David Miller (2000).

In areas of limited statehood, however, things get more complicated. Instead of one central actor with clearly specified duties, a myriad of non-state actors operate alongside each other in addition to, and at times competing with, the remains of the state. These are, among others, non-governmental organizations (NGOs), transnational companies (TNCs) and organized identity groups.⁴ Even if *de jure* the state retains ultimate responsibility, it often lacks the capacity to fulfill even its most elementary duties, namely to protect and promote basic human rights.

The more specific question addressed in this paper, then, is whether non-state actors operating in areas of limited statehood have specific human rights obligations, and if so, how to determine the social scope of these obligations. Might it be legitimate for an organized identity group to protect exclusively its own members? Is a TNC only responsible for its employees, or also for the larger social environment in which it operates? And is it entirely up to humanitarian NGOs which services they provide to whom?

In this working paper, we provide the outline of an answer to these questions. Our starting point in the following section is the idea of a natural duty of justice. This duty entails that which we all owe to each other: the contribution to institutions that protect and promote the human rights of everyone. Yet implementing this duty effectively requires specifications. In section 3, we therefore suggest four types of social relations which make it possible to assign particular obligations to non-state actors in areas of limited statehood, and also to specify towards whom they have these obligations. Through reference to such relations, we can specify which particular agents ought to become *governance actors* who are thereby accountable to a particular addressee, i.e. the governance collective.

2. A Natural Duty of Justice

We start from the assumption that all human beings everywhere in the world have the same moral status and should be granted the same basic human rights. Following Henry Shue (1980), and going beyond the suggestions of human rights minimalists such as Michael Ignatieff (2001) or John Rawls (2002), we understand these rights to include not only civil rights, but also certain basic political and social rights, such as the right to have some say in the public sphere and the right to subsistence. According to Shue, these rights are basic in the sense that enjoying them is indispensable to the enjoyment of all other rights. If a right is truly basic, abandoning it would be literally self-defeating from the point of view of human rights as such.

Notwithstanding potential further requirements of justice, basic human rights form the core of the natural duty of justice. Drawing on earlier work by John Rawls (1971: 115), Allen Buchanan defines this duty as “the limited moral obligation to contribute to ensuring that all persons have

⁴ Many of the more empirically oriented research projects at the SFB 700 focus on these non-state governance actors. See, for instance, Marco Schäferhoff et al. (2009), Jana Hönke et al. (2008) Börzel/Hönke (2011).

access to just institutions, where this means primarily institutions that protect basic human rights” (Buchanan 2004: 86).⁵ As Buchanan further explains, as a *natural* duty this demand does not depend on any particular kind of interaction, such as prolonged cooperation or an explicit promise, but is owed to every human being as such, whose equal moral status must be respected by all others (Buchanan 2004: 85).

But why should we stress the importance of institutions? Isn't the most important question how to guarantee that any human being has secure and non-discriminatory access to all basic goods necessary to lead a decent life in dignity? If so, the question of whether this requires potentially coercive institutions seems to be merely pragmatic. But we can easily see that in the absence of institutions, the natural duty of justice would remain hopelessly under-determined: It would be left unclear who owes what to whom. What is more, collective-action problems such as possible free-riding and an exploitation of the willing could not be tackled – with the consequence that the natural duty of justice would turn out to be heavily over-demanding.

Given the need for institutional solutions, the natural duty of justice must be specified in the form of arrangements that assign particular obligations to particular actors (Buchanan 2004: 105). In other words, it calls for a *moral division of labor* (Shue 1988). The state system can be conceived of as the most prominent form of such a moral division of labor. It assigns responsibility for the protection and promotion of basic human rights to states and, through the assumption that every individual is a citizen of at least one minimally just state, guarantees that all individuals have access to minimally just institutions. According to this view, states are legitimate insofar as they fulfill their function within this moral division of labor, which at the minimum requires that they respect, protect, and fulfill their citizens' basic human rights (Buchanan 2004: ch. 5; Waldron 1993).

The special relation between the state and its citizens, as well as the corresponding obligations, thus stem from the rationale that legitimizes the state in the first place. In other words, a functioning state that protects and promotes its citizens' basic human rights is one well-established way to fulfill the natural duty of justice. In areas of limited statehood, however, this division of labor often does not function: In extreme cases, the remains of the state are either unwilling or incapable of securing even its citizens' basic human rights. In principle, such situations trigger the subsidiary responsibility of the international community (the state system as a whole) and require some form of international assistance to provide for a minimum of human rights protection. Unfortunately, however, in many of these cases the international community also fails to fulfill its obligations, and we are left, once again, with the universal but under-determined natural duty of justice. Confronted with ongoing violations of basic human rights, the problem becomes pressing how to determine in a principled manner who is, in the words of David Miller, remedially responsible – who has “a special responsibility, either individually or along with others, to remedy the position of the deprived or suffering people, one that is not equally shared with all agents; and to be liable to sanction (blame, punishment,

⁵ See also Jeremy Waldron (1993).

etc.) if the responsibility is not discharged” (Miller 2007: 98-99).

Given the failure of the state system to specify, or rather to effectively implement human rights obligations in such cases, the question arises whether it is possible to assign particular human rights obligations to *non-state actors* operating in areas of limited statehood. Areas of limited statehood are neither *tabula rasa* nor total anarchy. Instead, we can observe various activities by formally private actors in addition to, and even in place of, the remains of the state. Some TNCs and NGOs, for example, formulate collectively binding rules and provide public goods for the areas in which they operate. In order to determine potential human rights obligations of such actors, we propose to proceed in four steps:

First, we should be aware of the distinction between respecting, protecting and fulfilling human rights claims (see Shue 1980: 51-53). We will take for granted that each and any actor in areas of limited statehood has a clear duty to *respect* human rights, i.e. not to violate them. This is a universal demand that, standing alone, does not need further specification (e.g. not to kill or not to deprive someone of her property). No TNC, for instance, is allowed to force people to work. The remaining questions concern the dimensions of protection and fulfillment. According to duties to *protect*, one might ask whether private actors can ever be entitled to enforce a human right, especially if this would include coercive measures. We will leave this open and concentrate mainly on the problem of how to *fulfill* human rights under conditions of limited statehood. To fulfill someone’s rights means to help him or her to gain access to the respective basic goods, such as basic health care, education, or the means of subsistence.

Second, non-state actors must be *capable* of fulfilling human rights obligations. Other factors aside, it seems that the more capable an actor is, the more responsibility that actor bears. To be sure, the capacity to act must be weighed against the moral costs of doing so. But the burdens that capable actors have to take should not be unbearable.⁶ Moreover, as important as the criterion of capacity is with regard to *agency*, it remains undetermined with regard to the *recipients*. Taken by itself, it leaves open to whom a certain relief is owed.

Third, the human rights obligations of non-state actors in areas of limited statehood can take two forms. Non-state actors can be required to contribute to the (re-)construction or strengthening of governmental institutions, e.g. by paying taxes, fighting corruption, providing capital and knowledge. Essentially, this means “repairing” the state system as a moral division of labor, in which states function as the most important means to institutionalize the natural duty of justice. Additionally or even alternatively, given the extremely adverse conditions in areas of seriously limited statehood, non-state actors can be required to fulfill certain human rights themselves. To be sure, there might be a trade-off between these two demands: Directly assuming responsibilities that ideally should be those of a government might itself contribute to a further weakening of state structures. In extreme cases, it seems necessary to weigh the short-term benefits of human rights protection through non-state actors against the medium-

⁶ Consider the objections against such purely consequentialist approaches as Singer’s (1972).

or long-term benefits of a functioning, minimally just state.

Fourth, in order to specify the obligations deriving from the natural duty of justice, we suggest focusing on the *special relations* of non-state actors to their social environment. Different non-state actors have different relations to the societies they operate in. We argue that these different kinds of relations can create human rights obligations which then differ with regard to the nature and scope of the collective entity towards which a non-state actor has these obligations. In the remainder of this paper, we will expand on this last point. In the following section, we suggest four criteria to define different kinds of relations which create different obligations. We do so by taking a detour. In theories of global justice, so-called institutionalists have discussed several forms of social connectedness that might trigger duties of – egalitarian distributive – justice (e.g. Beitz 1979; Nagel 2005; Pogge 2008; Rawls 2002). Referring to that discussion, we gain four criteria that can be used to determine the kind of morally relevant relations that actors have with their social environment: membership, cooperation, impact, and relations of power.

In an abstract sense, there is one basic similarity between governance in areas of limited statehood and governance in the global realm: In both cases it is under-determined which governance actor has which obligations to which recipients. But there is an important difference between the original role the four criteria play in debates about global distributive justice and the way we use them here. In the global justice debate, institutionalists argue that some types of special relations, or some forms of association, are needed to trigger genuine duties of distributive justice. The argument is directed against moral cosmopolitans who infer from the principle of our equal moral worth that the scope of our duties of distributive justice is global. In our paper, we remain agnostic on this point, but presuppose that there is at least one *natural* duty of justice which does not depend upon any kind of prior interaction or association. Our question is not what might create duties in the first place; we are only concerned with the specification of duties *already given*.⁷ We want to distinguish several ways in which remedial responsibilities, responsibilities to provide relief regarding basic goods, can be identified and ascribed to particular agents (Miller 2007: 100-104).

3. Four Criteria

It is important to clarify at the beginning that our four criteria are analytical distinctions. The four types of relations may all apply to one empirical case at the same time, yet they might create obligations which differ with regard to the scope of the recipients, and which may even stand in tension to each other. Moreover, the obligations in question arise only under certain conditions. Given a sufficiently functioning moral division of labor centered around the state system, entering into relations and adopting roles as differentiated below might not bring with

⁷ We thank Christopher H. Wellman for the suggestion to clarify this point.

it any particular duties of formally private actors to fulfill basic rights. It might even be morally forbidden because private actors should not compete with governments in the latter's domain of genuine competence. However, the situation is different if there is a pressing need and no official agent available to provide relief.

Membership

Apart from the rather unfamiliar possibility of "membership in the moral community of mankind" or in a world state, the membership criterion is the most exclusive one. While the other three criteria can in principle be applied to the global population as a whole, membership is normally confined to groups, discriminating somehow between members and non-members. This, however, raises the question of what (if anything) can justify treating membership as a morally relevant criterion for allocating human rights-related obligations.

The first necessary condition is a serious scarcity of resources. Only if one is forced to choose between protecting the human rights of a member or a non-member, it might be justified to choose the member simply because of her membership. Otherwise the non-discriminating natural duty of justice trumps all attempts to privilege co-members. But why might preferential treatment of co-members be justified under conditions of serious scarcity? Implicit or explicit in many relations of membership seems to be a *promise* to help each other. We hold that such a promise, and the expectations it creates on behalf of the members of the group, then justifies preferential treatment. If such a promise can plausibly be assumed, using seriously limited resources primarily to protect the members of one's own group might be justified.

The potential moral relevance of special relations among members can be illustrated with the case of clans. Kathleen Collins describes a clan as "an informal organization comprising a network of individuals linked by kin-based bonds" (Collins 2004: 231). Normally, a clan shares a common identity implying norms of reciprocity. It thereby fulfills the criterion of an implicit promise. Moreover, it has the capacity to organize the actions of its members. Imagine now two families who have lost their homes in a heavy storm. One of them lives in village A, belonging to clan p; the other in village B, belonging to clan q. In village C some construction materials are available, but only enough to rebuild one house. The people in village C also belong to clan p and therefore decide to give the material to the family living in village A.

Although relations between the two clans are friendly, both still have strong separate identities. On both sides, these include an implicit agreement to help each other. Thus, the family living in village B has to accept the preferential treatment of the family belonging to the clan that owns the construction materials. After all, this family would expect the same kind of preferential treatment from members of its clan.

By this example we do not want to suggest that human rights obligations towards group members are restricted to groups sharing cultural characteristics. Instead, the same rationale of an

implicit or explicit promise applies to all types of groups which create justified expectations of solidarity among their members. An example for this might be a group of organized human rights activists, such as members of Amnesty International working in a foreign country (although we do not want to exclude the possibility of a certain cultural homogeneity among Amnesty's membership). Another example might even be the corporate identity of the members of a TNC. In cases of TNCs, however, this first criterion overlaps with a second one, cooperation. This second criterion points to further relevant social relations, which reach beyond the formal membership in a TNC.

Cooperation

A standard definition of cooperation describes it as a voluntary collaboration of at least two parties for the sake of mutual advantage. In areas of limited statehood, however, it seems wise to employ a wide interpretation of these two criteria, voluntariness and mutual advantage. First, voluntariness should be understood in a rather formal sense. An employee might not have *much* choice but to work for a TNC in order to escape poverty. Still, she must have at least some morally acceptable alternative. This implies, but goes slightly beyond the demand that a TNC is not allowed to *force* an employee into a work contract. Also, the employee may not be in such an extreme situation of *one-sided dependency* that she has no viable choice but to accept literally any offer the TNC might present. Second, the collaboration has to be mutually advantageous only under the conditions already given. The conditions of the status quo ante must not themselves be just. All that is required is an improvement for all the parties involved in the cooperation relative to the status quo ante, given that all parties face some set of minimally acceptable options.

Nevertheless, even this rather unambitious understanding of cooperation is not without normative content. The parties are at least committed to the structural and material preconditions of their cooperative relations as such. As already indicated, in order to be even minimally free, all the parties must have effective choices at their disposal. Otherwise, they run the risk of becoming pure objects of exploitation by other parties. This would also violate the criterion of mutual advantage. In that regard, basic rights once again turn out to be crucial. Some rights are also basic in the sense that without them one is exposed to exploitative relations vis-à-vis other economic actors. Consequently, even if one is treated as a partner in cooperation for the time being, other parties can arbitrarily change the nature of the relationship (see Pettit 1997).

In areas of consolidated statehood, governments effectively bear the ultimate responsibility to secure the conditions for all parties to enter truly cooperative relations as they please. In areas of seriously limited statehood, however, the state's capacity to guarantee each party its standing as an independent actor capable of entering into mutually advantageous relations is limited as well. Under such unfavorable conditions, the responsibility for taking care of the structural and material preconditions of cooperative relations might shift to other actors already involved in cooperative relations. This provides us with a principle, stemming from the nature of cooperation itself, to distribute responsibility for the fulfillment of basic rights among cooperative

actors under conditions of limited statehood. Those actors then have a special responsibility towards people with whom they stand in cooperative relations, in order to secure that the relations remain, or can be reconstructed as, truly cooperative. Most obviously, this notion of cooperation is applicable to profit-seeking actors such as TNCs. But even NGOs often enter into relations with other actors that might bring these NGOs into a position that would allow for exploitation if the conditions of cooperation are no longer secured.

Take a TNC, which on the one hand has special responsibilities towards its members, the employees, and on the other hand regularly works with local contractors. Now consider a situation in which the contractors, though not through any fault of the TNC, are threatened with starvation. Neither the state nor the international community is capable or willing to provide relief to the starving contractors. If moreover the contractors cannot offer their work to another company, their bargaining power shrinks to the point that the TNC can one-sidedly dictate the conditions of bargain. In this type of situation the norms implicit in the very concept of cooperation give us a reason to allocate responsibility to the TNC for fulfilling basic rights such as subsistence as the only way to restore the conditions of true cooperation.

Negative impact

Every cooperative approach is limited in one important respect: Obligations are restricted to the actual (or at least potential) cooperators (Buchanan 1990; Nussbaum 2006: 14-22). These, however, might not be the only ones affected by cooperation. Every ongoing social interaction might have a pervasive impact on others not participating in the interactive process itself. As Arash Abizadeh has pointed out, this happens because cooperative schemes of social interaction have *externalities*. The participants are not necessarily co-extensive with the persons affected (Abizadeh 2007: 342). Here we adapt an example originally given by Henry Shue (Shue 1980: 40-46):

Suppose a local peasant owns a relatively large piece of land, providing not only her family with sufficient means of subsistence, but also producing a surplus she can sell on the market. Her profits make it possible for her to hire six workers, who depend on their salaries because their own pieces of land are rather small. Meanwhile, a TNC finds out that there is a very valuable resource to be extracted from the successful peasant's land. It buys the land from her, paying her a good price and giving her and her six workers decent jobs in the company. Due to the additional money in town and the sharp decline in supply, however, this results in soaring crop prices on the local market. The locals who could not find work with the TNC cannot afford to pay these prices. As a consequence, they are left in deprivation. Since they have never participated in the cooperative process, they cannot make any claims based on the cooperative approach. Nevertheless, they are severely harmed by the cooperative process, even though this might not have been intended.

At this point, the impact criterion seems to yield more plausible results. The TNC, given its important causal role in the process just sketched, bears some *outcome responsibility* for the development of prices which, as an unintended result, worsened the situation of the locals. In order to make this claim, we do not have to assume that the TNC is also *morally* responsible for the results (on these different dimensions of responsibility, see Miller 2007: ch. 4). We can suppose that it acted in accordance with the legal norms in place and without the intention to harm anyone. It might not even have violated its duty to consider carefully the consequences of its economic decisions. Therefore, we might not be allowed to blame the TNC or to sue it in court. Nevertheless, the activities of the TNC changed the situation significantly by producing negative externalities with a disastrous impact on the human rights of third parties. Other things being equal, this justifies ascribing a remedial responsibility (Miller 2007: ch. 4) to the TNC regarding rights to subsistence of the parties affected.

Power

While the impact approach relies on the *all affected* principle, theories focusing on relations of power are based on the *all subjected* principle: All those subjected to relations of power can make legitimate claims of justice. In a general sense, relations of power are morally problematic insofar as they entail or produce relatively stable or even self-reinforcing social asymmetries. Some actors, then, are in a systematically privileged position to achieve a goal against the will or the actual interests of other persons (Bachrach/Baratz 1962; Lukes 1974). This wide concept of power includes, but goes beyond, hierarchic institutions and capacities to coerce. We hold that the moral relevance of power for allocating duties of justice derives from the fact that the systematic asymmetries it entails stand in tension to the moral equality of all human beings.

In the debate on global justice, authors such as Michael Blake and Thomas Nagel focus on state authority as the form of power that is hierarchically institutionalized. For them, it is the subjection under such a centralized state authority which grounds claims to distributive justice (Blake 2001; Nagel 2005). Notwithstanding everything that might be said for or against this position in principle, with regard to areas of limited statehood it is clearly of limited use. In these areas, governments often lack the capacity to perform their roles as central authorities which formulate and execute rules that are effectively binding for all of their citizens. If the international community fails to fulfill its subsidiary responsibility, non-state actors with the capacity to help must step in.

As such, the capacity to act does not specify to whom the relief might be owed. However, power in the sense of *power over* is a particular type of capacity. To have power over other people conceptually includes a reference to other, less powerful actors. To be sure, *power over* is a rather vague concept: As Max Weber famously wrote, it is “sociologically amorph” (1922: 28). For our purposes, thus, we focus on one specific form of power over, namely the capacity to make collectively binding decisions for an identifiable group. This more restricted form of power is not limited to governments, but in principle is applicable to influential non-state actors as well.

If, under conditions of limited statehood, a non-state actor has this form of power, this actor has a moral obligation to make use of its power, and to do so in a legitimate way. If a non-state actor has the capacity to make collectively binding decisions, it must use this capacity to secure the human rights of those over whom it has power. It must be prepared not only to respect but also to fulfill their basic human rights if no other actor with an overriding responsibility to do so is identifiable or in place. Only if a non-state actor fulfills these requirements can its exercise of power be justified to those subjected to it as a form of power that respects their equal moral status. Through this, the power becomes legitimate.

To illustrate this line of argument, consider the case of a rebel group fighting for a just cause. This group has a benevolent leader with power over the people living in the territory controlled by the rebel group. He does not conceive of himself as a governance actor, but rather directs his attention to the cause the rebel group is fighting for. On our account, however, if he has the capacity to make collectively binding decisions, he has the moral obligation to use this power in a legitimate way. This includes doing the best he can to fulfill the basic human rights of those subjected to his power. In this sense, the rebel leader has a moral obligation to become a responsive governance actor.⁸

So far we have spoken of non-state actors which have the capacity to make collectively-binding decisions, but do not systematically make use of this capacity. Another case are non-state actors that exercise power in this sense by making collectively binding decisions, but do so in an illegitimate way. For instance, they might not fulfill the human rights of all people towards whom they have an obligation to do so, or they might even commit human rights violations themselves. Such actors are already governance actors, and as such they must conform to the minimal standards for legitimate governance, namely the protection and promotion of human rights.

4. Conclusion

The natural duty of justice is under-determined, especially in areas of limited statehood. Here, both the remains of the state and also the international community often fail to fulfill their human rights obligations. In this paper, we have argued that under these non-ideal conditions, it is possible – and often necessary – to assign specific human rights obligations to non-state actors operating in areas of limited statehood. The social scope of these obligations can be specified by taking a closer look at the relations between non-state actors and their social environment. Adapting and transforming criteria used in the debate about global justice, we have identified four kinds of morally relevant relations: Some agents interact under conditions of shared membership; some stand in cooperative relations towards each other; some actors' be-

⁸ For helpful discussions on this point we want to thank Cord Schmelzle.

havior has a negative impact on the living conditions of particular others; and some are able to dominate others in asymmetrical relations of power.

This preliminary result leads to further questions, which we will mention here as a perspective for our future research agenda:

1. Do the four types of special relations indeed cover all relevant relations in areas of limited statehood? Or is there a conceptual or also normative hierarchy between them?
2. Does the content of the human rights obligations of non-state actors also vary depending on the kind of relation a non-state actor has towards the larger society?
3. Can we say more about the potential trade-off between short-term direct aid and long-term reconstruction of state structures? The question remains of how to weigh the sometimes pressing need to help against the need for institutional improvements in order to get down to the root of the problem.
4. Finally, can we say more about ways to hold non-state actors accountable concerning their human rights obligations? Insofar as an actor takes part in governance, he must also meet standards of good governance, such as providing effective structures of contestation and transparency. But how can we enforce such standards under conditions of limited statehood, when the problem is exactly that a regular system of enforcement is absent in the first place?

We cannot provide answers to these questions here, but the ideas summarized in this working paper might provide a fruitful starting point to find such answers.

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