

De Ethica

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DE ETHICA

A JOURNAL OF PHILOSOPHICAL, THEOLOGICAL, AND APPLIED ETHICS

De Ethica seeks to publish scholarly works in philosophical, theological, and applied ethics. It is a fully peer-reviewed, open-access publication hosted by Linköping University Electronic Press. We are committed to making papers of high academic quality accessible to a broad audience.

De Ethica is published in cooperation with *Societas Ethica, the European Society for Research in Ethics*. *Societas Ethica* was founded in Basel, Switzerland, in 1964; today, it has more than 280 members from approximately 35 countries, representing a variety of theological and philosophical traditions. The annual conferences of *Societas Ethica* draw speakers from across the globe and provide a lively forum for intellectual exchange. Like *Societas Ethica*, *De Ethica* aims to create dialogue across national, political, and religious boundaries.

We welcome contributions from all philosophical and theological traditions. While we welcome historically and empirically oriented work, we focus on normative ethical questions. We are also particularly interested in papers that contribute to ongoing public debates.

We aim to facilitate intellectual exchange across disciplinary and geographical boundaries and across the gaps between different philosophical and theological traditions. Thus, we seek to publish papers that advance a clear and concise argument, avoid jargon and are accessible to a non-specialized academic audience.

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De Ethica was founded in 2013. It published its first issue in 2014 under the guidance of its first Editor-in-Chief, distinguished professor Brenda Almond.

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From the Editor

As our former Executive Editor, Lars Lindblom, mentioned in our previous issue, we are experiencing both new beginnings and closures. For many, this issue marks a fresh start—especially for me; I am honored and humbled to serve as De Ethica’s new Executive Editor, and I owe much to Lars, who held the position for many years. Lars has long been an inspiration and a great mentor in our editorial office. He and the entire team have been crucial to De Ethica’s growth over the past few years. As noted in the previous issue, we have started including book reviews, and we plan to continue doing so. Another essential aspect is the research we publish, and here the editorial Lars wrote in volume 8, issue 4, concerning the state of “allowed” research in the US. As before, De Ethica will continue publishing relevant research—even when it may be uncomfortable—that is vital for advancing discussions on ethics and morality. Our goal is to keep most elements the same, so you, as a reader, will continue to find familiarity in De Ethica.

In this issue of De Ethica, the articles examine ethics from various perspectives, including migration, administrative law, human rights, environmental philosophy, and moral methodology. Despite these different topics, each piece analyzes how ethical ideas are interpreted and applied in contexts shaped by institutions, public debate, and social practices. Together, they highlight the broad scope of contemporary ethical research across multiple fields that we regularly publish in De Ethica.

We start with Peter G. Kirschläger’s article on the ethical foundations of the right to asylum. Using his Ethics-SAMBA model—observation, analysis, ethical judgment, and action—Kirschläger connects contemporary asylum debates to broader issues of human rights, political responsibility, and moral duty. His main point is that vulnerability is not an exceptional condition but a core aspect of human life. From this, he argues that those whose safety, dignity, or basic needs are threatened have both a moral and legal right to protection. He also questions common distinctions between asylum seekers, refugees, and migrants when such categories are used to limit moral concern or legal responsibility. The article highlights the tension between universal human rights and state sovereignty and shows how ethical reflection can link ideas like dignity and vulnerability to institutions, public policy, and practical steps.

The second article, by Johanna Romare, Johanna Ohlsson, and Olof Wilske, explores whether individuals have a right to receive reasons for administrative decisions that affect them, especially in areas like welfare, detention, and deportation. What might initially seem like a technical procedural issue is shown to have deep legal and moral importance. The authors place reason-giving within the context of administrative law and the rule of law, highlighting its links to transparency, accountability, and good governance. Providing reasons clarifies the exercise of public power, helps affected individuals understand the basis of a decision, and allows for appeal, review, or criticism. Philosophically, drawing on Kantian ideas and Rainer Forst’s theory of justification, the authors argue that the obligation to give reasons is closely connected to autonomy, dignity, and mutual justification. They suggest that a person subject to public authority is not just

an object of administration but a subject entitled to ask why a decision was made. Thus, the article shows that fairness involves not only outcomes but also whether decisions are reasoned, communicable, and open to scrutiny.

The third article, by Alexandra Lebedeva, examines the connection between human rights discourse and responses to honor-based violence in Sweden. Her goal is not to question how serious this violence is but to analyze how it is presented in legal, political, and public discussions. A key point is that the language of human rights and gender equality can become strongly linked to national identity, so that these are seen not as universal principles but as specifically "Swedish values." When this happens, rights discourse can be used to distinguish between those who are seen as already embodying these values and those portrayed as culturally outside of them. By analyzing policy documents, legal changes, and court cases, Lebedeva illustrates how terms such as honor culture, honor norms, and honor context can contribute to the cultural framing of violence, especially when linked to ethnic or religious minorities. She argues this can hide larger patterns of gendered violence and may also enhance subtle forms of discrimination. The article therefore raises important ethical questions about how universal rights are understood in specific contexts and how they can sometimes be used in ways that promote exclusion rather than challenge it.

The fourth contribution by Anders Melin explores environmental ethics and considers whether the Capability Approach can serve as a normative framework for urban biodiversity management. Melin starts from the idea that biodiversity in cities is not just an ecological or planning issue but also a matter of justice. Since urban environments influence the conditions in which both human and nonhuman beings live, questions of flourishing, coexistence, and access become ethically important. Melin contends that the Capability Approach, which emphasizes what beings are able to be and do, offers a deeper understanding of well-being than approaches based solely on income, resources, or preference satisfaction. This makes it a useful way to interpret the ethical significance of green spaces, ecological diversity, and human interactions with nonhuman life. Melin further extends the discussion by asking whether the framework can be broadened beyond human beings to include animals, plants, species, and ecosystems. This raises profound questions about freedom, agency, and the limits of ethical individualism, because environmental ethics often involve not only individual organisms but also entire ecosystems and multispecies relationships. His analysis underscores both the potential and the limits of the Capability Approach when it comes to thinking about justice in more-than-human urban environments.

The final article by Anoop Kumar Suraj and C. Upendra shifts the focus from substantive ethical issues to moral methodology, offering a critical examination of reflective equilibrium. Associated mainly with John Rawls, reflective equilibrium aims for coherence among considered judgments, moral principles, and background theories, and has long been seen as a central model of ethical justification. Suraj and Upendra identify several key limitations of this approach. First, they argue that moral intuitions are not neutral starting points but are influenced by social, historical, and ideological factors, which complicates claims of universality or impartiality. Second, they point out the problem of circularity: achieving coherence within a system of beliefs can produce internal consistency without providing an independent basis for justification. Third, they highlight epistemic inequality, noting that the resources needed for reflective moral reasoning are unevenly distributed, with social position, education, and institutional authority shaping whose judgments are heard and whose perspectives are valued. As a result, the method

might perpetuate exclusion even while seeming inclusive. Their article makes a valuable contribution by questioning not only how moral justification is built but also whose perspectives are included, and whether ethical inquiry should focus solely on coherence or also accommodate ongoing disagreement in pluralistic societies.

The two book reviews in this issue, although they explore very different intellectual traditions and concerns, are linked by a common ethical question: what resources do we have for thinking clearly during a time marked by crisis, interconnectedness, and uncertain moral boundaries? Each review, in its own way, emphasizes the need for frameworks broad enough to handle the complexity of today.

Mao Xin reviews Jana S. Rošker's *Confucian Relationism and Global Ethics*, noting it questions whether global ethics are too Western-centric. Rošker advocates reviving Confucian relationism to address global issues like human rights, equality, and the ethical challenges of the pandemic. The book promotes a transcultural dialogue beyond mere opposition, although it leaves some political and societal questions unresolved. Mao sees it as a valuable addition to global ethics discussions.

Gary Slater's review of *Liberating People, Planet, and Religion*, edited by Joerg Rieger and Terra Schwerin Rowe, examines its focus on the connection between ecological crises, economic systems, and Christian thought. Slater describes the volume as an ambitious effort to explore these areas together, emphasizing their deep interconnectedness. He highlights the book's ability to combine systemic critique with practical action, analyzing capitalism, anthropocentrism, ecological injustice, and reflections on care work, divestment, organizing, and farming. The review also notes limitations such as its narrow focus, overemphasis on Christianity, and weaker engagement with politics. Overall, Slater sees it as a serious, thoughtful contribution to Christian ethics that addresses urgent issues.

Martin Langby, Executive Editor

Seeking Asylum, Not Looking for Being the Scapegoat: An Ethical Analysis of the Discourse About Humans Seeking Asylum

Peter G. Kirchsclaeger

The ethical and political discourse about asylum-seeking is often dominated by two fundamental questions: Firstly, should all humans have a human right to asylum? Secondly, are the duties corresponding with this claim even fulfillable for a state? From an ethical perspective, attempts to answer these questions by searching for an ethical justification of a human right to asylum respectively of corresponding state responsibilities could rely on the model of ethical decision-making SAMBA. The Ethics-SAMBA, which aims to provide concrete guidance for ethical decision-making with ease and argumentative elegance in four steps, is applied and results in an ethical justification based on the principle of vulnerability for the human right to asylum. Beyond that, it shows why the duties corresponding with the human right to asylum for a state need to be fulfilled – even if they are demanding and challenging. Finally, it presents some ethical arguments why the distinction between humans fleeing, seeking asylum, and humans migrating as well as borders per se are arbitrary and feudal, and this ethical analysis results in concrete proposals for concrete appropriate action.

0. Introduction: Ethics-SAMBA

The political discourse about asylum-seeking is often dominated by two fundamental questions: Should all humans have a human right to asylum? Are the duties corresponding with this claim even fulfillable for a state? From an ethical perspective, attempts to answer these questions by searching for an ethical justification for a human right to asylum and corresponding state responsibilities could rely on the model of ethical decision-making SAMBA. The Ethics-SAMBA aims to provide concrete guidance for ethical decision-making with ease and argumentative elegance in four steps. It serves primarily as a philosophical instrument of argumentation and can – besides that – support secondarily ethical decision-making as a pedagogical tool. This model is intended to provide a concrete and practical framework for structuring ethical arguments, ethical discussions, and ethical decision-making. SAMBA strives to clarify why and how decisions are made, enabling

people to make concrete, consistent ethical decisions and take effective, ethically coherent, and sound action. SAMBA consists of the following four steps:¹

1. See and understand the reality.
2. Analyze the Reality from a
Moral Standpoint.
3. Be the Ethical Judge!
- 4 Act Accordingly!

1. See and Understand the Reality

The goal is to describe reality as objectively and neutrally as possible, while acknowledging that this is impossible to fully achieve due to the limits of human reasoning. The basis of this description of reality should strive for critical distance and should not be subjective. Studies from other scientific disciplines that can competently contribute to achieving the most objective and neutral perception of reality, rather than relying on personal impressions, should shape this perception.

2. Analyze Reality from a Moral Standpoint

The goal is to identify the suspected ethical question/challenge/problem. This is initially only a guess, since the precise identification of an ethical question/challenge/problem is itself oriented toward and based on an ethical reference point. These ethical reference points must first be identified and then ethically justified in order to then – and only then – be able to precisely determine the ethical question/challenge/problem. The selection of the ethical reference points should be free from arbitrariness, randomness, sympathy, emotions, or gut feeling, and should be rationally justifiable and plausible.² When justifying the selection of the ethical reference points, the principle of generalizability must be met by providing rational and plausible arguments – “good reasons” – for it. “Good reasons” means that it must be conceivable that all humans, in their effective freedom and autonomy, as well as in their full equality, would agree to these reasons on ethical grounds – within a conceptual model and not within a real global referendum.³ With the help of the ethically justified ethical reference points, the ethical question/challenge/problem needs to be defined.

3. Be the Ethical Judge!

The goal is to take a position from an ethical standpoint and conduct an ethical assessment. This ethical position and ethical assessment can initially include a response to and mastery of the challenge and problem, as well as subsequently a concrete ethical solution proposal. The ethical position and the ethical assessment need to be rationally and ethically justified. This ethical justification must fulfill the principle of generalizability by providing “good reasons” as introduced above.

¹ Peter G. Kirchsclaeger, *Ethical Decision-Making* (Baden-Baden: Nomos, 2023).

² Micha H. Werner, *Einführung in die Ethik*. Heidelberg/Berlin: J.B.Metzler, 2021, pp. 239-240.

³ Kirchsclaeger, *Ethical Decision-Making*.

4. Act Accordingly!

The goal is to demonstrate concretely and practically how the ethical position and assessment can be concretely and effectively addressed and an ethical solution implemented. The ethical solution on should be coherent with the ethical decision and its justification. Any necessary contextualization in the course of implementing these ethical principles in specific contexts must not involve a dilution of the ethical principles. At the same time, it must be ensured that the ethical solution does justice to the rule-transcending uniqueness of the concrete.⁴ The rule-transcending uniqueness of the concrete means that the ethically right and ethically good in a concrete encounter with concrete humans in a concrete situation can include disregarding an ethical principle in the service of a higher ethical good. Ethics cannot blindly follow rules but must strive in every concrete encounter with concrete humans in a concrete situation for the ethically right and ethically good.

1. See the Reality

Striving for as objective a description of reality as possible, it can be stated, *firstly*, that in 2024 in the exemplary context of Europe (to sweep in front of one's own door in the course of an ethical critical account), about 981'319 people sought asylum in the European Union.⁵

448 million people live in the European Union. This means that asylum seekers equal 0.203 % of the population of the European Union.

Thirdly, the EU has allocated 16.2 billion EUR to support the EU's neighbors as well as international development and cooperation. This includes a targeted increase of 1.9 billion EUR for the humanitarian aid programme to respond to global crises, and 11.5 billion EUR for the Neighborhood, Development and International Cooperation Instrument – Global Europe, with a focus on migration in the EU's southern neighborhood and on addressing the root causes of migration from Africa.⁶

Fourthly, the member states of the European Union lost 100 billion EUR in 2024 because of harmful corporate tax avoidance.⁷ How many times have you heard about this enormous theft? How many times a week do you hear or read about a political discussion about humans seeking asylum? Although this financial theft is so significant for the European Union because these resources are missing to fund education, social justice, and social welfare, it is literally neglected while 12 humans seeking asylum per municipality in the European Union are statistically irrelevant but overrepresented in the public and political discourse.⁸

Fifthly, legally speaking, there is a human right to seek asylum. If one considers – as it is often done in philosophy of human rights as well as in ethics of human rights – the

⁴ Kirchsclaeger, *Ethical Decision-Making*.

⁵ European Union Agency for Asylum (EUAA). *EU+ asylum applications decrease by 11% in 2024, and some changing trends established* (2025). Online at <https://euaa.europa.eu/news-events/eu-asylum-applications-decrease-11-percent-in-2024> (accessed 2025-07-04); Flourish. *Key first instance indicators by EU+ country, 2024* (2024). Online at <https://public.flourish.studio/visualisation/21467921/> (accessed 2025-07-04).

⁶ EUR-Lex. *2024 European Union budget* (2024). Online at <https://eur-lex.europa.eu/EN/legal-content/summary/2024-european-union-budget.html> (2025-07-04).

⁷ European Court of Auditors. *EU fight against systemically harmful tax practices still not watertight* (2024). Online at <https://www.eca.europa.eu/en/news/NEWS-SR-2024-27> (accessed 2025-07-04).

⁸ Juan Sebastian Olier and Camilla Spadavecchia, 'Stereotypes, disproportions, and power asymmetries in the visual portrayal of migrants in ten countries: an interdisciplinary AI-based approach'. *Humanities and Social Sciences Communications* 9:410 (2022), pp. 1-16.

Universal Declaration of Human Rights of 1948 (although it is not legally binding, but rather a political programme), article 14 states: "Everyone has the right to seek and to enjoy in other countries asylum from persecution." So, the intention of humans seeking asylum is protected and guaranteed by a specific human right. (The question about the ethical justification still needs to be addressed below.) "Refugees are people who have fled their countries to escape conflict, violence, or persecution and have sought safety in another country."⁹ Refugees are characterized by "first a movement from one place to another, and second an element of hardship and involuntariness, as the notions of flight and shelter indicate."¹⁰ At the same time, they are granted a unique status in international law as well as in the ethical reflection of admission to a state. "For asylum seekers, who seek admittance and refugee status in a foreign country, being granted refugee status can make an enormous difference. First and foremost, a requirement of non-refoulement applies. A refugee cannot be returned to a country where they would be in danger. For refugees whose stay in the host country is more permanent, there is also typically a requirement to provide them with a 'durable solution' that involves gaining membership in the host country including the right to remain indefinitely."¹¹ This means: "Without question, all people who move between countries deserve full respect for their human rights and human dignity. However, refugees are a specifically defined and protected group in international law, because the situation in their country of origin makes it impossible for them to go home. Calling them by another name can put their lives and safety in jeopardy."¹²

Sixthly, there is a negative connotation of asylum-seeking in general as well as of humans seeking asylum in the political discourse. Humans seeking asylum are blamed for everything by some voices and political parties.¹³

Seventhly, negative effects of political unprofessionalism as well as economic, political, and societal challenges are attributed to humans seeking asylum¹⁴ instead of being addressed as solvable problems – as they actually are – and with other causes independent of humans seeking asylum (e.g., is the cause of the growth of right-wing populism¹⁵ not rather the insufficiency of political solutions and the lack of attractiveness of alternative political forces and parties?): worries about security, preoccupations concerning job security, lack of integration, lack of language skills, ...

⁹ The UN Refugee Agency (UNHCR). *Who we protect. Refugees* (2025). Online at <https://www.unhcr.org/about-unhcr/who-we-protect/refugees> (accessed 2025-07-04).

¹⁰ Dana Schmalz. *Refugees, Democracy and the Law. Political Rights at the Margins of the State* (UK: Routledge, 2020), p. 15.

¹¹ Adam Hosein. *The ethics of migration: an introduction* (UK: Routledge, 2019), p. 117-118. (emphasis in the text in the original)

¹² The UN Refugee Agency (UNHCR). *Asylum and migration* (2025). Online at <https://www.unhcr.org/what-we-do/protect-human-rights/asylum-and-migration> (accessed 2025-07-04).

¹³ Musa Okwonga. *Anti-migrant hate is flourishing in Germany's time of the cowards*. The Guardian (2025). Online at <https://www.theguardian.com/world/commentisfree/2025/feb/23/anti-migrant-hate-germany-election-time-of-the-cowards> (accessed 2025-07-04).

¹⁴ Julian Nida-Rümelin. 'Ethische Postulate für die Migrationspolitik', *Integration: Teilhabe und Zusammenleben in der Migrationsgesellschaft*, edited by Michael Spieker and Christian Hoffmann. (Baden-Baden: Nomos, 2020), pp. 33-51.

¹⁵ Walter Lesch. *Europa - Migration - Populismus: aktuelle Spannungsfelder politischer Ethik*. Basel: Schwabe Verlag, 2022.

Eighthly, even the ethical discourse about migration is dominated by blaming humans seeking asylum.¹⁶ This goes even so far that, among others, the rise of the political extreme right-wing parties is attributed to humans seeking asylum.¹⁷

2. Analyze the Reality from a Moral Standpoint

The suspected ethical question consists in the query of whether the human right to asylum can be ethically justified. The justification approach based on the principle of vulnerability addresses this question encompassing the ethical justification of human rights as an ethical point of reference (first step) and the ethical justification of a human right to asylum (second and third step). This analysis occurs thus from a perspective of ethics as the scientific discipline reflecting on, among others, what one should and what one shouldn't do including the critical examination of the legitimacy of positive law. In the course of this endeavor, human rights are understood as rights which "in a downright irritating way, (...) are supposed to be rights that – from a philosophical point of view – apply even when, from a realpolitik or legal point of view, they *do not* apply."¹⁸

First Step of the Approach Justifying Human Rights Based on the Principle of Vulnerability

The justification on the basis of the principle of vulnerability¹⁹ is based on the observation that humans recognize their own vulnerability, a *first* element of this principle. For example, a person who is healthy today knows that he or she could become ill tomorrow. In this thought process, a human goes through a process of uncertainty. For he or she becomes aware of his or her own vulnerability and, ultimately, of his or her transitoriness.²⁰

Second, an essential component of the principle of vulnerability is the "first-person perspective"²¹. During this process of becoming aware of one's own vulnerability, a human recognizes *ex negativo* the "first-person perspective" and the "self-relation". The "first-person perspective" includes a human's awareness that he or she is the subject of his or her own life, through which he or she has access to his or her own vulnerability (i.e., first person singular). The actions, decisions, sufferings, and the life of a person emanate from him or her as a subject.²² In this process, the human being perceives "self-relation"; he or she relates to him- or herself.

¹⁶ Sarah Song, 'The Ethics of Migration', *Introduction to International Migration: Population Movements in the 21st Century*, edited by Jeannette Money and Sarah Lockhart (UK: Routledge, 2021), ch. 15.; Lukas Schmitt, *Von Grenzen, Menschen und Mauern: Migrationsethische Perspektiven in der globalisierten Weltgesellschaft* (Freiburger theologische Studien Vol. 198) Freiburg i.Br./München/Berlin: Herder, 2022.; Adrian Papenhagen, *Eine Stufentheorie der Migrationsethik* (Baden-Baden: Nomos, 2024).

¹⁷ Anthony Edo and Yvonne Giesing. *Has Immigration contributed to the rise of rightwing extremist parties in Europe ?*. Econpol Policy Report 2020 July Vol. 4. Online at https://www.ifo.de/DocDL/EconPol_Policy_Report_23_Immigration_Far_Right.pdf (2025-07-04).

¹⁸ Arnd Pollmann, *Menschenrechte und Menschenwürde. Zur philosophischen Bedeutung eines revolutionären Projekts*, Frankfurt a. M.: Suhrkamp, 2022, p. 57, highlighting in the text (translated by the author).

¹⁹ Peter G. Kirchsclaeager, *Wie können Menschenrechte begründet werden? Ein für religiöse und säkulare Menschenrechtskonzeptionen anschlussfähiger Ansatz*; Münster: LIT-Verlag, 2013, pp. 231-267.

²⁰ Barry Hoffmaster, 'What Does Vulnerability Mean?'. *Hastings Center Report* 36:2 (2006), pp. 38-45, at p. 42.

²¹ Edmund Runggaldier, 'Deutung menschlicher Grunderfahrungen im Hinblick auf unser Selbst', *Unser Selbst – Identität im Wandel neuronaler Prozesse*, edited by Guenter Rager, Josef Quitterer and Edmund Runggaldier (Paderborn: Ferdinand Schoeningh, 2003), pp. 143-221.

²² Ludger Honnefelder, 'Theologische und metaphysische Menschenrechtsbegründungen', *Menschenrechte. Ein interdisziplinäres Handbuch*, edited by Arnd Pollmann and Georg Lohmann (Stuttgart: J.B. Metzler, 2012), pp. 171-178, at pp. 171-172.

Third, vulnerability is perceived by people from their “first-person perspective” as well as for the “first-person perspective” itself and “self-relation”.

This process of becoming aware of one’s own vulnerability and the “first-person perspective” leads *fourth* to the fact that he or she shares this vulnerability with all people.

Fifth, the process of becoming aware of one’s own vulnerability and the vulnerability of all other people enables humans to perceive that they share also the individual “first-person perspective” as well as the individual “self-relation”. Humans therefore recognize that the “first-person perspective” and the “self-relation” are a condition for the possibility of a life as a human being.

Humans become aware of the same vulnerability of all other human beings. In the face of their own vulnerability, humans want first and foremost to survive physically and to live a life with human dignity. Physical survival and a life with human dignity must not be taken away from a human. They must be legally enforceable in order to offer real protection, and they must be applicable to various dimensions because vulnerability can include legal, political, historical, and moral dimensions. Physical survival and a life with human dignity should not be conditional because they are of utmost importance, as mentioned above, and because vulnerability is unpredictable. The desire to physically survive and live a life with human dignity is shared with all other humans. This desire is not individualistic, even though it is a concern of each person as an individual, which each individual discovers through his/her “first-person perspective” and his/her “self-relation”.

Sixth, because people are aware of their vulnerability but at the same time do not know if and when this vulnerability manifests itself and turns into a concrete violation or transgression, they are willing to grant all people the “first-person perspective” and “self-relation” based on the equality of all people, because this is the most rational, prudent, and advantageous solution for them. That means granting rights – human rights – to all humans in order to protect themselves and all others, because the vulnerability also includes the “first-person perspective” and “self-relation”. This protection through human rights aims, on the one hand, at avoiding the transformation of vulnerability into a concrete violation, and on the other hand – in case of such a transformation – to receive active compensation. They choose to entitle all humans including themselves with rights and to not ascribe everyone including themselves mutual obligations toward one another because they want to ensure absolutely that the omission of the transformation of vulnerability into a concrete violation as well as the active compensation in the case of such a transformation works, makes a concrete difference, and causes a positive impact for them facing the fundamental significance of and existential threats embedded in the uncertainty corresponding with their own vulnerability.

In this context, people are aware that the protection through human rights also includes the duties corresponding to human rights, because they are not exclusive rights, but rights to which all humans are entitled.

These six points on the principle of vulnerability explain that, *seventh*, humans are not human rights bearers because of their vulnerability but because they deal with their own vulnerability and its relevance. The principle of vulnerability with the “first-person perspective” and “self-relation” as a moral claim is normatively charged. The principle of vulnerability is a starting point for the justification of human rights in general and of specific human rights.

Eighth: It is altogether possible that the principle of vulnerability can be the basis for recognizing new sufferings and experiences of injustice that require human rights protection.

With the first step of the justification model based on the principle of vulnerability, human rights were ethically justified as an ethical point of reference in the Ethics-SAMBA.

Human rights as an ethical point of reference confirm that there is an ethical question, namely whether there should be a human right to asylum. "Be the Ethical Judge!" One is invited by the Ethics-SAMBA to answer this question. The justification approach based on the principle of vulnerability addresses this inquiry in the second and third step.

3. Be the Ethical Judge!

Second Step of the Approach Justifying Human Rights Based on the Principle of Vulnerability

The selection of those historical experiences of injustice that need human rights protection requires criteria. These criteria can be derived from the above descriptions of humans and the weighting because it shows what humans want to primarily protect themselves from. First of all, people want to survive and live as humans with human dignity (fundamentality). People become aware that their vulnerability threatens their own survival and the survival of all humans as well as their own life with human dignity and the lives of all others with human dignity (universality), because vulnerability does not stop at the "first-person perspective" and "self-relation" as a condition of living as a human. Survival and a life with human dignity should absolutely never be taken away from people or be traded off for something else (inalienability). They must be legally enforceable (justiciability) and applicable to the different dimensions (multidimensionality) because humans want to make totally sure that this protection works if they need it and because vulnerability can include legal, political, historical, and moral dimensions. Due to the fact that they possess such a high priority, as mentioned above, and since vulnerability is unpredictable and can be transformed into injury, survival and a life with human dignity should not be conditional (categorical character) because humans want to avoid that they have to negotiate in the case of injury or in the need for compensation. People share this desire to survive and live a life with human dignity with all other people (equality) to the same extent and they are willing to accept and respect it in order to enjoy themselves human rights facing the uncertainty originating from vulnerability. It is not individualistic, even though each individual discovers it through his or her own "first-person perspective" and "self-relation", but embodies an individual entitlement (individual validity) because no one wants to – in the case of an injury or in the need of a compensation – first have to join a collective (e.g., a nationality, a religious or worldview-based community, ...) in order to enjoy the protection by these rights but wants to enjoy directly and immediately these rights protecting physical survival and a life with human dignity. Therefore, the following eight criteria should determine the selection of those historical injustices and vulnerabilities from which all human beings should be protected by specific human rights: fundamentality, universality, inalienability, justiciability, multidimensionality, categorical character, equality, and individual validity.

Third Step of the Approach Justifying Human Rights Based on the Principle of Vulnerability

This step involves applying the above-mentioned eight criteria to identify the elements and spheres of human existence that must be protected by human rights. In our case, the question needs to be addressed whether asylum fulfills the eight criteria.

If one considers the numerous cases where physical survival or human dignity was denied to humans because of a lack of asylum, it seems obvious that experiences of violation of elements and spheres protected by a human right to asylum lead to the awareness which demands that these violations be put to an end and prevented.

In order to prove the *universality* of the right to asylum, the possibility must be excluded that these experiences of injustice in the sphere of protection of the right to asylum are only particular experiences of injustice that cannot be universalized. A positive outcome of this examination would mean the transition from a subjective experience of injustice to an experience of injustice that can be universalized. The universality of the right to asylum is justified because there cannot be “good reasons” as introduced above which would legitimate the exclusion of an individual human or a group of humans from this right.

In order to show the *categorical status* of the right to asylum, it is plausible that the right to asylum does not rely on any requirements expected from a human for sharing historical experiences of injustice in the sphere of asylum or for holding the corresponding right which protects every human from a vulnerability or a violation of the sphere protected by the right to asylum.

The *egalitarian nature* of the human right to asylum is based on the possibility that every human can enjoy protection of the human right to asylum in an identical manner.

The human right to asylum is an individual right that protects the individual right-holder’s ability in the dimension of asylum and does not depend on their being part of a collective, which proves its *individual validity*.

The right to asylum is *legally enforceable* because a violation of this right can be identified, it can be a reason to take legal action, a verdict can be delivered, the perpetrator of the violation can be convicted, a sentence can be served, and this can be controlled and enforced.

The *fundamentality* of the right to asylum – belonging to the essential elements and spheres of human existence – is justified because the elements and spheres protected by the human right to asylum are necessary for the physical survival and for the human dignity of an individual. The protection by a human right to asylum cannot be substituted by other means (e.g., foreign aid in the case of famine, or, e.g., military intervention into foreign states in the case of persecution)²³ because of the impossibility and the impermissibility of these other means.²⁴ Moreover, if an individual’s human right to asylum is violated or not respected, a human can be limited in his or her access to other rights, for example, the right to life, the right to security, the right to freedom.

The right to asylum is *inalienable* because of its necessity for the physical survival and for the human dignity of an individual. Therefore, it should not be possible that one can lose this right.

²³ Christopher Wellman, ‘Immigration and Freedom of Association’. *Ethics* 119:1 (2008), pp. 109-141.

²⁴ Susanne Mantel. ‘Stability, Protection, and Refugees: Does Refugee Protection Require Admission?’, *Migration, Stability and Solidarity* (International Politics: Perspectives from Philosophy and Political Science Bd. 4), edited by Wolfram Cremer and Corinna Mieth. (Baden-Baden: Nomos, 2021), pp. 85-108, at pp. 90-92.

The right to asylum is *multidimensional* because its realization takes place in the legal, political, historical, and ethical dimensions.

Hence, it can be argued with “good reasons” that the right to asylum is universal, categorical, egalitarian, individual, enforceable, fundamental, inalienable, and multidimensional – and consequently: ethically justifiable.

Of course, when states implement the human right to asylum and generally regulate fleeing and asylum-seeking, there are constraints which need to be addressed. It represents the idea behind the SAMBA-step “Be the Ethical Judge!” that “constraints such as lack of political will or xenophobia should not inform the theorization of states’ duties toward asylum seekers. This does not mean policymakers and other stakeholders should not consider these elements when formulating this policy. Yet, these considerations should not be accounted for in the theorization of states’ duties to asylum seekers done from the point of view of justice understood in pure normative sense.”²⁵

At the same time, it needs to be taken into account that the human rights to asylum is part of the – based on the principle of vulnerability justifiable –²⁶ catalogue of human rights that must be respected, protected, implemented, and realized in its entirety due to the principle of indivisibility of human rights.²⁷ Therefore, the human right to asylum – if asylum is granted – goes beyond mere residence in the receiving state as also the other human rights need to be respected, protected, implemented, and realized. This results in implications regarding inclusion into the social contract, access to economic and social rights such as healthcare and social security.

Beyond that, it cannot escape the ethical assessment of the legitimacy of the human right to asylum that violations of this human right occur often and manifoldly in the exemplary context of Europe (to sweep in front of one’s own door in the course of an ethical critical account).²⁸ “Refugees on Greek islands are being held in detention-like refugee camps and so-called migration agreements are being concluded with often authoritarian states or militias, such as in Libya, so that the effects of the EU’s external border are already being felt by refugees outside EU territory.”²⁹ In an open letter to European government leaders, “Doctors Without Borders (MSF)“-President Joanne Liu states: “What migrants and refugees are living in Libya should shock the collective conscience of Europe’s citizens and elected leaders. (...) People are simply treated as a commodity to be exploited. They are packed into dark, filthy rooms with no ventilation, living on top of one another. Men told us how groups of them are forced to run naked in the courtyard until they collapse from exhaustion. Women are raped and then made to call their families back home asking

²⁵ Mario Josue Cunningham Matamoros. ‘Normativity in Migration Ethics: Toy Theories and Prudential Normativity. *Topoi* 44 (2025), pp. 115–126, at p. 116.

²⁶ Kirchsclaeger, *Wie können Menschenrechte begründet werden? Ein für religiöse und säkulare Menschenrechtskonzeptionen anschlussfähiger Ansatz*.

²⁷ Kirchsclaeger, *Wie können Menschenrechte begründet werden? Ein für religiöse und säkulare Menschenrechtskonzeptionen anschlussfähiger Ansatz*.

²⁸ Hungarian Helsinki Committee, *We Are Monitoring Association, Centre for Peace Studies et.al. Pushed, Beaten, left to die. European Pushback Report 2024* (2025). Online at <https://11.be/sites/default/files/2025-02/20250217-Pushbacks-Report-2024-Pushed-Beaten-Left-to-die.pdf> (accessed 2025-07-04); Mixed Migration Centre (MMC). *Quarterly Mixed Migration Update*. Online at <https://mixedmigration.org/resource/quarterly-mixed-migration-update-eu-q3-2024/> (accessed 2025-07-04); Lukas Schmitt. ‘Migrationsethik: Die Ukraine und die Verletzlichkeit von Menschen und Grenzen’. *Stimmen der Zeit* 240:6 (2022), pp. 403-416, at p. 410.

²⁹ Lukas Schmitt. ‘Migrationsethik: Die Ukraine und die Verletzlichkeit von Menschen und Grenzen’. *Stimmen der Zeit* 240:6 (2022), pp. 403-416, at p. 410.

for money to be freed. All the people I met had tears in their eyes, asking again and again, to get out. Their despair is overwhelming.”³⁰

Unfortunately, even the new “European Union Pact on Migration and Asylum” (adopted in May 2024) itself focuses more on securitizing the external borders rather than on protecting human rights.³¹ Such an approach jeopardizes “la coherencia del proyecto europeo”³².

Furthermore, safe and humane paths for fleeing from conflict and persecution to Europe hardly exist anymore.³³ At least 8’938 people died on migration routes worldwide in 2024. Unfortunately, this means that the year 2024 was the deadliest year on record.³⁴ “The tragedy of the growing number of migrant deaths worldwide is both unacceptable and preventable. Behind every number is a human being, someone for whom the loss is devastating.”³⁵ These deaths did not fall from heaven. These deaths are the results of the ethical and political discourse about as well as the present policies on humans fleeing and humans seeking asylum. These deaths are of course ethically unacceptable. Ethically sound solutions including, among others, safe and humane transit routes³⁶ could avoid such deaths occurring in the future.

In addition, out of the ethical justification of the human right to asylum the question arises whether the search for a strict distinction³⁷ between refugees and asylum-seekers (without a choice for their flight) and migrants (with a choice) in the ethical, legal, and political discourse³⁸ can be upheld justifiably from an ethical standpoint.³⁹ The UN Refugee Convention of 1951, the Protocol relating to the Status of Refugees of 1967, and related instruments build on a clear distinction between legitimate and illegitimate rights-holders, with the state as the defined duty-bearer. This question if this distinction can be – ethically justified – be upheld finds a negative response from an ethical perspective

³⁰ Medecins sans frontières. *European governments are feeding the business of suffering*. Online at <https://www.msf.org/libya-open-letter-european-governments-are-feeding-business-suffering> (accessed 2025-07-04).

³¹ Magda Ennaji Térmens. ‘Anàlisi del Pacte de la Unió Europea sobre Migració i Asil’. *Quaderns IEE* 4:1 (2025), pp. 107–141.

³² Gemma Pinyol-Jiménez, ‘Migraciones, asilo y derechos humanos: Una aproximación lucasiana a las disfunciones de la gobernanza migratoria’. *Cuadernos Electrónicos De Filosofía Del Derecho* 49 (2023), pp. 979–988, at p. 987.

³³ Jeff Handmaker and Claudia Mora, ‘Experts: the mantra of irregular migration and the reproduction of Hierarchies’, *The Role of ‘Experts’ in International and European Decision-Making Processes: Advisors, Decision Makers or Irrelevant Actors?*, edited by Monika Ambrus, Karin Arts, Ellen Hey and Helena Raulus (Cambridge: Cambridge University Press, 2014), pp. 263-287.

³⁴ IOM UN Migration. *2024 is Deadliest Year on Record for Migration, New IOM Data Reveals*. Online at <https://www.iom.int/news/2024-deadliest-year-record-migrants-new-iom-data-reveals> (accessed 2025-07-04).

³⁵ IOM UN Migration. *2024 is Deadliest Year on Record for Migration, New IOM Data Reveals*. Online at <https://www.iom.int/news/2024-deadliest-year-record-migrants-new-iom-data-reveals> (accessed 2025-07-04).

³⁶ Borja Niño Arnaiz, ‘Justicia global, autonomía personal y política migratoria’. *Revista De Estudios Políticos* 203 (2024), pp. 37–61.

³⁷ Papenhagen. *Eine Stufentheorie der Migrationsethik*.

³⁸ Lukas Schmitt. *Von Grenzen, Menschen und Mauern: Migrationsethische Perspektiven in der globalisierten Weltgesellschaft* (Freiburger theologische Studien Bd. 198) (Freiburg i.Br./München/Berlin: Herder, 2022); Lesch, *Europa - Migration - Populismus : aktuelle Spannungsfelder politischer Ethik*, p. 181.

³⁹ Liza Schuster. ‘Unmixing Migrants and Refugees’, *The Routledge Handbook of Immigration and Refugee Studies*, edited by Anna Triandafyllidou. UK: Routledge, 2016, pp. 297-303.

because famine, poverty as well as miserable economic⁴⁰ and climate conditions⁴¹ can take away any supposed choice.⁴² “Restricting the status of refugees to those who have crossed an international border because of a well-founded fear of persecution is morally arbitrary.”⁴³ In the focus here is that not only persecution but also famine, poverty as well as miserable economic and climate conditions can be threatening for the human dignity and for the physical survival of a human.

Moreover, the arbitrariness of borders should be acknowledged from an ethical standpoint: No one can choose to be born on the one side or the other side of a border. Borders make humans “refugees”, “asylum-seekers”, and “migrants”. This arbitrariness of borders reinforces the criticism presented above of the arbitrariness of the distinction between refugees and asylum-seekers on the one side and migrants on the other side. “For many people on earth, borders are not easily surmountable landmarks on a map or itinerary but rather have an immobilizing power. Borders have by no means become less significant in our globalized world but rather exert power in a very selective manner on individuals, not only at the borders themselves, but also beyond them and within border areas.”⁴⁴

From the perspective of ethics of human rights, the impact of borders on the lives of humans represents a fundamental questioning of equality⁴⁵ and equal opportunities. “Most migrants want little more than to make a better life for themselves. If people wish to migrate across borders, why shouldn’t they be able to?”⁴⁶ In addition to equality, also freedom and autonomy provide ethical guidance, especially freedom of movement. “Deciding where to live is an essential component of autonomy, and this includes both the decision to stay and the decision to migrate.”⁴⁷ An inconsistency cannot be avoided if freedom of movement is restricted in the case of international movement. “Every reason why one might want to move within a state may also be a reason for moving between states. One might want a job; one might fall in love with someone from another country; one might belong to a religion that has few adherents in one’s native state and many in another; one might wish to pursue cultural opportunities that are only available in another land.”⁴⁸

⁴⁰ Margaret E. Peters, ‘Migration and Development’, *Introduction to International Migration: Population Movements in the 21st Century*, edited by Jeannette Money and Sarah Lockhart (UK: Routledge, 2021), pp. 223-243.

⁴¹ Ingrid Boas and Hanne Wiegel, ‘Environmental Change and Migration’, *Introduction to International Migration: Population Movements in the 21st Century*, edited by Jeannette Money and Sarah Lockhart (UK: Routledge, 2021), pp. 263-282.

⁴² Franco Valenti, *Migrazioni. In Italia e nel mondo*. Brescia: Editrice Morcelliana, 2020, p. 5.

⁴³ Wellman, ‘Immigration and Freedom of Association’, pp. 109-141, at p. 128; Saskia Sassen, *Guests and Aliens*. New York: The New Press, 1999, p. 96.

⁴⁴ Lukas Schmitt, ‘Macht von Grenzen: Macht über Grenzen: Eine migrationsethische Betrachtung im Spannungsfeld universaler und partikularer Perspektiven’, *Macht: Omnipräsent und doch tabu? Theorien und Praktiken einer sozialetischen Grundkategorie*, edited by Sebastian Dietz, Felix Geyer, Lukas Schmitt, Isabella Senghor and Elisabeth Zschiedrich (Münster: Aschendorff Verlag, 2023), pp. 199-216, at pp. 199-200 (translated by pgk).

⁴⁵ Javier De Lucas, ‘Immigrantes : del estado de excepción al estado de derecho’. *Oñati socio-legal series* 1:3 (2011), p. 7.

⁴⁶ Song, ‘The Ethics of Migration’, pp. 328-347.

⁴⁷ Niño Arnaiz, ‘Justicia global, autonomía personal y política migratoria’, pp. 37-61, at p. 53.

⁴⁸ Joseph Carens, *The Ethics of Immigration*. (Oxford: Oxford University Press, 2013), p. 239.

This inconsistency grows into a bias⁴⁹ of the ethical discourse about fleeing, seeking asylum, and migration or a fundamental denial of ethically justifiable claims to humans fleeing, seeking asylum, or migrating when ethical principles like freedom and equality of all humans as well as the principle of justice in the form of equal opportunities are ethically justified in providing ethical guidance in the general ethical discourse but are neglected in the ethical discourse about fleeing, seeking asylum, and migration or denied to humans fleeing, seeking asylum, or migrating.⁵⁰ E.g., it can be shown that in the ethical discourse about humans fleeing, seeking asylum, or migrating, “the question of how opportunities should be distributed is addressed in opposite terms depending on whether migrants are concerned or not”⁵¹.

A source for this bias is nationalism.⁵² This bias does not allow one to see clearly the reality through ethical lenses. “An ethos of white nationalism and capital accumulation, moral geographies that map responsibilities in order to deflect or deny them, creating hostile environments invoking moral immunity, are neither natural nor inevitable.”⁵³

A second source for this bias is methodological nationalism, defined by the assumption “that the nation-state provides the relevant unit of analysis and the categories for understanding social phenomena.”⁵⁴

A third source for this bias can be found in “cimmigration” applied in the ethics of migration⁵⁵ referring to “three areas in which criminal law enforcement and immigration law enforcement are problematically conflated. The first is when criminal convictions come to have immigration consequences, such as a revocation of a visa or green card. The second is when immigration law violations come to have criminal-style punishments. The third is when the tactics sanctioned for criminal law enforcement are commandeered for the purposes of performing immigration enforcement or vice versa.”⁵⁶

A fourth source for this bias is an abusive misinterpretation of the common good into an exclusive good for an exclusive group of people.⁵⁷

The lack of equal opportunities “is further exacerbated by the fact of withholding of subjectivity for humans seeking asylum. They cannot speak in the political and ethical discourse about seeking asylum nor act in the political design of the legal framework of

⁴⁹ Speranta Dumitru, ‘The ethics of immigration: How biased is the field?’, *Migration Studies* 11:1 (2023), pp. 1-22.

⁵⁰ Jan Friedrich, ‘Können Integrationspflichten Migrationsrechte einschränken? Zum Verhältnis von Migrations- und Integrationsethik’. *Zeitschrift für Praktische Philosophie* 7:1 (2020), pp. 15-42. ; Jean-Philippe Vincent. *Éthiques de l’immigration*. Online at <https://www.fondapol.org/etude/ethiques-de-limmigration/> (2025-07-04); Federico Arcos Ramírez, ‘¿Existe un derecho humano a inmigrar? Una crítica del argumento de la continuidad lógica’. *DOXA. Cuadernos De Filosofía Del Derecho* 43 (2020), pp. 285–312.; Francisco Javier Laporta San Miguel, ‘Javier de Lucas y la ética de la inmigración’. *Cuadernos Electrónicos De Filosofía Del Derecho*, 49 (2023), pp. 264–273.

⁵¹ Dumitru, ‘The ethics of immigration: How biased is the field?’, pp. 1-22-

⁵² Lior Erez, ‘The Nation, the State, and the Foreigner’, *The Routledge Handbook of the Ethics of Immigration*, edited by Sahar Akhtar (UK: Routledge, 2025), pp. 140-154, at pp. 142-150.

⁵³ Dan Bulley, *A relational ethics of immigration: Hospitality and hostile Environments* (Oxford: Oxford University Press, 2023), pp. 161-162.

⁵⁴ Dumitru, ‘The ethics of immigration: How biased is the field?’, pp. 1-22.

⁵⁵ José Jorge Mendoza, ‘Crimmigration and the Ethics of Migration’. *Social Philosophy Today* 36:1 (2020), pp. 49-68.

⁵⁶ Mendoza, ‘Crimmigration and the Ethics of Migration’, pp. 49-68, at p. 50.

⁵⁷ Frank Dietrich and Adis Selimi, ‘Gemeinwohlargumente in der Ethik der Migration’, *Handbuch Gemeinwohl*, edited by Christian Hiebaum. Springer: Heidelberg, 2020, pp. 379-391.

seeking asylum. These abilities are denied and withheld from them.”⁵⁸ Human rights guarantee this participation in opinion-forming- and decision-making-processes to all humans – of course including also humans fleeing, seeking asylum, and migrating.⁵⁹

Furthermore, the existence of borders violates moral equality.⁶⁰ “Citizenship in Western liberal democracies is the modern equivalent of feudal privilege – an inherited status that greatly enhances one’s life chances. Like feudal birthright privilege, restrictive citizenship is hard to justify when one thinks about it closely”⁶¹.

On top of that, the existence of borders as such makes humans “refugees”, “asylum-seekers”, and “migrants”.⁶² Moreover, humans fleeing or seeking asylum are neither per se and nor make themselves “refugees”, “asylum-seekers” respectively “migrants”, someone else does for them and about them.⁶³ The definitory and constituting process as well as corresponding decision-making processes about their fate are not in the hands of humans fleeing, seeking asylum, or migrating and take place without participation of the humans fleeing, seeking asylum, or migrating.⁶⁴

Seen and used differently, the concepts “refugees”, “asylum-seekers”, and “migrants” offer “an important lens on law and democracy beyond the state. Its counterbalancing role within the state framework highlights that the territorial delimitation of rights and obligations has always been accompanied by commitments to openness and solidarity beyond the territorially defined community. This cross-border commitment of the refugee concept references a concrete rather than an abstract universalism.”⁶⁵ At the same time, the problem is becoming apparent that “migrant rights are compromised by a paradox between the universality of international human rights and the national scope of their enforcement.”⁶⁶

In addition, humans fleeing from one place to another respectively or fleeing from one country to seek asylum in another country usually don’t have the self-understanding as “refugees”, “asylum-seekers”, or “migrants” but the self-understanding as “HUMANS”. Hannah Arendt states: “We don’t like to be called ‘refugees’.”⁶⁷

Moreover, no one is born and wishes to become a human fleeing, seeking asylum, or migrating. “On the one hand, mobility thereby mirrors global inequalities: borders are permeable to a starkly different degree depending on one’s passport. On the other hand, migration works as a marker for interdependencies where these would otherwise be

⁵⁸ Josef Becker, ‘Normative Probleme der Ethics of Migration’, *Grenzgänge der Ethik*, edited by Josef Becker, Sebastian Kistler & Max Niehoff (Münster: Aschendorff Verlag, 2020), pp. 69-86, at p. 75.

⁵⁹ Susana Angélica Pastrana Corral, ‘Derechos humanos y políticas Migratorias’. *Revista Virtual Universidad Católica del Norte* 74 (2025), pp. 1-3, at p. 2.

⁶⁰ Joseph Carens, ‘Aliens and Citizens: The Case for Open Borders’. *Review of Politics* 49:2 (1987), pp. 251-273.

⁶¹ Carens, ‘Aliens and Citizens: The Case for Open Borders’, pp. 251-273, at p. 252.

⁶² Schmalz, *Refugees, Democracy and the Law. Political Rights at the Margins of the State*, p. 23.

⁶³ Johan Rochel, ‘L’éthique de la migration : propositions pour un débat de Société’, *La recherche et l’enseignement en éthique : Un état des lieux*, edited by Edwige Rude-Antoine and Marc Piévic (Paris: L’Harmattan, 2020), pp. 93-109, at p. 108.

⁶⁴ Schmalz, *Refugees, Democracy and the Law. Political Rights at the Margins of the State*, pp. 27-40, pp. 106-120, pp. 151-166.

⁶⁵ Schmalz, *Refugees, Democracy and the Law. Political Rights at the Margins of the State*, p. 24.

⁶⁶ Lisa Simeone, ‘The Paradox of Migrant Rights’, *Introduction to International Migration: Population Movements in the 21st Century*, edited by Jeannette Money and Sarah Lockhart. UK: Routledge, 2021, pp. 307-327, at p. 323.

⁶⁷ Hannah Arendt, ‘We Refugees’, *Altogether elsewhere. Writers on Exile*, edited by Marc Robinson (Boston; Faber and Faber, 1994), pp. 110-119.

omitted. When political conflicts, environmental degradation, or ravaging poverty causes persons to migrate, they bring to awareness elsewhere that we live in one world.”⁶⁸

Beyond that, living as humans means standing on the same ground – on the same “solidum” which represents the conceptual basis for the ethical principle of “solidarity”.⁶⁹ The ethical principle of solidarity urges one to understand that all humans should be there for each other and for the community if it is necessary as well as the community of all humans should be there for a human who needs it. “L’insatisfaction est constante, dans l’action de solidarité.”⁷⁰ One should not escape from this challenge by framing its fulfillment as “unrealistic”⁷¹ for three reasons⁷²: first, the conceptual problems of assessing realistic versus unrealistic (for example, the arbitrary definition of “the given situation” or “the given reality”; the impossibility of foreseeing what is possible in advance; the impossibility to identify who is the acting subjects failing facing the unfeasibility)⁷³; second, normative ethics does not work this way. An ethical compass does not lose its legitimacy just because it is demanding to follow it. Rather this challenge forms an incentive to become better. E.g., personally, I’m not able to avoid lying all the time. Just because of that, the legitimacy of honesty does not dissolve. Honesty as an ethical virtue is still in place.⁷⁴ Third, the complexity of reality cannot serve as an excuse not to fulfill ethical principles but rather as an impulse to find an ethically sound solution.

The principle of solidarity – combined with the above-mentioned principle of vulnerability – reminds all of us: It could be us. It could be oneself.

The kind invitation goes to everyone who contributes to the ethical discourse about fleeing, asylum-seeking, and migrating without critically questioning the arbitrary and feudal nature of borders to transfer the perspective and to imagine that they themselves would be the humans fleeing, seeking asylum, and migrating.

The same kind invitation goes to everyone who argues for the exception of the sphere of fleeing, asylum-seeking, and migrating from ethical principles that are otherwise in place in the general ethical discourse, like, for example, freedom and equality of all humans as well as the principle of justice in the form of equal opportunities to critically re-examine their own positions through the thought experiment to try (and these attempts will always fail due to the first-person perspective but could one bring at least a little bit closer to the perspective of other humans)⁷⁵ to put on the shoes of humans fleeing, humans seeking asylum, as well as humans migrating and to then question whether their own positions remain ethically justifiable.

The same kind invitation goes to everyone who argues that realizing the respect of human dignity of all humans – including humans fleeing and humans seeking asylum –

⁶⁸ Schmalz, *Refugees, Democracy and the Law. Political Rights at the Margins of the State*, p. 167.

⁶⁹ Alois Baumgartner, ‘Solidarität’, *Christliche Sozialethik. Ein Lehrbuch* (Vol. 1: Grundlagen), edited by Marianne Heimbach-Steins (Regensburg; Verlag Friedrich Pustet, 2004), pp. 283-292.

⁷⁰ Bruno-Marie Duffé, ‘Quand les migrants nous font faire un «chemin éthique» et nous rappellent au «devoir de fraternité». *Revue d'éthique et de théologie morale* 326:1 (2025), pp. 53-61, at p. 61.

⁷¹ Papenhagen, *Eine Stufentheorie der Migrationsethik*, pp. 115-488.; Andreas Niederberger, ‘Migrationsethik in der Krise. Einige grundlegende philosophische Überlegungen’. *Zeitschrift für Migrationsforschung* 1:1 (2021), pp. 97 - 123.

⁷² Kirchsclaeger, *Ethical Decision-Making*.

⁷³ James S. Pearson, ‘Realism in the ethics of immigration’. *Philosophy & Social Criticism* 49 :8 (2022), pp. 958-968.

⁷⁴ Kirchsclaeger, *Ethical Decision-Making*.

⁷⁵ Kirchsclaeger, *Wie können Menschenrechte begründet werden? Ein für religiöse und säkulare Menschenrechtskonzeptionen anschlussfähiger Ansatz*.

would be an act of “mercy”⁷⁶. While attributing to mercy an essential role within ethics and morals, in the case of humans fleeing and humans seeking asylum mercy and their ethically justifiable claims to get their human rights respected and enforced, it is an absolutely inadequate category, first, because humans fleeing, seeking asylum, as well as migrating are holders of human rights. Their legal entitlements are neither depending on acts of mercy nor on arbitrariness and randomness. Second, mercy implies a certain power imbalance between the mercy-giver and the beneficiary of mercy, which would undermine the notion of human dignity and human rights including freedom, autonomy, and equal opportunities.

Finally, the same kind invitation goes to everyone who argues that humans fleeing, seeking asylum, and migrating by crossing boundaries without official permission – due to above-mentioned lack of safe and humane transit routes – should be framed as this person “made a bet that he(/she) would not be discovered; his(/her) pain when that bet fails to hold is a pain he(/she) is rightly made to endure.”⁷⁷

The ethical implications of the ethical principle of solidarity underline the ethical justification of the human right to asylum and its ethical relevance as well as the ethical necessity to take appropriate action in the particular contexts where the universality of human rights and the universal solidarity among all humans as well as of humanity become concretely alive. “Liberal states grant rights to their citizens as members of a political community sharing certain norms and obligations. While the international human rights system expands this theory of social contract to encompass all countries, it does not represent a global political community with the authority to protect its members. Its normative framework of human rights must be translated into civil rights to have legal power.”⁷⁸

Finally, humans seeking asylum are forced into the role of scapegoats for everything.⁷⁹ Blaming humans seeking asylum for everything negative goes so far that one asks oneself what would happen if there weren't any asylum-seekers anymore, but the political problems would continue to exist.

4. Act Accordingly!

The ethical justification of the human right to asylum calls for corresponding action, namely to respect, protect, implement, and realize the human right to asylum together with all other human rights.

Besides the legal enforcement of this human right, part of the corresponding action to this ethical assessment of the legitimacy of the human right to asylum is also to stop making humans seeking asylum to the problem. That does not mean at all not to take the

⁷⁶ Michael Blake, *Justice, Migration, and Mercy* (Oxford: Oxford University Press, 2023), pp. 210-223.

⁷⁷ Blake, *Justice, Migration, and Mercy*, pp. 215-216.

⁷⁸ Simeone, ‘The Paradox of Migrant Rights’, pp. 307-327, at pp. 307-308.

⁷⁹ Bianca Rumore, ‘Imago migrantis: media, algoritmi e rappresentazioni. Il caso italiano’, *Migrazione, donne, diritti. Orizzonti di pace per il mondo contemporaneo* edited by Uliano Conti and Maria Caterina Federici (Roma: Carocci editore, 2021, pp. 85-100), p. 98; Peter Schink and Jan Weber. *Nach Migrationsdebakel: Geflüchtete sind nun an allem Schuld*. Berliner Morgenpost (2025). Online at <https://www.morgenpost.de/incoming/article408208780/nach-migrationsdebakel-gefluechtete-sind-nun-an-allem-schuld.html> (accessed 2025-07-04); Daniel Winkler. Widerstand gegen Asylbewerber. Ängste bewirtschaften und Sündenböcke suchen. Der Bund (2024). <https://www.derbund.ch/migration-aengste-bewirtschaften-widerstand-gegen-fluechtlinge-180743754399> (accessed 2025-07-04).

real problems seriously. In contrast, from an ethical standpoint, it is the ethical responsibility of a state, of a government, of politicians, of a political and legal community as well as of all humans to address consistently and diligently existing problems including the ethical and political dilemmas.⁸⁰ If there are, e.g., worries about security, preoccupations concerning job security, lack of inclusion, lack of language skills, ..., humans seeking asylum should not be made the causes of these problems and challenges but rather the inadequate political and social treatment of humans seeking asylum, as the actual origins of these problems and challenges should be named and addressed concretely, pragmatically, and sustainably. Too simply put, for example, if there is a lack of language skills, don't make humans seeking asylum the problem, but rather the lack of adequate learning opportunities and incentives and address the latter accordingly, namely by, e.g., increasing the teaching capacities within a school class with children seeking asylum having another first language than the first official language of the context of the school. If some people should feel insecure, concrete security measures (e.g., more presence of police) should be implemented. If some people link threat automatically with humans seeking asylum, some nondiscriminatory awareness-building should be considered. If preoccupations concerning job-security exist, concrete economic steps to increase job-security or to compensate the massive reduction of paid professional tasks by so-called "AI"⁸¹ should be taken. If there is a lack of inclusion, programs for humans seeking asylum and for humans living with humans seeking asylum promoting and fostering inclusion should be provided. And so on ... The fallacy – surprisingly very present in the ethical discourse about humans fleeing or seeking asylum –⁸² should be avoided, e.g., to counter the rise of populist extreme right-wing parties and politicians by not addressing perceptibly and visibly with concrete and immediate actions the real problems but by blaming humans fleeing or seeking asylum for them. In the ethical discourse about humans fleeing or seeking asylum, restrictions for flight, migration, and for asylum-seeking are often presented as the only solution. This alleged absence of alternatives is not only reductionist and does not represent the reality but manifests also a disappointing lack of political, societal, and economic creativity and innovativeness.

Besides that, from an ethical perspective, of course possible problems causing flights and asylum-seeking should be firmly addressed and sustainably resolved⁸³ – for example, persecution, global injustice, famine, poverty, as well as miserable economic and climate conditions – but they cannot be an alternative (as is often inadequately presented in the discourse about fleeing and asylum-seeking)⁸⁴ to immediate and concrete implementation and realization of the human right to asylum. It is only honest to admit that addressing the root causes will take time – more time than present humans fleeing and humans seeking asylum have at their disposal.

Last but not least, numbers – but in front of all – how we deal with numbers matters. First, ethically speaking, it is to avoid seeing numbers. "Refugees are often seen

⁸⁰ Rainer Bauboeck, Julia Mourao Permoser and Martin Ruhs, 'The ethics of migration policy dilemmas.' *Migration Studies* 10:3 (2022), pp. 427-441.

⁸¹ Peter G. Kirchsclaeger, *Ethics and the Digital Transformation of Human Work. The Society, Entrepreneurship, Research-Time Model SERT*. UK: Palgrave Macmillan, 2025.

⁸² Stephen Macedo, 'After the Backlash: Populism and the Politics and Ethics of Migration?' *The Law & Ethics of Human Rights* 14:2 (2020), pp. 153-180.

⁸³ Rainer Bauboeck, 'A mid-level perspective on the ethics of immigration policies.' *Critical Review of International Social and Political Philosophy*, pp. 1-18.

⁸⁴ Bauboeck, 'A mid-level perspective on the ethics of immigration policies', pp. 1-18.

as nothing more than an anonymous mass of people from whom one must isolate oneself.”⁸⁵ We should see an individual human being behind every number.⁸⁶

Second, the European Union consists of 86'061 municipalities. Mathematically, if one would distribute all humans seeking asylum to all municipalities equally, every municipality would welcome 12 humans seeking asylum. To this reality belongs as well the fact that big cities like Rome and Berlin count as 1 municipality. This means that even a large city like Rome, with its 2.76 million inhabitants, or Berlin, with its 3.9 million inhabitants, would only welcome 12 asylum seekers each. This also indicates that there is extensive space for balancing if there should be a necessity in the case of a very small municipality.

Pragmatically speaking, 981'319 humans seeking asylum in the European Union in the year 2024 should be distributed equally to the 86'061 municipalities in the European Union. Mathematically, every municipality would welcome 12 humans seeking asylum.⁸⁷ This pragmatic approach embodies – and this needs to be made transparent right from the start – the ethical problem that the freedom to move and settle freely in the course of seeking asylum would be limited to a certain extent. I would argue only “to a certain extent” because humans seeking asylum should be entitled to indicate their preferences (including reasons for these preferences, e.g., presence of family members) and these preferences should be respected as much as possible relying on the substantial possibilities for balancing thanks to counting big cities as municipalities if there should be a respective need in the case of tiny municipalities.

Beyond that, the numbers show that there would be evidently space for more people in need due to persecution, famine, poverty, miserable economic and climate conditions, ... This analysis takes place in front of a financial background supporting this argument: The financial background consists in the allocation of 3.73 billion EUR in the year 2024 for border-protection and migration by the EU⁸⁸, the allocation of 16.2 billion EUR to support the EU's neighbors as well as international development and cooperation by the EU, the allocation of 1.9 billion EUR for the humanitarian aid programme to respond to global crises by the EU, and the allocation of 11.5 billion EUR for the Neighborhood, Development and International Cooperation Instrument – Global Europe, with a focus on migration in the EU's southern neighborhood and on addressing the root causes of migration from Africa.⁸⁹ At the same time, part of this financial background is also that the member states of the European Union lost 100 billion EUR in 2024 because of harmful corporate tax avoidance.⁹⁰

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⁸⁵ JoeBarth C. Abba. *Friedensethik : auf der Basis der Menschenrechte : eine Orientierung in Zeiten von Migration und wachsender Intoleranz* (München: Verlagshaus Schlosser, 2021), p. 186 (translated by pgk)

⁸⁶ Bruno-Marie Duffé. ‘Quand les migrants nous font faire un «chemin éthique» et nous rappellent au «devoir de fraternité»’, pp. 53-61, at p. 53.

⁸⁷ By this model “Distributing humans, not shifting numbers”, the assumption of unfeasibility of ethically legitimate handling of fleeing and seeking asylum, e.g., in the “Stufentheorie der Migrationsethik” by Adrian Papenhagen (Papenhagen, A. (2024). *Eine Stufentheorie der Migrationsethik. Nomos*), can be invalidated.

⁸⁸ EUR-Lex. *2024 European Union budget* (2024). Online at <https://eur-lex.europa.eu/EN/legal-content/summary/2024-european-union-budget.html> (2025-07-04).

⁸⁹ EUR-Lex. *2024 European Union budget* (2024). Online at <https://eur-lex.europa.eu/EN/legal-content/summary/2024-european-union-budget.html> (2025-07-04).

⁹⁰ European Court of Auditors. *EU fight against systemically harmful tax practices still not watertight* (2024). Online at <https://www.eca.europa.eu/en/news/NEWS-SR-2024-27> (accessed 2025-07-04).

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Is there a human right to reasons for administrative decisions?

Johanna Romare, Johanna Ohlsson & Olof Wilske

When public employees make administrative decisions affecting individuals, they exercise governmental power. The subjects affected by these decisions are often in a vulnerable position, generating an asymmetrical power relationship, which is why reason-giving – justifications – for administrative decisions serves a central role in communicating why a certain decision was taken. The aims of this article are to clarify the legal and philosophical reasons why public authorities have an obligation to justify the decisions they make and explore whether providing reasons for decisions can be seen as a human right. We do this by critically examining the obligation's legal and moral foundations, and we subsequently discuss to what extent it is reasonable to consider it a human right to have decisions justified. We conclude that when sufficient reasons for a decision are missing, the affected individual is deprived of crucial information, impairing their capacity to assess on what grounds the decision was taken, which we argue is a violation of their right to moral autonomy and self-government, and ultimately a violation of their right to justification.

1. Introduction

This article examines whether individuals¹ affected by administrative decisions have a human right to be provided with clarifying reasons for these decisions. By administrative decisions, we refer to the authoritative determinations made by public officers that directly affect the interests of individuals, often without the procedural protections typical of judicial decisions. The background is that administrative decisions made by public officers at governmental agencies often have a significant impact on individuals who are already vulnerable. For instance, public officers issue decisions on solitary confinement of inmates, deportation of asylum seekers, and welfare benefits, such as sickness compensation. In addition, in the case of Sweden, there have been several examples of categorical motivations for decisions, making it hard for individuals to appeal these decisions if necessary, as the actual reasoning is articulated in an unspecific way. The vulnerability is

¹ We use the terms ‘individuals’ and ‘persons’ interchangeably. However, for Kant (persons) and Forst (individuals), we use their own terminology.

relational, and ultimately a question of power asymmetry between the state employee and the individual affected by the decision. This calls for administrative decisions to be carefully reasoned and justified to those affected. In administrative law, the requirement is referred to as an obligation² to give reasons for administrative decisions, which mirrors important principles in a state governed by the rule of law.

Despite the perceived importance of the obligation, public authorities are recurrently criticised for not providing sufficient reasons for their decisions. For example, Sweden has, like many other states, been criticised by human rights committees for inadequate reason-giving. For instance, the United Nations Committee for the Rights of the Child has criticised Sweden for not informing detained children and juveniles of the reasons for the restrictions imposed on them, and for failing to explain the reasons in an understandable manner.³ Another example and potential challenge is explicated by the Swedish Tax Agency, articulating that an excessively inadequate justification in a decision is an example of a procedural error that may result in the decision being overturned upon judicial review.⁴

While the UN criticism is merely one example among many, it highlights a discrepancy between the perceived importance of justifying administrative decisions and their implementation. This discrepancy can be explained in several ways.⁵ Central to these explanations is our suspicion that the obligation to justify decisions appears obscure, stemming from a lack of a coherent rationale. To prevent maladministration, there is a pressing need to provide a comprehensive understanding of this obligation and explain why justification is imperative. Moreover, the examples indicate a relationship between reason-giving and human rights, warranting further scrutiny. UN human rights committees often treat insufficient or missing reasons for administrative decisions as human rights violations. The inclusion of reason-giving as a core component of the right to good administration in Article 41 of the Charter of Fundamental Rights of the European Union (the EU Charter) supports this interpretation, demonstrating its importance for respecting fundamental rights and freedoms.

Therefore, this article addresses three questions: (1) What is the legal basis for providing reasons for administrative decisions? (2) What is the moral basis for providing

² Though the concepts sometimes overlap, we use ‘obligation’ for requirements arising from legislation, or other external requirements, while ‘duty’ is used in the philosophical sense of a moral requirement.

³ United Nations Committee on the Rights of the Child, ‘Concluding Observations on the Fifth Periodic Report of Sweden’ (6 March 2023) UN Doc CRC/C/SWE/CO/5, (accessed 3 December 2024).

⁴ Cf. Högsta förvaltningsdomstolen (Supreme Administrative Court) 2020 not. 34, case no. 2453-20, judgment of 23 December 2020, and Högsta förvaltningsdomstolen (Supreme Administrative Court) 2011 ref. 10, case no. 7262-09, judgment of 21 June 2011.

⁵ E.g., there may be a lack of awareness of the obligation to provide reasons, or differing assessments of what is sufficient; Cf. E. Fura and A. Svensson, ‘Motiveringsskyldigheten ur ett JO-perspektiv’, *Förvaltningsrättslig tidskrift*, 2015:4, (2015) pp. 539–549, and J. Ohlsson, J. Romare, and O. Wilske, ‘Beslutsmotivering som rättfärdigande’, *Förvaltningsrättslig tidskrift*, vol. 2021, no. 5, (2021) pp. 889-910. As argued by Ohlsson, Romare, and Wilske in 2021, there has been, also in the Swedish case, a lack of comprehensive and coherent rationale for the obligation. Building on S. Jägerskiöld, ‘Om motiveringen av förvaltningsbeslut’, *Förvaltningsrättslig tidskrift*, 1961:6, (1961), pp. 305–328, the practice of providing reasons for decisions is seen as a procedural safeguard grounded in rule of law principles. However, in the preparatory works for the Swedish legislation, the obligation is predominantly justified in instrumental and pragmatic terms – based on trust and efficiency – and is framed as a ‘basic guarantee for legal certainty’ (prop. 2016/17:180 p. 188). This suggests a functional rather than principled understanding of legal certainty in the Swedish context.

reasons for administrative decisions? (3) Is it a human right to have administrative decisions justified? Our starting point is that reason-giving embodies a deontological character, aligning with central rule of law principles. Section 2 presents an account of the legal foundations for providing reasons, especially in relation to the rule of law. Section 3 examines reason-giving through Kantian and neo-Kantian lenses, demonstrating that the practice is fundamentally rooted in deontological principles. Lastly, we examine the resources available for considering reason-giving as a human right. While we acknowledge that there may be other reasons than deontological ones (e.g., pragmatic reasons, such as clearly written and exhaustive decisions, leading to fewer appeals, and thus more efficient administration), we seek to examine the arguments for the practice based on a deontological position.

This article proceeds from the premise that legal and ethical justifications are both necessary, but not reducible to one another. Legal norms alone cannot ground the full normative weight of justification obligations, while ethical reasoning, without legal institutionalisation, risks ineffectiveness. By integrating both, we aim to show not only that there is a legal duty to give reasons, but also why such a duty is normatively compelling.

2. The legal obligation to give reasons for administrative decisions

Legal obligations to give reasons for decisions by public authorities exist in many jurisdictions, often within administrative law, but it is sometimes also regarded as a constitutional right.⁶ On a European level, the EU Charter guarantees in Article 41 a right to good administration including the right to have one's affairs handled impartially, fairly, and within a reasonable time.⁷ The principle of good administration is nevertheless complex, being both legal and extra-legal, a subjective right and a code of conduct, while at the same time also a condition for a functioning government, and a malleable vocabulary of power.⁸

More specifically, Article 41.2 (c) requires the administration to give reasons for its decisions, notably to prevent administrative arbitrariness, to ensure consistent practice, to provide a tool for administrative accountability and judicial review, and to fulfil an informative function vis-à-vis the individuals affected by such decisions.⁹ Reasons for decisions must always include their legal basis. In some cases, this might be sufficient, especially when decisions are beneficial for the recipient. However, the requirements regarding precision increase with the degree of administrative discretion, and when decisions penalise or are otherwise disadvantageous for the recipient. Reasons must be

⁶ See e.g., J. L. Mashaw, 'Reasoned Administration: The European Union, the United States, and the Project of Democratic Governance', *The George Washington Law Review*, 76, (2007), pp. 99–124, and I. Opdebeeck & S. De Somer, 'The Duty to Give Reasons in the European Legal Area: A Mechanism for Transparent and Accountable Administrative Decision-Making? A Comparison of Belgian, Dutch, French and EU Administrative Law', *Public Administration Yearbook*, 2016:2 (2016), pp. 97–148.

⁷ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, Art. 41, available at: <https://www.refworld.org/docid/3ac6b3b70.html> (accessed 3 December 2024).

⁸ I. Koivisto, 'From Moral Rules to Individual Rights – and Beyond? The Institutionalization of Good Administration in Finland and in Europe', *Förvaltningsrättslig tidskrift*, 2018:1, (2018), p. 80. Koivisto argues that it 'could even be labelled a "magic concept"', *ibid.* pp. 71–72. Koivisto here refers to broad concepts with possibly conflicting definitions, often normatively attractive, obscuring conceptual opposites, and usually popular and fashionable.

⁹ J. Reichel, *God förvaltning i EU och i Sverige*, (Stockholm: Jure, 2006), pp. 259 ff.

clear and unambiguous, and normally delivered in writing.¹⁰ Nevertheless, it is not easy to legally formulate the exact scope of the obligation to state reasons.

Regardless of jurisdiction, the rationale for providing reasons is ultimately rooted in the rule of law, which is enshrined in many constitutions and other foundational documents. For instance, the European Union has the rule of law as one of its fundamental values, according to Article 2 of the Treaty on the European Union (TEU). The EU has adopted a rather elaborate idea of the rule of law, defined along the following six principles: legality, implying a transparent, accountable, democratic, and pluralistic process for enacting laws; legal certainty; prohibition of the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, with effective judicial review, including respect for fundamental rights; separation of powers; and equality before the law. These principles have been recognised by the European Court of Justice and the European Court of Human Rights. In addition, the Council of Europe has developed standards, and issued opinions and recommendations, that provide well-established guidance to promote and uphold the rule of law.¹¹

Having said that, there is no single definition of 'rule of law' upon which everyone agrees. A common distinction is between formal, procedural, and substantive aspects of the rule of law. The formal aspects include consistency and generality of norms, the procedural aspects incorporate a right to a fair hearing, and the substantive aspects add layers of human rights, such as non-discrimination.¹² The duty of administrative agencies to provide reasons for their decisions is an aspect of the procedural and substantive elements of the rule of law, and is analogous to the duty to provide reasons in court cases, which is derived from Article 6.1 of the European Convention on Human Rights. When a court decides a case, the provision of reasons shows the parties involved that their case has truly been heard. The reasons given must be such as to enable the parties to make effective use of any existing rights to appeal, and must, at the very least, examine the litigant's main arguments.¹³ Consequently, legal protection of the individual is a key concern of the duty to provide reasons.¹⁴

From a constitutional point of view, the rule of law can be said to limit the exercise of public authority and power by preventing arbitrary and illegal actions, and decisions. Its purpose is to provide order and foreseeability for those subject to public authority. In this endeavour, the statement of reasons for decisions is a tool for assessing the legality and legitimacy of a given decision, but may also be seen as an integral part of the rule of law. Thus, as elusive a concept as the rule of law may be, it is the foundation of all legal orders and might even be seen as a logical requirement: if the law can be ignored, there is no rule of law. Without the rule of law, there is no need for law at all.

How does the rule of law require that reasons be provided for decisions? As Mathilde Cohen has argued, a legal system would not conform to the rule of law if its

¹⁰ C. Lebeck, *EU-stadgan om grundläggande rättigheter*, 2nd rev. ed., (Lund: Studentlitteratur, 2016), p. 428.

¹¹ European Commission, 'What is the Rule of Law?', available at: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/what-rule-law_en, (accessed 30 April 2025).

¹² J. Waldron, 'The Rule of Law', in E. N. Zalta and U. Nodelman (eds.), *The Stanford Encyclopedia of Philosophy*, Stanford University, 2023. <https://plato.stanford.edu/archives/fall2023/entries/rule-of-law/> (accessed 11 February 2025).

¹³ Cf. European Court of Human Rights, *H. v. Belgium*, App. No. 8950/80, 30 November 1987 (ECtHR), and European Court of Human Rights, *Hirvisaari v. Finland*, App. No. 49684/99, 27 September 2001 (ECtHR).

¹⁴ Cf. Obdebeek and de Somer, 2016.

decisions were not supported by publicly articulated reasons.¹⁵ Thus, a central tenet of the procedural conception of the rule of law is legal predictability: public authority should be exercised in a predictable and consistent manner, and this may be ensured by providing reasons. According to a substantive conception of the rule of law, its main purpose is to provide just outcomes. Unjust outcomes and abuse of power are less likely if (intelligible and reasonable) reasons must be provided by decision makers. It should be said that the obligation to provide reasons for administrative decisions has a close affinity to judicial reason-giving.¹⁶ Traditionally, the requirement has been, and still is, much stronger in judicial settings – a fact that is due to both varying legal requirements in different jurisdictions, and to professional orthodoxy in the judiciary. In an administrative context, the obligation has gradually evolved during the twentieth century, by and large relying on a simplified judicial model. For example, the jurisprudence of the European Court of Human Rights (ECtHR) has applied the right to criminal defence in Article 6 of the European Convention on Human Rights (ECHR) analogously in administrative matters.¹⁷

To a certain degree, there is an inherent requirement to provide reasons for administrative decisions in a legal order governed by rule of law principles. This implies that decisions by public authorities must at least refer to relevant legal rules, which may be understood as an embryonic requirement to provide reasons for decisions. However, the extension of ‘legal rule’ may vary between different jurisdictions depending on various legal traditions. For example, in comparison with many other jurisdictions, Swedish legal culture is permeated by a high degree of statutory positivism, especially in public law. This means that for a norm or principle to be legally relevant, it must, as emphasised by legal positivism, be expressed through positive law (legislation) in one way or another. Swedish legal positivism illustrates how the extension of the rule of law can vary as a result. In Sweden, this results in a legal system where statutory law is paramount, contrasting with jurisdictions where unwritten principles or judicial precedents play a more significant role. At the same time, the rule of law, understood as the principle of legality, is deeply entrenched in Swedish legal culture, and has been so since the dawn of the legal order. Sweden and Finland are similar in that standards and principles for good administration in a legal context have been elaborated on a case-by-case basis through what might be called ‘ombudsprudence’; that is, decisions by the Parliamentary Ombudsmen and the Chancellor of Justice. Such cases are usually triggered by ‘motivated irritation’, which is when a citizen has reason to be irritated due to a civil servant’s action or negligence, yet the action or negligence is not severe enough to constitute grounds for appeal or impeachment. Bad administrative behaviour often falls into the gap between the acceptable and the legally problematic.¹⁸ This approach further exemplifies how the extension of the rule of law can vary, as it relies on supervisory institutions to address issues that statutory law may not explicitly cover.

Now, we have observed a strong link between rule of law principles and the obligation to give reasons for administrative decisions. The obligation to give reasons is

¹⁵ M. Cohen, ‘The Rule of Law as the Rule of Reasons’, *Archiv für Rechts- und Sozialphilosophie*, 96:1, (2010), pp. 1–16.

¹⁶ For a discussion on judicial reason-giving see e.g., M. Cohen, ‘When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach’, *Washington and Lee Law Review*, 72:2, (2015), pp. 483–571. The term ‘judicial’ refers to decision-making by courts, as distinct from administrative agencies.

¹⁷ The Council of Europe has also issued a recommendation on good administration in Council of Europe: Committee of Ministers, *Recommendation CM/Rec(2007)7 of the Committee of Ministers to Member States on Good Administration*, adopted by the Committee of Ministers on 20 June 2007.

¹⁸ Koivisto, 2018, p. 76.

intimately connected to a procedural or even substantive concept of the rule of law. Research shows that from a legal perspective it is conceived as a procedural safeguard – as an instrument for regulating unequal power relationships between authorities and individuals.¹⁹ As a part of good administration, it has even been discussed as evolving towards an individual human right.²⁰ Thus, an issue here present is whether the obligation of state authorities to give reasons can be understood as a (human) right for the individual subject of a decision to obtain reasons. We will return to this discussion in Section 4, but let us first discuss the moral grounds for justifying administrative decisions.

3. Is there a moral duty to give reasons for administrative decisions?

As noted, from a legal point of view, providing reasons for administrative decisions ensures they follow legal rules and just considerations rather than an arbitrary use of power. With the aim of clarifying the rationales of reason-giving, this leads us to an elaboration of the moral foundation for the practice. Administrative decisions often entail significant consequences for personal autonomy and well-being, necessitating that public authorities justify their decisions. In this section, we contend that a Kantian deontological framework provides a compelling moral foundation for this obligation, emphasising respect for the inherent dignity of persons. Furthermore, we aim to demonstrate that such a theory not only aligns with the core principles of the rule of law, but also offers robust philosophical support for its practice. This argumentation will be developed in three steps, based on: (1) a duty to respect the moral autonomy of individuals, (2) a right to freedom from the arbitrary will of others, and 3) the idea that individuals are justificatory beings with an inherent right to justification.

However, before addressing the moral arguments for justifying administrative decisions, we must first define what justification entails. It is crucial to distinguish moral justification from other forms of justification, such as legal justification, briefly covered in the previous section, as well as political or pragmatic justification.²¹ We then return to the moral foundation for reason-giving in public administration.

¹⁹ Opdebeek and De Somer, 2016, p. 135; Ohlsson, Romare and Wilske, 2021, p. 902. In Sweden, the obligation to provide reasons for administrative decisions is expressly stipulated in the Swedish Administrative Procedure Act (SFS 2017:900), §32, which states that decisions presumed to affect someone's situation in more than an insignificant manner must be accompanied by clarifying reasons, unless it is manifestly unnecessary. A rationale for a revision in 2017 was to modernise and clarify the principles of good administration, ensuring that administrative processes are transparent, efficient, and fair. This was initiated due to the need to align with broader European standards, including those in the EU Charter of Fundamental Rights. This is supported by the preparatory work to SFS 2017:900, where the obligation is described as a 'basic guarantee for legal certainty', Swedish Government Bill, Prop. 2016/17:180, p. 188. In earlier administrative law doctrine, the obligation to give reasons was linked to several procedural safeguards, which serve the purpose of enhancing the legal protection of individuals against abusive state power. In this context, the rationale for providing reasons for decisions is clearly connected to demands for legal certainty and principles of the rule of law. See S. Jägerskiöld, 'Om motiveringen av förvaltningsbeslut', *Förvaltningsrättslig tidskrift*, 1961:6, (1961), pp. 305–328 for an interpretation of the obligation and its relation to the rule of law before the 2017 amendment.

²⁰ Opdebeek and De Somer, 2016, p. 140 f.

²¹ J. Ohlsson, 'On the Ethical, Moral and Pragmatic Justification of Political Decisions', *Ethical Thought*, 19:2, (2019), pp. 87–97, offers a typology differentiating between moral, ethical, and pragmatic justification which can be seen as an analytical roadmap. Developing this further lies beyond the scope of this article.

3.1. Justification as reason-giving

According to a standard dictionary definition, justification is '[t]he action of or result of showing something to be just, right, or reasonable'.²² This implies that justifying a decision involves providing reasons that demonstrate its fairness, correctness, etc. Thus, lexically, justification involves explaining the actions' rationale, which is why the obligation to give reasons for administrative decisions can be articulated in terms of an obligation to justify them.

We understand justification as providing normative reasons for an action or the normative arguments for undertaking a particular decision, where a reason is what Thomas M. Scanlon has described as 'a consideration that counts in favour of something'.²³ However, such reasons can be of various sorts: legal, moral, pragmatic, etc. Subsequent questions concern, then, what distinguishes the different types of justifications from each other, and what kind of justification public officers are expected to provide.

Distinguishing between different types of justification is crucial, as they relate to various normative frameworks and, thus, types of reasons. For example, in Swedish preparatory works, the obligation to provide reasons is supported by mixed and sometimes conflicting arguments, including both rule of law principles as well as instrumental and pragmatic arguments about trust and efficiency.²⁴ As indicated earlier, mixed arguments for why reasons ought to be provided may lead to confusion about when sufficient reasons have been given.²⁵ Using Swedish preparatory works as an example, we see that the arguments for the obligation relate to different types of reasons: some are pragmatic, others procedural, and some moral.

Our concern here is moral justification, which concerns the rightness or wrongness of an action (e.g., a decision) according to a normative moral standard, while legal justification can be said to concern reasoning and principles that render an action forbidden or permissible under specific legal standards and principles grounded in the rule of law, as already shown in section 2 above. Another type of justification is pragmatic justification, which involves practical or strategic reasons for political decisions, amongst others. While we consider the types of justifications to be normative, they relate to different types of reasons (moral, legal, pragmatic). Thus, they involve evaluative judgments about what ought to be done but are grounded in different normative frameworks. Nevertheless, there are overlaps and discussing legal as well as political justification separately furthers the understanding of the types of justification, as these could be of ethical, moral, or pragmatic character. While various types of reasons can be useful in clarifying the rationale of reason-giving, this article explores whether understanding this foundation can aid in interpreting the obligation as a legal demand. We therefore concentrate solely on moral and legal justifications and their interconnectedness.

In a broad sense, legal and moral justification are sub-types of rational justification, as they involve reasons that support a claim or an action that is logically sound.²⁶ However,

²² Oxford English Dictionary, 'Justification (n.)', September 2024, <https://doi.org/10.1093/OED/5642701592> (accessed 11 February 2025).

²³ T. M. Scanlon, *What We Owe to Each Other*, (Cambridge: Belknap Press of Harvard University Press, 1998), p. 17.

²⁴ Swedish Government Bill, Prop. 2016/17:180.

²⁵ Cf. n. 5.

²⁶ This may hold for other types of justifications as well. Whether they constitute a rational justification depends on the context and type of justification. For example, pragmatic reason relates to rational justification in that pragmatic reasons can provide a valid basis for justifying beliefs, actions, or decisions, especially in relation to means-end-reasoning.

a purely formal definition of justification has been criticised. Legal coherence theorists, such as Aleksander Peczenik, argue that legal justification requires deep justification that is beyond logical reasoning and legal validity. When it comes to the 'depth' of justification, it is helpful to differentiate between *formal* and *material* justification. Formal justification is achieved when the procedural or logical aspects are met (i.e. there are correct and transparent references to the accurate legal framework), while material justification is achieved once the contextual circumstances as well as the normative rationale for a decision are clearly communicated. As soon as one claims that one principle carries more weight more than another, one is, by definition, faced with the question: 'Why?'.²⁷ We interpret that as a matter of material justification, that is, including a normative rationale. Nevertheless, Peczenik highlights a challenge with deep justification in the sense that it 'constitutes a peculiar mixture of theoretical propositions and practical (normative or evaluative) statements, and yet is supposed to give knowledge of valid law or of juristic meaning of the sources of the law'.²⁸ This, we argue, indicates a need to explore further the theoretical mixture through a systematic assessment combining legal and ethical analysis.²⁹

3.2. *The argument from moral autonomy*

Kant was convinced that human reason alone is the foundation for morality, and in this lies the inherent dignity of persons.³⁰ By 'reason', he refers to the capacity to go beyond our nature and inclinations. Practical reason is the capacity to will, which enables us to act in contrast to the laws prescribed by nature by conceiving principles for action and choosing to act according to them.³¹ Thus, as rational beings we have the capacity of an autonomous will. It is from this idea that Kant formulates the introduction to his *Groundwork of the Metaphysics of Morals*: 'It is impossible to think of anything at all in the world, or indeed even beyond it, that could be considered good without limitation except a good will',³² and it is the good will that determines an action as moral. However, the will does not eliminate humans' naturally-given impulses but conveys the ability to distance ourselves from them as criteria for morality.

The categorical imperative serves as the supreme principle of morality – acting as a test for determining whether a maxim for action can be considered as part of the system of moral law that applies to all rational beings. The first formulation of the categorical imperative – the principle of universality – expresses this idea by requiring that a maxim can be willed as a universal law without contradiction, ensuring that moral principles are grounded in reason and apply equally to all rational agents.³³ Following Höffe's interpretation, the categorical imperative has a dual meaning.³⁴ It constitutes the highest principle (moral law) for all moral action but is at the same time the ultimate ground for

²⁷ A. Peczenik, *On Law and Reason*, (New York: Springer, 2009), p. 67. As J. C. Hage positions Peczenik's work (ibid., p. vi), he makes it clear 'that Peczenik rejected the idea of foundations that are beyond discussion'. Peczenik sees coherentism as the way to deal with the position that everything can be doubted.

²⁸ ibid., p. 162.

²⁹ This renders a discussion of (1) the conditions for justifications, and (2) the quality of justifications. We hold that aspects of transparency, coherence, and comprehensibility, as well as linguistic precision are central to the quality of justifications of administrative decisions.

³⁰ I. Kant, *Groundwork of the Metaphysics of Morals*, ed. M. Gregor, Cambridge Texts in the History of Philosophy, (Cambridge: Cambridge Univ. Press, 1997), 4:434–436.

³¹ ibid., 4:412, 4:432.

³² ibid., 4:393.

³³ ibid., 4:421.

³⁴ O. Höffe, *Immanuel Kant*, 5th rev. ed., transl. F. Linde, (Stockholm: Thales, 2004), p. 175.

being able to act in conformity with the moral law at all, i.e., to self-legislate. However, acting in conformity with the moral law is not a sufficient criterion for moral action. For this purpose, Kant distinguishes between *legalität* (acting in conformity with the moral law) and *moralität* (acting out of duty).³⁵ While conformity with the moral law can be driven by self-interest, morality requires that the agent acts out of duty, motivated solely by respect for the moral law. The latter means, as described in the paragraph above, that the possibility of moral agency lies in the capacity of the will to follow its own law. This is also why the good will is crucial for the morality of actions.

The second formulation of the categorical imperative requires of one to ‘act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means’.³⁶ This principle – the principle of humanity – requires that we treat others as *ends in themselves* by respecting their capacity to self-legislate. From this follows that it would be a moral wrong to influence someone by, for example, withholding information, as it would undermine their ability to freely act from duty. Thus, from a Kantian understanding, failure to justify administrative decisions would disregard the moral autonomy of persons, treating persons merely as passive recipients of authority rather than ends in themselves. Instead, providing reasons enables persons to understand and critically evaluate the rationale behind decisions, thereby respecting their autonomous will.

3.3. *The argument from external freedom*

Kant upholds a distinction between morality (doctrine of virtue) and politics (doctrine of right). His doctrine of right (*Rechtslehre*) centres on the legal and institutional conditions necessary for external freedom; that is, the conditions under which persons can coexist without arbitrary interference from other people or public authorities.³⁷ Thus, ‘right’ is a concept of reason, dealing with principles that regulate external freedom in relationship with others, not of internal moral motives. Nevertheless, similar to the moral law, the rules that govern people’s interactions must be able to be universally willed without contradiction and derived *a priori* – from pure reason. Consequently, the two domains are complementary in that morality underpins the legitimacy of political authority, as the laws governing external freedom must be consistent with the moral principles that respect the dignity of persons.

The doctrine of right requires that authorities operate through public laws, meaning that state power must always be exercised according to law, not arbitrary will.³⁸ Hence, the idea of a *Rechtsstaat* is indeed present in his political theory, ensuring that all laws and state actions respect the freedom of persons under universal (i.e., non-arbitrary) legal principles, and which operates in such a manner that makes its actions open to scrutiny and rational justification. Kant’s demand for public reason is not, however, merely a formal requirement but indeed also a substantive principle of justice, as it is rooted in the respect for persons as free and rational agents. An interpretation of this is that Kant

³⁵ See e.g., Kant, 1997, 4:397–399.

³⁶ *ibid.*, 4:429.

³⁷ I. Kant, *The Metaphysics of Morals*, 2nd ed., ed. and trans. by M. Gregor and L. Denis, (Cambridge: Cambridge University Press, 2017), 6:221–223.

³⁸ *ibid.*, 6:304–305, where Kant stresses that the legitimacy of state power depends upon its subordination to laws that are public and universally valid. Only then can the external freedom of all be preserved. See also *ibid.*, 6:230–233, where Kant discusses the right to property, and argues that rightful possession is performed in accordance with a public legal order.

provides a foundation for limiting the exercise of power and establishes a principle very similar to contemporary ideas of human rights.

A Kantian understanding of the rationale for justifying administrative decisions would thus not only reference the autonomous will of affected persons and fulfil the normative requirements of morality (universality). Opaque or unjustified decisions would also amount to an exercise of arbitrary power, subordinating the person's external freedom to the unchecked discretion of the authority. Thus, a lack of justification for administrative decisions would constitute a violation of external freedom, as it would lack the transparency required for rational endorsement by affected persons. This aligns well with contemporary interpretations of the rule of law as it requires that public officers act predictably, transparently, and in accordance with principles that persons can rationally endorse. Thus, providing justification is ultimately required to prevent the exercise of arbitrary power. From a moral perspective, providing reasons for decisions respects persons' autonomy by enabling them to evaluate the decision. Together, autonomy and freedom highlight the centrality of procedural justice and the indispensability of justification in ensuring that public administration operates transparently and consistently with the dignity and freedom of persons. Accepting the argument that morality underpins the domain of right, the obligation to justify administrative decisions can be derived from the importance of public reason, supported by Kant's principle of universality.

3.4. Merging the moral and political domains into a unified theory of justification

Forst's theory of justification constitutes an important contribution to contemporary political and legal philosophy, especially in relation to power and legitimacy. At the core of his theory is the idea that justification is not merely a normative aspect of power but its very structure. Further, Forst's theory of justification can be understood as an attempt to bridge Kant's distinction between the moral and political domains. By viewing justification – reason-giving – as a common foundation for both morality and politics, he places the individual's capacity to challenge power at the centre of his theory. Like Kant, he emphasises that norms must be justifiable according to universal principles but extends the principle of universality to the political sphere: exercises of power within the political sphere are not legitimate if they cannot be justified to those they affect.³⁹ Consequently, the practice of reason-giving belongs to a fundamental normative category underlying the legitimacy of moral and political norms.

While building on central parts of Kant's theory, he differs in his understanding of autonomy in that he sees humans as justificatory beings – beings that justify what they think and do.⁴⁰ This means that they not only act autonomously but also have the capacity and duty to justify their actions and beliefs to others. In doing so, this adds a layer of social and communicative responsibility that is a fruitful addition for the analysis of administrative reason-giving, not least his critique of power and domination.⁴¹ This goes back to his human anthropology – what it means to be human. For a society to be just, it must have a justified normative order, and respect an individual's right to justification.

³⁹ This thesis permeates many of Forst's writings, e.g., R. Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice*, (New York: Columbia University Press, 2014b); R. Forst, 'Noumenal Power', *The Journal of Political Philosophy*, 23:2, (2015), pp. 111–127; R. Forst, *Normativity and Power*, (Oxford: Oxford University Press, 2017).

⁴⁰ See e.g., Forst, 2014b, p. 13.

⁴¹ *ibid.*, p. 213.

Forst's claim that every person has a fundamental right to justification means that any action or decision affecting someone must be justified with reasons that the affected person can accept as valid. This relates to his criteria of reciprocity and generality as criteria for justification. Reciprocity means that justifications – in Kant's terms *practical reasons* – must be mutually acceptable. This means that they must be acceptable to all affected parties based on their own reasoning capacities.⁴² Generality requires that the reasons given must apply universally to all in a similar situation and cannot be based on particularistic principles – again, very similar to Kant's principle of universality.⁴³ These requirements ensure that justification cannot be a unilateral process in which an authority imposes its reasons on others, but must instead be an open and reflexive order in which all affected have a right to participate. He thus clearly stresses that the dignity of persons requires that they are treated as autonomous agents with the capacity for moral self-government.⁴⁴

An important distinction for our aim is that of the phenomenal and noumenal.⁴⁵ This is yet another legacy from Kant, where the latter realm is where moral laws exist as pure principles of reason, while the former is the empirical context in which these laws are applied. Forst relates these concepts to *power* by showing how power operates not just as visible, coercive force in the phenomenal realm, but also as a structure that shapes the grounds for justification. For this purpose, he introduces the concept of 'noumenal power' to refer to power that operates at the level of justification – the ability to shape the justifications that underlie social and political orders.⁴⁶ However, noumenal power is not detached from the phenomenal realm. In fact, noumenal power is indeed exercised through institutions, norms, and discourses in the phenomenal world. To phrase it in Forst's own words: '[...] the original phenomenon of power is of a noumenal, intellectual nature: *to have power means to be able – and this comes in different degrees – to influence, determine, occupy or even to seal the space of reasons for others*'.⁴⁷ He thereby aims to bridge the noumenal and phenomenal realms by showing how power functions both as a framework for justification, through political and social institutions, and for decision-making.

Ordering deportation in asylum cases can exemplify how noumenal power could be exercised in the phenomenal world.⁴⁸ In such cases, an individual's legal/factual

⁴² Forst 2014b, p. 6, 21 f.

⁴³ *ibid.*

⁴⁴ Forst 2014b, p. 55, Forst 2017, p. 21. Cf. Kant's term 'self-legislation', which in our interpretation is narrower in scope than 'self-government', as the former refers to personal autonomy only in the moral domain.

⁴⁵ The distinction is addressed in detail in Forst, 2015, pp. 111–127. See also R. Forst, 'Justifying Justification: Reply to My Critics', in R. Forst, ed., *Justice, Democracy and the Right to Justification: Rainer Forst in Dialogue*, (London; New York: Bloomsbury Academic, 2014a), pp. 169–216.

⁴⁶ Forst, 2015, p. 112, where he states that 'I want to claim that the real and general phenomenon of power is to be found in the noumenal realm. [...] I suggest that the essential point about power is that in characterizing a situation as an exercise of power, we do not merely give an empirical description of a state of affairs or a social relation; we also, and primarily, have to place it in the space of reasons, or the normative space of freedom and action'.

⁴⁷ Forst, 2014a, p. 179 f.

⁴⁸ For a discussion on the role of reasons for decisions that exemplifies the exercise of noumenal power in the phenomenal world, see Johan Rochel's work on the principle of proportionality and procedural guarantees in the handling of admission applications within EU immigration law. Rochel argues that '[i]t requires the public authority to be able to justify its decisions in the form of reasons that are understandable for the affected person. By getting notified about the reasons, the affected person or entity is able to ascertain his or her legal position and the associated rights and obligations. From a general point of view, the law and its application appear transparent, understandable, and

situation is directly affected by what is considered legitimate grounds – justifications – for decision-making. Another example of exercising noumenal power is communicating opaque or non-existing reasons for administrative decisions, not transparently or publicly justified to those affected. Thus, noumenal power does not have to involve direct control but instead shapes the reasons and norms underlying what is perceived as legitimate decisions. This gives a clear account of the importance of justifying administrative decisions. If a public officer issues a decision without explaining its justification or formulates it in a way that makes it difficult for the individual to understand the grounds of the decision, this restricts the individual's ability to contest and influence the power exercised over them. In this way, authorities affect not only an individual's legal status through noumenal power but also their moral agency. Thus, his analysis of noumenal power demonstrates that the exercise of power is problematic not only when it is repressive in a direct sense, but also when it limits the individual's ability to understand and challenge justifications.

Forst's theory comprises two aspects of justification: the duty of agents to provide justification, and individuals' right to justification.⁴⁹ The first aspect speaks directly to principles of the rule of law; for instance, the minimum requirement of legality as central to a right to reasons for administrative decisions. The second aspect explicates that the right to justification is a communicative act, which is both a moral duty of administrative decision makers and the right of the individual receiving the decision, and hence affected by it. If the use of power is legitimate only when it can be justified to those affected, it follows that administrative decisions must be articulated in a way that enables rational understanding and challenge. A public officer that issues decisions without explaining their grounds, violates the individual's right to justification. In Forst's model, this would constitute an unacceptable form of noumenal power, where certain agents are allowed to dictate what counts as a legitimate reason without these reasons being open to scrutiny by those affected. Following Koivisto (section 2), poor administrative behaviour tends to fall into a gap between the legally acceptable and problematic, which we interpret as a communicative challenge adding to the necessity of clarifying the scope of reasons for decisions.

It is important to add that Forst's theory of justification highlights the limitation of formal legality. His analysis shows that it is insufficient for administrative decisions to be merely formally correct; they must also be transparent and justified in a way that allows citizens to understand and, if necessary, contest them. Thus, the two aspects of justification mentioned above cannot be separated. By analysing power through the lens of justification, Forst's theory allows us to understand why legality alone is not enough – decisions must also be justified to those affected by them.

Following the discussions in sections 2 and 3, we land in a position that sees the practice of reason-giving as a question of a right to a reasoned decision. What is not completely clear, however, is if this right could also be understood as a *human right*. Section 4 will explore this question.

hence legitimate.' J. Rochel, 'Working in Tandem; Proportionality and Procedural Guarantees in EU Immigration Law', *German Law Journal*, 20, (2019), p. 101.

⁴⁹ Forst, 2014b, p. 21.

4. Is there a human right to reasons for administrative decisions?

Human rights have been defined in various ways depending on the perspective adopted. In general, they are understood as universal and inalienable rights that belong to all human beings by virtue of their humanity, formulated in terms of legitimate freedoms and claims against the state. Kant has had a profound influence on contemporary discussions of human rights, as it implies universal moral duties that protect human dignity. Here, the principle of humanity, which demands that we always treat humanity, whether in ourselves or others, as an end in itself and never as a mere means, has been widely interpreted as a moral foundation for human rights – including individual claims such as a right to personal autonomy.

Kant's moral philosophy provides us with support for seeing justification as a *moral duty* grounded in the principle of humanity. If treating persons as ends in themselves requires recognising their capacity for self-legislation, then it follows that public authorities have a moral duty to justify their actions to those affected. Nevertheless, having a moral duty does not necessarily correspond to a claimable human right. While in a Hohfeldian claim-right sense rights are correlatives, and, thus, imply corresponding duties, the opposite does not hold.⁵⁰ Thus, further argumentation would be needed to maintain the assumption that there is a right to justification for administrative decisions, for example that receiving such justifications is a necessary condition for persons to be able to exercise their capacity for self-legislation. It should be stressed that 'necessity' in this context is to be understood as a deontic necessity, i.e., it is necessary in a noumenal sense, not by being derived from empirical facts or social contingencies. Otherwise, it would be nothing more than a derived human right, and not an inherent human right.

Would it instead be possible to suggest that a human right to justification for administrative decisions could be derived from Kant's political philosophy? As previously maintained, we must distinguish between the different domains of his philosophy. In his political philosophy, Kant is primarily concerned with external freedom of persons, which requires the state to establish a lawful condition in which persons can coexist under principles that secure their external freedom. One path could be to argue that external freedom is itself a fundamental human right – a right that exists prior to a particular legal order – and that a right to justification for administrative decisions can be derived from it. Nevertheless, the character of this right is still debateable: is justification for administrative decisions a human right or should we understand it in a juridical sense, as a condition for a legitimate political and legal order?

While it is possible to dig even deeper into interpretations of Kant, we will now return to Forst, as he builds on Kantian ideas but places a right to justification at the core of his theory. He argues that the right to demand justifications for the exercise of power is fundamental to a just society, as it ensures that individuals are treated as equal participants in a legitimate order. For Forst, human rights are those fundamental norms that must be justifiable to all affected parties based on the principles of reciprocity and generality. This perspective, while Kantian in spirit, departs from Kant's political theory by more explicitly grounding rights in a discursive and justificatory process rather than in the formal requirements of moral autonomy and external freedom.

As discussed, justification is central to Forst's theory of power, justice, and legitimacy. He argues that power must always be justified to those affected by it.

⁵⁰ W. N. Hohfeld, *Fundamental Legal Conceptions Applied as Applied in judicial Decisions*, 3rd reprint, org. 1919, (New Haven: Yale University Press, 1964), p. 36 f.

Consequently, the legitimacy of power depends on its justification being accessible, transparent, and mutually acceptable. In this context, the question of whether public authorities have a duty to justify their decisions becomes crucial. We have already seen how Forst distinguishes between phenomenal and noumenal power. When public authorities issue decisions without providing adequate justifications, they exercise noumenal power in a way that limits the individual's ability to understand and challenge the decision. This can be argued to constitute a potential violation of moral autonomy. Since Forst sees justification as a necessary component of legitimate power, he would likely argue that the obligation of public authorities to justify their decisions is not merely an administrative norm but a moral demand, and hence also a human right.

Forst develops the idea that '[p]receding all demands for concrete human rights, there is one basic right being claimed: the *right to justification*'.⁵¹ The quote illustrates that Forst is explicit in claiming that the right to justification is not in itself a human right. It is a basic moral and political principle from which human rights can be derived. Given this interpretation, it is reasonable to argue that a human right to receive justifications for administrative decisions can be derived from the right to justification. This would mean that individuals affected by administrative decisions have the right to understand the reasons behind those decisions, ensuring transparency and accountability in governance. Surely, a human right to justified administrative decisions is not a codified human right, but based on the reasoning above, it is clearly possible to be seen as derived from a basic right to justification.

The vast literature on the concept of human rights provides various definitions and understandings of what human rights mean. We argue, along with many others, that human rights are fundamentally about protecting individuals from arbitrary interference and abuse of power by the state. Both Kant and Forst reinforce this by asserting that individuals have a right to demand reasons for actions that affect them. Nevertheless, while Kant maintains a distinction between the moral and political domains, Forst's theory of a right to justification merges them into a unified theory. He integrates moral autonomy and political freedom, rendering them interdependent. This makes autonomy directly relevant to political and legal structures and practices, ensuring they are justified to all. By emphasising public justification, Forst addresses issues of power in ways that Kant does not fully anticipate. Thus, Forst's theory highlights the vulnerability of individual subjects to the decision-making of others, thereby addressing the power asymmetry between the officer issuing the decision and the person it affects.

Forst's conception of a right to justification maintains that public authorities cannot impose decisions without providing valid reasons, thereby safeguarding individuals' autonomy. Thus, this right is essential for ensuring procedural justice, as it allows individuals to understand the rationale behind decisions and to challenge them if they believe they are unjust.

While it is true that the obligation to give reasons appears as a positive obligation embedded in legal rights, such as the right to a fair trial, or as a right to good administration, we argue that the practice of reason-giving cannot be wholly reduced to such derivative obligations. Instead, drawing on Forst's account of the 'right to justification', we maintain that being provided with intelligible reasons is a precondition for the exercise of moral and political autonomy, and, hence, a candidate for recognition

⁵¹ Forst, 2014b, p. 205.

as a human right in its own right. Thus, this right is not merely instrumental to other rights, but constitutive of the normative legitimacy of public authority itself.

While a right to justification of administrative decisions may not be explicitly listed in conventional human rights documents, we argue that it can be supported through a broader interpretation of existing rights, such as the right to a fair trial and protection against arbitrary detention. In the context of public administration, reason-giving is central to respecting, protecting, and providing particular rights claims of the individual; for instance, the right to equal treatment or equal protection of the law (the Universal Declaration of Human Rights, UDHR, Article 7). Additionally, the right to a fair trial, as articulated in Article 6 of the ECHR, includes the right to a fair and public hearing by an independent and impartial tribunal. This right ensures that individuals are informed of the reasons behind judicial decisions, which is a form of justification. Similarly, the right to be treated fairly by the court (Article 8, UDHR) and the right to protection against arbitrary detention (Article 9, UDHR) imply that individuals should be given reasons for decisions that affect their rights and freedoms. By interpreting these rights broadly, one can argue that the right to justification is an essential component of ensuring fairness and preventing arbitrary actions by public authorities.

As stressed in section 2 above, the right to good administration, enshrined in Article 41 of the EU Charter, explicitly includes the right to be given reasons for administrative decisions. While not expressed as a human right, it reinforces the principles of respect for personal autonomy and transparency, which are integral to both the EU Charter, and broader human rights frameworks. This is also a way of reinforcing the rule of law principles. Yet, these rights are to be understood as legal rights, possibly derived from Kantian political philosophy. Alternatively, they can also be seen as human rights, based on Article 41 in the EU Charter and following the Forstian basic right to justification and its interconnection to the basic structure of a democratic society. In addition, transparency ensures that the decisions of public authorities are open to scrutiny, preventing secretive and potentially abusive practices. This openness – or in Cohen’s terminology, predictability, helps to prevent arbitrary and abusive use of power by the state, and to secure just outcomes. Transparency thus acts as a safeguard against the misuse of power (and hence counteracts maladministration).⁵²

In sum, we are beings that communicate, reflect, and think critically. These are key aspects for articulating as well as receiving, accepting, and, if necessary, appealing against reasons for a decision. By embracing a Kantian deontological perspective, we argue for an understanding of justification as a theory and practice which recognises the moral agency in others, which prevents unjust structures and exploitation. Further, the Forstian theory of justification aligns with the broader aim of human rights to protect individuals from abuse of power, but also the principles of rule of law, by ensuring that power is exercised transparently and accountably.

5. Concluding remarks

This article has employed a dual approach, combining legal analysis with moral philosophy. While the legal discussion has focused on institutional obligations grounded in administrative law, and constitutional principles, the ethical argument has drawn on deontological theories to articulate the moral foundations of the duty to justify decisions.

⁵² Cf. Koivisto, n. 13.

By this dual approach, we demonstrate that legal obligations to give reasons become more compelling when understood in light of its deeper normative commitments. By integrating these dimensions, we argue that the practice of reason-giving is not merely a procedural requirement, but a reflection of the moral standing of individuals, as autonomous agents entitled to justification.

We have argued that when sufficient reasons for a decision are missing, the affected individual is deprived of crucial information, impairing their capacity to assess on what grounds the decision was taken. Thus, if the individual is not provided with sufficient reasons for matters that are of importance to them, there is a violation of their right to moral autonomy and self-government. To use Forst's terminology, it is a violation of their right to justification.

From a legal and political point of view, human rights are (as has been suggested by Jack Donnelly) fundamental constitutional principles.⁵³ As shown in section 2 above, reason-giving in public administration is an intrinsically valuable practice in a state governed by the rule of law. As a measure for securing legality (i.e., non-arbitrariness), moral quality, and transparency of administrative decision-making, it also – we argue – serves as an important safeguard for human rights.

The state – and by extension the public officer – should be the legitimate and trusted actor to make necessary infringements over freedoms of individuals within its jurisdiction, but for public power to be legitimate it must adhere to central legal and moral principles of democratic governance. This shows that there is a connection between reason-giving, justification, and state legitimacy.⁵⁴ However, this might seem like an ideal understanding of the state, implying that the state is always 'doing good'.⁵⁵ Yet, as Forst acknowledges in relation to noumenal power, state power can be exercised not only physically but through structures, in discourses, and in decision-making processes. This is why transparency of reasons for decisions is so central.

At the core, when the reasons for a decision are exhaustive and clearly communicated to the affected individual, it makes them *involved* in the decision. When provided with the full range of the reasons, they have a chance to understand the grounds on which the decision was made and take proper action: whether to accept or appeal. It respects their autonomy and power to act. In addition, as a communicative act, reason-giving requires the decision maker to be contextually specific about the reasons for the decisions. The aim should be to provide materially justified decisions, not only formally justified by reference to relevant statutory provisions.

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⁵³ J. Donnelly, *Universal Human Rights in Theory and Practice*, (Ithaca, New York: Cornell University Press, 2013), p. 16.

⁵⁴ Exploring the detailed connection to legitimacy lies beyond the scope of this article.

⁵⁵ The state is nothing more than the state and should not be regarded as an ideal apolitical actor, as power is very much centred in the state machinery.

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Human Rights Complicity in Contemporary Manifestations of Racism: An Analysis of Sweden's Efforts to Combat Honor-Based Violence

Alexandra Lebedeva

In the article, I examine how the ideologization of human rights contributes to their complicity in contemporary forms of racism by rendering racism invisible and overlooking the risks of indirect discrimination. The analysis is contextualized by an examination of the political discourse surrounding Sweden's efforts to combat honor-based violence, where human rights and gender equality are invoked. I argue that their invocation can be interpreted as an example of the ideologization of human rights through nationalistic rhetoric and politics, with human rights being framed as "Swedish values." This interpretation of human rights risks limiting their critical potential, turning human rights into a tool for self-justification and domination rather than a genuine framework for addressing social injustices.

Introduction

Contemporary societies legitimize human rights violations in various ways: by referencing the need for legal and social order, by invoking national and international security, by appealing to traditional values, or by prioritizing the economic benefits of the majority, to name a few. Regardless of whether a political regime is democratic or nondemocratic, minorities remain particularly vulnerable to human rights violations. Paradoxically, some of these violations are even justified through reference to human rights themselves, as new laws and policies are enacted in the name of protecting these rights. While human rights frameworks are intended to uphold equal dignity for all and to serve as a framework for limiting the power of the state, certain interpretations can inadvertently reinforce racial hierarchies and inequalities. This article explores the intersection of human rights and racism, examining the underlying understandings of human rights that contribute to their complicity in contemporary forms of racism.

Drawing on critical human rights theory, I argue that human rights are always in danger of becoming ideologized and instrumentalized for the advancement of political goals and thus contribute to the complicity of human rights in contemporary forms of racism by rendering racism invisible and overlooking the risks of indirect discrimination. I begin with a critique of human rights, focusing on the dangers posed by their ideologization. The second section explores racism as a systemic form of exclusion,

emphasizing its operation through denial and colorblindness. This is followed by an analysis of a case from Sweden, where there are strong reasons to interpret the case as manifestation of racism. In conclusion, I discuss the problem of contradictory interpretations of human rights that allow human rights to be deployed to legitimize exclusion and domination.

Human Rights as Ideology

The critical theory of human rights offers a framework for understanding human rights and challenging their origins, ideological foundations, and dominant interpretations in contemporary political discourse. This critical approach arises from the recognition of an inherent tension: while human rights possess emancipatory potential and a critical impetus, they are also embedded within structures of Western political, economic, and cultural dominance.¹ Historically, those in power have often invoked human rights hypocritically to justify and legitimize injustices. Examples range from colonialism and civilizing missions to the Responsibility to Protect doctrine and legitimizations of humanitarian interventions in the name of human rights protection. Due to the historical legacy of human rights appropriation for the purpose of domination, it is essential to scrutinize political discourse surrounding human rights to mitigate the risk of their ideologization.²

Previous analyses of human rights ideologization have primarily focused on two key issues: the Eurocentrism of human rights and their convergence with neoliberalism. Postcolonial scholars such as Makau Mutua, Gayatri Spivak, and Chandra Mohanty argue that the international human rights regime is deeply rooted in Western values and Western historical contexts. Mutua, in particular, contends that the Eurocentric bias leads to a failure to recognize alternative perspectives and lived experiences. For human rights to effectively address injustices and uphold the principles of justice, non-discrimination, and equality, this Eurocentrism must be abandoned.³

The second critique of human rights ideologization examines the historical and conceptual links between human rights and neoliberalism. In her influential book *The Morals of the Market: Human Rights and the Rise of Neoliberalism*, Jessica Whyte argues that neoliberalism promotes a distinct morality in which human rights play a central role primarily by preserving and ensuring the functioning of competitive markets.⁴

Both critiques highlight how human rights are often depoliticized and framed as an ideologically neutral set of norms and principles. The process of depoliticization can lead to a reductionist interpretation of human rights, which, together with the invocation of their neutrality, opens the door to the ideological appropriation of human rights in service of the interests of those in power. The importance of understanding human rights as political has previously been discussed in detail by such scholars as Wendy Brown,

¹ Nascimento, Amos and Lutz-Bachmann, Matthias: *A Critical Theory of Human Rights*, Routledge, Boca Raton, FL 2018.

² Fine, Robert: *Debating Human Rights, Law, and Subjectivity: Arendt, Adorno, and Critical Theory*, in Rensmann L. & Gandesha S. (eds.) *Arendt and Adorno: Political and Philosophical Investigations*, Stanford University Press, Stanford 2012, 157.

³ Mutua, Makau: *Human Rights: a Political and Cultural Critique*, University of Pennsylvania Press, Philadelphia 2002, 6.

⁴ Whyte, Jessica: *The Morals of the Market: Human Rights and the Rise of Neoliberalism*, Verso, London 2019.

Michael Goodheart, Nicola Perugini and Neve Gordon. Brown writes that recognizing the political dimension of human rights allows us to see that, like any political project, human rights can evolve beyond their initial aims and actions.⁵ This perspective acknowledges that the objectives of human rights are shaped by social contexts and may shift over time. If we accept this view, it then becomes essential to critically scrutinize and evaluate the human rights project itself, considering the specific social contexts that shape and have shaped its development.

Racism as a System of Exclusion

Today, a plurality of theoretical perspectives on racism exists, including conceptualizations of racism as an ideology, a system, and a practice. While a comprehensive analysis of these perspectives is beyond the scope of this article, I will address the relationship between racism and human rights – specifically, how human rights can become compatible with racism. Answering this question requires two steps: first, examining how contemporary racism operates, and second, analyzing the interpretations of human rights that align with racial and discriminatory practices. I will begin with the first.

Étienne Balibar identifies linguistic obscurity as a critical condition shaping contemporary understandings and analyses of racism. Historically, racism has been understood as an ideology tied to specific instances of genocide and apartheid, such as the Holocaust, segregation in the United States, and apartheid in South Africa. These historical experiences serve as reference points for studying and understanding racism in today's society. Condemned as an unequivocal evil, racism is often attributed to others rather than acknowledged within one's own community, shaping the way it is analyzed. ⁶ As Dimitrina Petrova observes, "racism is rarely a self-description; it is mostly a label applied to groups or individuals by others."⁷ This process of othering follows a binary logic, where the demonization of others is often accompanied by a reinforced positive self-image. In constructing this self-image, condemnation of racism and the promotion of a human rights culture frequently play a central role.

According to Stefan Jonsson, the defining characteristic of racism is exclusion. His analysis shows that the basis for exclusion is not fixed: it can shift from biological race to ethnicity, religion, culture, or language. While the forms that racism takes may change over time, its core function – regulating and controlling populations through mechanisms of inclusion and exclusion – remains constant.⁸

Jonsson argues that exclusion has both cultural and economic motives, shaped by references to both cultural and economic values. The economic dimension is evident in migration politics, where restrictive policies are often legitimized by asserting the limited economic capacity of welfare states to support refugees and migrants. The cultural dimension is reflected in the construction of cultural hierarchies, where the values of the

⁵ Brown, Wendy: "The Most We Can Hope For . . .": Human Rights and the Politics of Fatalism, in *The South Atlantic Quarterly*, Vol. 103, No.2-3, 2004, 461.

⁶ Balibar, Étienne: Racism Revisited: Sources, Relevance, and Aporias of a Modern Concept, in *Comparative Racialization*, Vol. 123, No. 5, 2008.

⁷ Petrova, Dimitrina: Racial Discrimination and the Rights of Minority Cultures, in Fredman Sandra (ed.) *Discrimination and Human Rights*, Oxford University Press, Oxford 2001, 49.

⁸ Jonsson Stefan: Rasism och nyrasism i Sverige 1993–2003, i Mattsson, Katarina & Lindberg, Ingemar (red.): *Rasism i Europa – kontinuitet och förändring*. Agora, Stockholm 2004, 50.

national culture are portrayed as incompatible with those of migrants. One example of cultural racism is the belief that immigrant groups threaten the national culture, based on the assumption that they are either unwilling or unable to integrate and assimilate. 9 Jonsson urges us to “examine the outrageous self-contradiction inherent in the global system of exclusion unfolding before us, the fact that contemporary racism often operates under the guise of protecting universal values”¹⁰ (my translation). Human rights are among these universal values, and paradoxically, they may contribute to perpetuating racism by legitimizing exclusion.

Racism encompasses not only racist attitudes and ideologies but also social practices and institutions that perpetuate racial inequalities, even in the absence of explicit racial beliefs or convictions. In line with critical race theory, I emphasize the importance of addressing colorblindness as a component of racist structures. Colorblindness refers to the use of seemingly neutral language, such as in legal provisions, that, while not explicitly racist, results in discriminatory effects. The concept of colorblindness assumes that everyone is treated equally, without regard to race or ethnicity. This idea is often invoked in legal and political contexts to support claims of equal treatment and the protection of rights. However, it overlooks the ways in which racism operates in contemporary societies and how racial inequalities are systematically and institutionally reproduced. 11

Colorblindness is rooted in the presumed neutrality of laws and politics, which, in reality, implicitly uphold whiteness as the ideal while devaluing anything that does not conform to this standard. 12 Colorblindness is also linked to the denial of racism. Teun van Dijk argues that denial of racism operates through a combination of positive self-presentation and negative other-presentation. Positive self-presentation involves the portrayal of values such as tolerance, along with the moral and legal dismissal of racism. As van Dijk notes, “...since discrimination and racism are legally and morally prohibited, most Western countries share the official belief that therefore discrimination and racism no longer exist as a structural characteristic of society or the state” 13 (my emphasis). In other words, racism is perceived as incompatible with official ideologies, as well as with dominant democratic and humanitarian norms and ideals. The result is a positive self-image or national myth of tolerance that makes it much harder for minorities to challenge existing inequalities.

Having outlined some key dimensions of racism as a system of exclusion, I will now address the second question: which interpretations of human rights are compatible with racism and discriminatory practices? The intersection of racism and human rights has already been touched upon in this section. It has been argued that racism often operates under the guise of universal human rights, with these rights being used to legitimize exclusion. Another point of intersection involves the denial of racism through reference to human rights, particularly in framing the state’s self-image as one that condemns racism and upholds human rights. Several analyses of racism in Western states highlight this

⁹ Ibid., 51.

¹⁰ Ibid., 74.

¹¹ Zamudio, Margaret, et al. *Critical Race Theory Matters: Education and Ideology*, Taylor & Francis Group, 2010. ProQuest Ebook Central, <http://ebookcentral.proquest.com/lib/uu/detail.action?docID=592906>, 22.

¹² Zamudio et al, op.cit., xviii.

¹³ Van Dijk, Teun A.: Discourse and the denial of racism, in *Discourse & Society*, 1992, Vol. 3, No. 1, 95.

problematic condition, which ultimately renders racism invisible.¹⁴ So, how are human rights understood and interpreted in this context?

Human rights and human rights language can be and are appropriated and used as tools to promote different political goals. The invocation of human rights and gender equality by nationalist ideologies is not a new phenomenon and has been witnessed in many national contexts, including Sweden. For instance, women's rights and gender equality were invoked to justify military intervention in Afghanistan. A narrative about "saving" Muslim women and the construction of Muslim women as victims without agency fits well into the Orientalist discourse. The discourse of women's emancipation from patriarchal oppression and advocacy for women's rights has also made up part of a nationalist rhetoric in France. This rhetoric, which is directed against the Muslim minority, invokes the ideals of gender equality and *laïcité*, using them as a frame of reference for evaluating issues related to religious symbols, particularly the legislative regulation of veiling.¹⁵ The underlying motive concerns the perceived threat to French national identity from Muslim and other migrants.

When human rights are appropriated for nationalist purposes, they become interpreted as a feature of a particular nation – a part of a national and cultural identity, a set of national values. National belonging based on birth, skin color, religion, or language automatically implies an embrace of, and respect for, certain values. Simultaneously, non-belonging automatically implies a lack of respect for human rights and gender equality.

The discourse surrounding human rights as national values is constructed in opposition to other cultures, which are presumed to represent different values, thereby creating cultural hierarchies with racist implications. The appropriation of human rights for the purpose of creating an "imagined community" becomes an effective way to legitimize hierarchies and subordination between those cultures that embrace human rights and those who do not. This interpretation of human rights as national values aligns closely with a nationalistic, exclusive notion of a people who share the same traditions and values. As the example of France shows, the political goal of invoking women's rights and gender equality ideals is to provide cover for restricting migration in favor of an ethnically and culturally homogenous society.

Contemporary Manifestations of Racism in Sweden: A Case of Honor-Based Violence

Drawing on the critical theoretical tradition, I will now examine the political discourse surrounding Sweden's efforts to combat honor-based violence, where human rights and gender equality are often invoked. I argue that this discourse can be interpreted as an example of the ideologization of human rights through nationalistic rhetoric and politics, as human rights are framed as "Swedish values." The discourse on Swedish values, once a hallmark of nationalist rhetoric, has now been adopted by mainstream political parties across the spectrum. While nationalist parties, such as the Sweden Democrats, explicitly promote a racist agenda aimed at creating a homogeneous society, liberal parties adopt the notion of human rights as Swedish values in the name of protecting human rights and freedoms. Regardless of their respective agendas, the result is an assertion of the exclusive

¹⁴ Petrova, Dimitrina: *Racial Discrimination and the Rights of Minority Cultures*, in Fredman Sandra (ed.) *Discrimination and Human Rights*, Oxford University Press, Oxford 2001.

¹⁵ Léonard, Marie des Neiges: *Racial Diversity in Contemporary France: the Case of Colorblindness*, Bristol University Press, Bristol 2023.

right to interpret and act upon human rights, while denying other actors the agency to interpret human rights differently.

A substantial body of research across various fields has examined honor-based violence, with particular attention to the racist implications of its discourse. In the Nordic countries, a heightened public focus on honor-based violence has been attributed to two key factors. First, in the Nordic states, racism is rarely addressed in public debate or research – unlike, for example, the United Kingdom, where discussions of race are more prevalent due to that nation’s colonial history. By contrast, Nordic states are often perceived as having little connection to colonialism and thus racism. Second, the Swedish national identity is strongly rooted in the notion of gender equality, which is seen as both an established reality and a core societal value.¹⁶ These factors – little public attention to racism and racial discrimination and the significance of gender equality for the national self-image – have given rise to two opposing positions. On the one hand, there is a strong claim for addressing honor-based violence as a distinct form of violence, since Swedish society does not accept patriarchal oppression and violence. On the other hand, this claim is criticized particularly for its *distinct* approach to honor-based violence, due to the risk of its discriminatory implications.

This opposition has been described as an opposition between feminism and multiculturalism, where multiculturalism is understood not as an inclusive notion valuing plurality and difference, but as a tolerance for violence based on cultural, traditional, and religious justifications.¹⁷ Critics of multiculturalism often accuse it of cultural relativism and standing for the toleration of honor-based violence. As Alinia Minoo rightly argues, the majority of such criticism is directed not at the ideologies of tolerance, but at diversity and the coexistence of difference.¹⁸ The Istanbul Convention explicitly rejects such justifications, mandating that member states criminalize and prevent violence in all forms. Sweden not only signed and ratified the Convention but also went a step further by criminalizing honor-based violence and oppression as a separate offense, called honor-based oppression (*hedersförtryck*).

Culturalization of Violence

The representation and handling of honor-based violence in Sweden have been framed through the lens of the culturalization of violence, where violence is perceived as cultural in some cases but not in others, depending on factors such as the perpetrator’s ethnicity, skin color, or religion.¹⁹ Honor-based violence is constructed in opposition to “Swedish men’s violence,” reinforcing the idea that the former does not belong in Swedish society. Sabine Gruber observes that honor-based violence is seen as a more brutal form, compared to Swedish male violence against women. Unlike (Swedish) men’s violence, which is seen

¹⁶ Keskinen, Suvi: “Honor-related violence and Nation-Building”, in Keskinen S., Tuori S., Irni S. and Mulinari D. (eds.) *Complying with Colonialism: Gender, Race and Ethnicity in the Nordic Region*. Taylor & Francis Group, 2009, 268-269.

¹⁷ Meeto Veena and Safia Mirza. Heodi: There is Nothing ‘Honourable’ about Honour Killings”: Gender, Violence and the Limits of Multiculturalism, in *Women’s Studies International Forum*, Vol. 30, 2007.

¹⁸ Minoo, Alinia: Racial Discrimination in the Name of Women’s Rights: On Contemporary Racism in Sweden, in *Routledge International Handbook of Contemporary Racisms*, Routledge 2020, 333.

¹⁹ Bruno, Linnéa: National self-image as an obstacle to ensuring children’s rights in the context of domestic violence and family law: the case of Sweden, in *Journal of Social Welfare and Family Law*, Vol. 40, No. 4, 431, 436.

as a series of individual and deviant acts, honor-based violence is portrayed as institutionalized and collectively accepted.²⁰ This categorization of violence is closely tied to a perceived cultural and value-based conflict between Swedish values and those of “the Others.”

The construction of “we” and “the Other,” whether as victim or perpetrator, is marked by certain ambiguities. As Gruber rightly points out, for a Swedish person, “the Other” is not necessarily a newly arrived stranger with unfamiliar norms and values. Instead, it refers to the presumed violent suburbs. The suburbs are areas that are, geographically, part of Swedish cities and whose residents are part of Swedish society.²¹ However, these communities are repeatedly identified as bearers of honor culture.²² In contemporary discourse, the term “parallel communities” (*parallelsamhällen*) is used to suggest systems of distinct norms and sanctions that are presumed to emerge in environments where family honor serves as a driving force, influencing the creation of rules and enforcement mechanisms that are not accepted by broader Swedish society.²³

Like all societies, minority communities are diverse – some individuals uphold conservative ideals, while others prioritize liberal values of freedom and individual agency. Yet, regardless of their perspective, minority voices are often delegitimized as relativistic, apologetic, or racist. In the end, their actual beliefs and statements become irrelevant.

As already stated, Jonsson identifies exclusion as the core function of racism. He therefore argues that mechanisms of exclusion and admission must be thoroughly examined and analyzed. He explores this dynamic using the tragic case of Fadime Şahindal, who was murdered by her father, Rahmi Şahindal, in January 2002. While the father was portrayed in the media as a symbol of Kurdish patriarchal norms and values, Fadime – an outspoken feminist and politically active young woman – was not defined by her Kurdish origins in the same way.²⁴

Jonsson discusses the public debate that followed the murder of Fadime Şahindal as an example of how a cultural conflict came to be constructed between Kurdish and Swedish cultures. In this debate, Kurdish culture was depicted as premodern and patriarchal, while Swedish culture was framed as being committed to gender equality and a refusal to tolerate men’s violence against women.²⁵ However, Jonsson concludes that the debate did not ultimately reinforce the idea of irreconcilable cultural differences. Instead, it shifted toward the notion that these differences could be reconciled through universal human rights. In this way, he argues, universal human rights served as a façade for cultural racism.²⁶

In Sweden today, the preoccupation with religious dress and the symbolic meanings of the hijab and veil has been replaced by medial and political attention on

²⁰ Gruber, Sabine: In the Name of Action against “Honour-Related” Violence: National Nations, Gender, and Boundaries in the Swedish School’s Ambitions to Combat Violence and Oppression, in *Nordic Journal of Migration Research*, Vol. 1, No. 3, 2011, 129-130.

²¹ Gruber, op.cit., 130.

²² Mino, op.cit., 254.

²³ SOU 2020: 57 *Ett särskilt hedersbrott. Betänkande av Hedersbrottsutredningen*. Justitiedepartementet, 14.

²⁴ Jonsson, op.cit., 65.

²⁵ Jonsson, op.cit., 63-64.

²⁶ *Ibid.*, 64–65.

honor-based violence – a shift that has also been observed in other Western countries.²⁷ Another key aspect of the Swedish context is an institutionalization of the discourse on honor-based violence within welfare practices, particularly in social services and schools.²⁸ This deepens the influence of the discourse, as it extends beyond media representations and becomes embedded in the policies and practices of welfare institutions and educational systems, where it is continually reproduced and reinforced.²⁹

In addition to young women, who are commonly perceived as victims of honor-based violence, the discourse has now expanded to include families, communities, and other collectives. Since honor norms are viewed as collective-centered, violence is assumed to be sanctioned by the collective. As a result, families in ethnic minority groups (e.g., Muslim or Roma families) are often depicted as practicing conservative and violent forms of upbringing.

Honor-Based Violence and Human Rights

Honor-based violence, like any other form of gender-based violence, has been a focal point of human rights research.³⁰ The Istanbul Convention identifies violence against women and girls, including violence carried out in the name of “honor,” as a serious violation of human rights.³¹ Measures and actions to combat honor-based violence are framed as efforts to uphold human rights: fighting “on the barricades for human rights.”³² In this context, honor-based violence is portrayed as alien to Swedish society and incompatible with Swedish values of human rights, gender equality, and children’s rights. The “barricade for human rights” often implies a need to “civilize” those who do not know or share these values.³³

Instead of human rights providing a legal means for protection for those exposed to violence, there is a risk that they may be interpreted in a way that reinforces the construction of honor-based violence as an ethnicized issue.³⁴ Building on previous research, I will now analyze the most recent developments in Sweden and the initiatives taken to address honor-based violence. The analysis will be guided by the following questions: What role do human rights play in Sweden’s efforts to combat honor-based

²⁷ Altınbaş, Nihan: Honor-related Violence in the Context of Patriarchy, Multicultural Politics, and Islamophobia after 9/11, in *The American Journal of Islamic Social Sciences*, Vol. 30, No.3, 2013, 10.

²⁸ Keskinen, Suvi, op.cit., 262. Safia Mirza, Heidi and Veena Meeto: Empowering Muslim Girls? Post-feminism, multiculturalism and the production of the “model” Muslim female student in *British schools*, in *British Journal of Sociology of Education*, Vol. 39, No. 2, 231.

²⁹ Sabine Gruber offers a critical analysis of the Swedish educational system’s ambitions to combat honor-based violence. Based on an analysis of policy documents for school welfare staff, interviews, and participant observations in schools, Gruber shows how a perception of Swedish values as respect for human rights, gender equality, and democracy frames measures against HRV as a form of “civilization of “the Others” (Gruber, op. cit., 131)

³⁰ See, for example, Meeto Veena and Safia Mirza. Heodi: There is Nothing ‘Honourable’ about Honour Killings”: Gender, Violence and the Limits of Multiculturalism, in *Women’s Studies International Forum*, Vol. 30, 2007; Grans, Lisa: A Right Not to Be Left Alone – Utilizing the Right to Private Life to Prevent Honour-related Violence, in *Nordic Journal of International Law*, Vol. 85, 2016.

³¹ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210), Preamble.

³² Gruber, op.cit., 131.

³³ Gruber, op.cit., 131.

³⁴ Meeto and Safia, op.cit., 195.

violence? How do human rights contribute to reinforcing racism against ethnic minorities in Sweden?

I will start by examining how the issue of honor-based violence is constructed in key political and legal documents, including the Action Programme against Men's Violence against Women, Domestic Violence and Honor-Based Violence and Oppression 2024–2026 (the "Action Program" below); the Swedish Government Official Report "A Special Honor Crime" (SOU 2020:57); and two rulings from the Örebro and Västmanland District Courts in cases where the defendants were charged with honor-based oppression.

In the legal and political materials, efforts to combat honor-based violence are framed as being driven by Sweden's international human rights obligations, including adherence to the Istanbul Convention and the Convention on the Rights of the Child. At the heart of these commitments is the principle that every individual has the right to self-determination and to live freely.

The Swedish debate on honor-based violence is highly polarized. Addressing honor-based violence presents a dilemma. On one hand, there is a risk of reinforcing racist perceptions by treating honor-based violence as separate from other forms of gender-based violence (or male violence against women). On the other hand, the use of universal terms like "gender-based violence" may overlook the specific nature of this form of violence.³⁵ This dilemma is not new; it emerged in the early 2000s and still generates heated debate, particularly among researchers and activists.

Politically, however, a clear stance has emerged. A culturally reductionist approach predominates that calls for treating honor-based violence as a distinct form of violence demanding distinct political measures and legal regulations. National Strategy to Prevent and Combat Men's Violence against Women (2015) includes honor-based violence as a particularly vulnerable category, alongside other groups such as women with disabilities and LGBTIQI persons.³⁶ Similarly, the Action Program places significant emphasis on honor-based violence, outlining strategies for its prevention and mitigation.³⁷

The Action Program is a policy document outlining the government's plan for measures to be taken, division of responsibilities, and budget. It identifies honor-based violence and oppression as serious societal issues that significantly violate the human rights of those affected, including women, men, boys, and girls.³⁸ It also uses the term "honor norms" to describe norms that restrict rights and freedoms.

The Action Program prioritizes three groups of rights: girls and women's rights, children's rights, and LGBTIQI rights. Among girls and women's rights, the right to life and bodily integrity is emphasized.³⁹ Children's rights are mentioned repeatedly, with children and young people exposed to honor-based violence and oppression identified as a particularly vulnerable group. Their vulnerability is seen as compounded by a lack of family support, as the families (parents and other relatives) are often assumed to be the perpetrators of the violence.⁴⁰ The aim is thus to provide these children and young people

³⁵ Carbin, Maria: The Requirement to Speak: Victim stories in Swedish Policies against Honour-related Violence, in *Women's Studies International Forum*, Vol. 46, 2014, 108.

³⁶ SOU 2015:55 *Nationell strategi mot mäns våld mot kvinnor och bedersrelaterat våld och förtryck. Slutbetänkande av Utredningen som ska föreslå en nationell strategi mot mäns våld mot kvinnor.*

³⁷ Arbetsmarknadsdepartementet, Justitiedepartementet, Socialdepartementet: *Fri och trygg utan våld och förtryck: Åtgärdsprogram för att förebygga och bekämpa mäns våld mot kvinnor, våld i nära relationer och bedersrelaterat våld och förtryck 2024-2026*, Diarienummer: A2024/00869.

³⁸ Ibid., 16.

³⁹ Ibid., 8.

⁴⁰ Ibid., 22-23.

with help and support, as well as to inform them about their rights and freedoms.⁴¹ Finally, the document highlights LGBTQI rights as part of Sweden's international efforts to promote equality and equal rights for LGBTQI individuals.⁴²

The Action Program proposes that the civic orientation course (sambällsintroduktion) for asylum seekers and migrants with temporary residence permits, organized by the Migration Board, should include information about gender equality and honor-based violence. The proposed content of the course is outlined as follows:

To strengthen knowledge about Swedish society and clarify the expectations placed on individuals, the government has tasked a special investigator with reviewing the civic orientation [course] (dir. 2023:169). Among other things, the investigator will propose new content with a greater emphasis on gender equality. It is crucial to make clear that gender equality is a fundamental value in Swedish society, encompassing issues such as freedom from honor-based violence and oppression, as well as children's rights.⁴³

This analysis of the Action Program reinforces findings from previous research. It is a document that constructs human rights and gender equality as inherently Swedish values – values that asylum seekers and migrants are presumed not to share and which they therefore need to be taught.

The Action Program is one of the central Swedish policy documents on gender-based violence. Given its overarching theme, the primary rights in focus concern physical integrity, personal freedom, and protection from violence. While this focus is crucial, it means that the document primarily addresses interpersonal violence: violence directed at an individual. This begs the question: should these violations be interpreted as *human rights* violations?

If human rights are understood as legitimate claims directed toward the state as the primary duty-bearer, as I argue they should be, then the state's role in upholding human rights extends beyond merely acknowledging individual harm. It entails a duty to take proactive measures to prevent, protect, and prosecute acts of violence. This broader perspective expands the scope of rights, emphasizing the relationship between individuals as rights-holders and the state as the duty-bearer. It also demands a more comprehensive interpretation of the state's human rights obligations, particularly regarding the principle of non-discrimination and its application to human rights and freedoms. However, in discussions of gender-based violence in general and honor-based violence in particular, there is a tendency to position the perpetrator (e.g., a partner or family member) as the primary duty-bearer.⁴⁴ This tendency effectively shifts responsibility away from the state, undermining its obligations to uphold and enforce human rights protections.

⁴¹ Ibid, 23, 57.

⁴² *Fri och trygg utan våld och förtryck: Åtgärdsprogram för att förebygga och bekämpa mäns våld mot kvinnor, våld i nära relationer och hedersrelaterat våld och förtryck 2024-2026*, 9.

⁴³ Ibid., 39-40.

⁴⁴ See Elena Namli's blog post on expansion of duty-agency: "The Duty-Bearers of the Rights of the Child", in *Berkeley Journal of International Law*, December 2024. Accessible at: <https://www.berkeleyjournalofinternationallaw.com/post/the-duty-bearers-of-the-rights-of-the-child>

Crime of Honor-Based Oppression

As previously noted, Sweden, unlike other members of the Council of Europe, has criminalized honor-based violence with the introduction of the specific offense of honor-based oppression in 2022. According to the Criminal Code, honor-based oppression is defined by motive, specifically the intent to preserve or restore an individual's or family's honor.⁴⁵

During the legislative process, several critical concerns were raised, including the potential for discrimination against ethnic minorities and the argument that the law contradicts the principle of generality.⁴⁶ The preparatory work also highlighted broader objections to establishing a separate offense, such as the difficulty of defining and delineating which actions and individuals would be covered, the applicability of existing legislation, and the challenge of defining "honor" within a legal framework.⁴⁷ It has been acknowledged that implementing this legislation will be complex. Previous research has also underscored the difficulties involved in addressing honor-based violence through legal mechanisms.⁴⁸

In connection with the law on honor-based oppression, the government asked an investigator to assess whether a specific criminal provision should be added to the Criminal Code to explicitly address honor-based violence and oppression.⁴⁹ In their official report, the investigator examined various considerations related to the definition of "honor" and "honor-based" violence, acknowledging that there is no clear consensus as to how these terms should be defined and suggesting that they must be understood and interpreted contextually.⁵⁰

The way these terms are defined is crucial, as their inherent ambiguities open the door to for arbitrary interpretations and legal judgments. In Swedish discourse, there has been a shift in terminology from "honor-based thinking" (*hederstänkande*), a term used in a 2007 action plan, to "honor cultures" and "honor contexts." In the 2007 action plan, the government deliberately avoided the term "culture", emphasizing "honor-based thinking" to prevent linking honor-based violence to any specific religion or culture. However, the 2020 report states that "honor context" and "honor culture" are now widely accepted terms and that honor culture constitutes a distinct cultural framework of its own.⁵¹ The report also suggests that avoiding a cultural link in earlier discussions was, in part, misleading.⁵²

Apart from considerations of such legal principles as the principle of last resort (*ultima ratio*), proportionality, and legality, the criminalization of honor-based violence has also been debated in relation to the risk of discrimination. As previously noted, concerns were raised about violating the principle of the generality of the law. Ultimately, the risk

⁴⁵ The Criminal Code (Brottsbalken) 4 kap. 4e§.

⁴⁶ Consultation responses (Remissvar), Accessible at:

<https://www.regeringen.se/remisser/2020/10/remiss-av-sou-202057-ett-sarskilt-hedersbrott/>

⁴⁷ Dir. 2017:25 *Utredningen om starkare skydd mot barnäktenskap, tvångsäktenskap och brott med hedersmotiv*. Justitiedepartementet.

⁴⁸ See, for example, Lidman, Satu och Hong, Tuuli: "Collective violence" and honour in Finland: a survey for professionals, i *Journal of Aggression, Conflict and Peace Research*, Vol. 10, No. 4, 2018, 261-271; and Eldén, Åsa och Westerstrand, Jenny: "Hederns försvarare. Den rättsliga hanteringen av ett hedersmord", i *Kvinnovetenskaplig Tidskrift*, Vol. 3, No. 4.

⁴⁹ Kommittédirektiv 2019:43. *Straffansvar för hedersrelaterat våld och förtryck*. Justitiedepartementet.

⁵⁰ SOU 2020:57, 99.

⁵¹ SOU 2020:55, 101.

⁵² SOU 202:55, 102.

of discrimination was largely dismissed, with the exception of a footnote in the official report stating:

At first glance, discrimination based on ethnic origin may seem like a relevant factor in discussions of honor-based violence. However, we emphasize that honor culture exists among people of diverse ethnic backgrounds and religious affiliations. It cannot be concluded that honor-based acts are committed by perpetrators or experienced by victims solely due to their ethnicity or religious beliefs. That said, the degree of religiosity can be linked to the occurrence of honor-based violence and other forms of oppression.⁵³

In other words, the report finds no conflict between discrimination prohibitions and the criminalization of honor-based violence as its own offense, defined by the motive of restoring honor. The argument is that, while religion and a high degree of religiosity may increase the risk of honor-based violence, such violence can also occur outside of a religious context.⁵⁴ The investigator simultaneously confirms that it is tenable to use the term “honor culture” to indicate a distinct cultural framework, without attributing it to any specific culture or religion. The risk of indirect discrimination,⁵⁵ where a seemingly neutral legal provision may disproportionately disadvantage individuals of certain ethnic or religious backgrounds that are assumed to represent “honor culture,” is neither acknowledged nor discussed.

Subsequent case law clearly demonstrates this imminent risk of discrimination. The first case I will discuss, in which a family was convicted of honor-based oppression, came before the court in 2023. It involved a young woman who had been subjected to years of threats and abuse by her family members. According to the prosecutor, the woman sought independence, wanted to make her own decisions, and had begun a romantic relationship with a man of whom her family did not approve.⁵⁶

The District Court of Västmanland found her parents and brother guilty of the newly established crime of honor-based oppression. As noted, the defining element of this crime is its motive: specifically, the intent to preserve or restore one’s honor, distinguishing it from other offenses, such as the violation of a woman’s integrity (*kvinnofridskränkning*). The motive-based nature of the offense makes it particularly important to examine how the motive is framed in judicial rulings.

In presenting the case, the prosecutor emphasized the family’s Iraqi background, describing Iraq as a country with a strong patriarchal structure and noting that the family belonged to the Mandaean community, an ethnic and religious minority in Iraq. According to Mandaean norms, the prosecutor claimed, both men and women are expected to remain virgins until marriage and must marry within their community. The prosecutor concluded that the family operated within an honor context that imposed specific norms on the young woman.⁵⁷

Another notable case of honor-based oppression involved the murder of a pregnant woman. Here, the prosecutor argued that the crime was honor-motivated based on the offender’s Somali background. The Örebro District Court’s reasoning relied heavily on cultural explanations, stating:

⁵³ SOU 2020:55, footnote 16.

⁵⁴ SOU 2020:55, 161.

⁵⁵ Discrimination Act, 2008:567, chapter 1, section 4.

⁵⁶ The Västmanlands District Court, B 3572-23, 2023.08.16

⁵⁷ The Västmanlands District Court, B 3572-23, 2023.08.16, 11.

Through his statement⁵⁸ and testimony at the District Court, which are largely supported by Somalia expert journalist Per Brinkemo, the prosecutor demonstrated that, within the Somali clan structure, honor is considered more important than blood ties and love. The Court finds that the prosecutor had shown that Amin's motive for killing Saga was rooted in honor, as he risked being ostracized if his family or clan did not accept his marriage to her.⁵⁹

The application of the honor-based oppression law in both cases shows how cultural and ethnic background become central in legal reasoning, reinforcing stereotypes and leading to the disproportionate targeting of certain minorities. The way the courts interpret "honor contexts" and "honor culture" in assessing motive illustrates how law, presumed to be neutral and colorblind, can actually reinforce racial inequalities and results in indirect discrimination.

The establishment of honor-based violence as a criminal offense carries discriminatory implications for the specific ethnic minority groups assumed to practice honor norms. Broad definitions of honor norms and honor contexts, both in legislation and policy documents, open the door to arbitrary interpretation, which has serious consequences for the legal system as a whole and can severely impact the rule of law and legal certainty in specific cases.

In the Name of Human Rights

Having presented recent developments in Sweden regarding efforts to combat honor-based violence, I will now turn to the question of the role that human rights play in Sweden's approach to this issue, and how the application of human rights frameworks may, in some instances, reinforce racism against ethnic minorities.

Human rights are central to Sweden's efforts to address honor-based violence, particularly through Sweden's adherence to international conventions such as the Istanbul Convention and the Convention on the Rights of the Child. Sweden has positioned itself as an advocate for the protection of individual freedoms, gender equality, and the right to live free from violence. However, when human rights are invoked to combat honor-based violence, there is a risk that these rights may be selectively applied in ways that disproportionately target certain ethnic or religious communities.

This dynamic is particularly evident in the way Sweden has constructed the national narrative around honor-based violence. By framing the issue through the lens of human rights, Sweden emphasizes a need to "civilize" children and young people, asylum seekers, and migrants seen as not fully aligned with Swedish values. This interpretation of human rights inadvertently perpetuates discriminatory practices by constructing cultural hierarchies and viewing minority communities as in need of moral reform.

The culturalization of violence relies on an explanatory model that attributes violence to specific cultural values and norms perceived as inherent to certain groups. In the context of honor-based violence, a paradox emerges. On one hand, terms like "honor cultures," "honor norms," and "honor contexts" are frequently

⁵⁸ The statement of Devin Rexvid, an expert in honor-based violence.

⁵⁹ The Örebro District Court, B 2686-23, 2024.06.05, 38.

used in policy documents and public debates. These concepts are associated with rigidly conservative, patriarchal, and homophobic norms primarily aimed at controlling women's sexuality to preserve family honor. Over time, these ambiguous terms have become internalized in Sweden as legitimate knowledge.⁶⁰

On the other hand, these so-called "honor norms" are often juxtaposed with universal human rights, which are simultaneously framed as Swedish values. In this framing, human rights are presented not only as universal principles that should be upheld by all, but also as uniquely Swedish ideals, integral to the nation's identity. Gender equality, in particular, is portrayed not only as a global goal but as a central tenet of Swedish society.

As Jonsson notes, the reconciliation between these conflicting sets of norms occurs through the invocation of universal human rights, which are used to critique harmful practices associated with honor norms while simultaneously reaffirming Sweden's own commitment to these values. Human rights, in this narrative, become a tool for highlighting the superiority of Swedish values over those perceived as "foreign" and "backward."

However, this interpretation of human rights carries significant risks. Even as human rights are wielded as a tool for critiquing and condemning practices linked to certain cultural norms, Sweden is prevented from critical reflection on its own violations of human rights, particularly those affecting minorities. By framing Swedish values as synonymous with human rights, a danger arises of making human rights into a unilateral and unquestionable force, effectively silencing any critiques of the state's own shortcomings. This undermines the political dimension of human rights and their potential to be genuinely emancipatory. In this way, the narrative of Swedish human rights exceptionalism risks limiting the critical potential of the concept of human rights, turning it into a tool for self-justification rather than a genuine framework for addressing social injustices.

The recent developments in Sweden and elsewhere clearly demonstrate how, despite different political agendas, both nationalist and liberal movements use the language of human rights.⁶¹ Paradoxically, human rights are used not only to address social injustices but also for the purpose of subjugation and domination. Therefore, as I have argued earlier, human rights should be treated as a political project and, as such, open to different and contested interpretations. If human rights are presented as ideologically neutral and apolitical, they risk becoming ideologized and misused to serve the interests of those in power.⁶²

The plurality of perspective and political disagreements have been neutralized for the sake of political compromise. For a long time, the liberal

⁶⁰ Mino, Alina: White Ignorance, Race, and Feminist Politics in Sweden, in *Ethnic and Racial Studies*, Vol. 43, No. 16, 2020, 252.

⁶¹ Perugini, Nicola and Gordon, Neve: *The Human Right to Dominate*, Oxford University Press, Oxford 2015.

⁶² Brown, Wende, op.cit., 463.

perspective on human rights has dominated, pursuing the ideal of neutrality and an apolitical understanding of human rights. However, it is specifically the politicization of human rights – their interpretation in relation to current social contexts and problems – that will make it possible to reclaim their emancipatory potential. A critique of the ideologization of human rights does not preclude the fact that all interpretations of human rights are ideological. But when human rights are appropriated by power, they come to operate in its service instead of limiting it.

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