CHAPTER 33

HUMAN RIGHTS

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Human rights are, literally, the rights we have simply because we are human. They are equal rights: One either is or is not a human being, and thus has exactly the same human rights as every other human being. They are inalienable rights: One cannot stop being a human being, and therefore cannot lose one's human rights, no matter how horribly one behaves nor how barbarously one is treated. Human rights are also universal rights, held by every human being, everywhere. This chapter offers a conceptual analysis of human rights, a brief account of their historical evolution, and an introduction to some leading theoretical controversies.

1 The Practice of Human Rights

Human rights are a complex and contested social practice that organizes relations between individuals, society, and the state around a distinctive set of substantive values implemented through equal and inalienable universal

rights.[1] This and the following section give strong emphasis to the universality of human rights, on the grounds that this is the way human rights have actually been presented both in theory and in political controversies. The first half of the final section, however, is explicitly devoted to challenges to universality.

1.1 Human Rights as Rights

"Right" has two principal moral and political senses, rectitude and entitlement, characteristically expressed in talk of some*thing being* right (or wrong) and some*one having* a right. Denying you something that it would *be* right for you to enjoy in a just world is very different from denying you something—even the same thing—that you *have* a right to enjoy. Claims of rights ordinarily "trump" utility, social policy, and other grounds for action (Dworkin 1977, xi, 90). And you can do special things with rights.

Adam's right to x with respect to Beth is not reducible to Beth's correlative duties. Should Beth fail to discharge her obligations, besides violating standards of rectitude and harming Adam, she violates his right. This makes her subject to special remedial claims. Furthermore, as the language of "exercising" rights suggests, Adam is actively in charge of the relationship. He may assert his right to x. If Beth still fails to discharge her obligation, he may press further claims, choose not to pursue the matter, or even excuse her, largely at his own discretion.

Exercising rights is cumbersome and costly both to the parties and to society. It is thus to be avoided when possible. Nonetheless, the power to claim rights distinguishes having a right from simply being the (rights-less) beneficiary of someone else's obligation. "Having" (possessing) a right is of special value precisely when one does not "have" (enjoy) the object of that right. Possessing a right must not be confused with the respect it receives or the ease or frequency with which it is (or is not) enforced.

Having a human right also should not be confused with enjoying the substance or object of that right. The fact that people are not executed arbitrarily may reflect nothing more than a government's lack of desire or

[1] This section draws heavily on Donnelly (2003, chs. 1, 2). Nickel (1987, chs. 1–3), Shue (1996, chs. 1, 2, afterword), and Hayden (2001, chs. 16–22) cover similar ground.

limited capabilities. Even active protection may have nothing to do with a right (title) not to be executed. Rulers may, for example, act out of a sense of justice, instrumental calculations, or a divine injunction that does not endow subjects with rights. And even a right not to be executed arbitrarily may rest on custom or statute rather than being human.

Human rights, as we shall see below, principally regulate relations between individuals, conceived of as citizens, and "their" state. But as rights (entitlements) they do more than establish standards of political legitimacy. They authorize and empower citizens to act to vindicate their rights.

Human rights are not just abstract values such as liberty, equality, and security. They are *rights*, entitlements that ground particular social practices to realize those values. Human rights claims express not mere aspirations, suggestions, requests, or laudable ideas but rights-based demands. And in contrast to other grounds on which goods, services, and opportunities might be demanded—for example, justice, utility, divine donation, or contract—human rights are owed to every human being, as a human being.

1.2 The Source and Substance of Human Rights

Turning from the "rights" to the "human" side of human rights, the central theoretical question is how being human gives rise to rights. To use an older idiom, what in (our) "nature" gives us "natural rights?"

Needs is a frequent answer (e.g. Maslow 1970, xiii; Green 1981, 55; Bay 1982, 67; Pogge 2001 [1995], 193; Gordon 1998, 728). But as Christian Bay, a leading advocate of a needs theory of human rights, admits "it is premature to speak of any empirically established needs beyond sustenance and safety" (Bay 1977, 17). And how needs give rise to rights is obscure.

A closer examination suggests that human rights rest on our *moral* nature. They are grounded not in a descriptive account of psycho-biological needs but in a *prescriptive* account of human possibility. We have human rights not to the requisites for health but to those things "needed" for a life worthy of a human being.

The "human nature" that grounds human rights is more a social project than a pre-social given. Human rights are at once a utopian ideal and a realistic practice for implementing that ideal; a sort of self-fulfilling moral prophecy. If the underlying moral vision of human nature is within the

"natural" limits of possibility, then implementing those rights will make real that previously ideal nature.

Human rights *constitute* individuals as a particular kind of political subject: free and equal rights-bearing citizens. And by defining the requirements and limits of legitimate government, they constitute states of a particular kind.

Contemporary international human rights law presents one politically important vision of this process. There is a surprising degree of international consensus—at least at the interstate elite level—on the list of rights in the 1948 Universal Declaration of Human Rights (see Morsink 1999) and the 1966 International Human Rights Covenants.[2] As of December 2005, the International Covenant on Economic, Social, and Cultural Rights had 151 parties and the International Covenant on Civil and Political Rights[3] had 154 parties, representing 80 percent of the total UN membership of 191. Few of the remaining states have expressed serious systematic objections of principle.

These two documents can be read as envisioning the mutual co-constitution of equal and autonomous citizens and democratic states fit to govern such rights-bearing citizens (Howard and Donnelly 1986; Donnelly 2003, chs. 3, 4, 11). The state must treat its citizens not just with concern for their capacity to suffer and respect "as human beings who are capable of forming and acting on intelligent conceptions of how their lives should be lived," but with *equal* concern and respect (Dworkin 1977, 272).

1.3 Justifying Human Rights

International human rights law, however, is silent about its theoretical foundations, except for scattered assertions that "all human beings are born free and equal in dignity and rights" (Universal Declaration, Article 1) and that human rights "derive from the inherent dignity of the human person" (Covenants, Preamble). The social contract tradition of political theory, which from Locke through Rawls has been closely associated with natural rights ideas, likewise simply assumes that they exist. Human rights are absent from the traditions of Western moral theory, among deontologists and teleologists alike. Even today, general justifications of human rights are

[2] http://www.ohchr.org/english/law/index.htm.
[3] http://www.ohchr.org/english/bodies/docs/Ratificationstatus/pdf.

peripheral to most theoretical discussions. (The principal exception is Gewirth 1982, 1996.)

For example, rights are absent from Kant's *Grounding for the Metaphysics of Morals* (1981) and the first part of "Theory and Practice" (1983, 61–92), which consider our categorical duties under the moral law; that is, right in the sense of rectitude. The second part of "Theory and Practice," however, addresses "political right." Here the discussion revolves around the rights of individuals, considered as human beings, subjects, and citizens—roughly what we would consider human rights today. Yet even as systematic a philosopher as Kant assumes rather than argues for the existence of these rights.

I have thus suggested (Donnelly 2003, 40–1, 51–3) that we understand human rights as what John Rawls calls a "political conception of justice" rather than a comprehensive religious, philosophical, or moral doctrine. Because a political conception of justice addresses only the constitutional structure of society, defined (as far as possible) independently of any particular moral or religious theory, adherents of different comprehensive doctrines may, despite other profound differences, come to an "overlapping consensus" (Rawls 1996, xliii–xlv, 11–15, 133–76, 385–96; 1999, 31–2, 172–3).

This has happened nationally in the West, where Christians, Muslims, Jews, and atheists, Kantians, utilitarians, neo-Thomists, Critical Theorists, and postmodernists, socialists, capitalists, and many others have come to endorse—for varying reasons and with varying degrees of enthusiasm—the liberal/social-democratic welfare state. The consensus is overlapping (rather than complete) and political (rather than moral or religious). Nonetheless, it is of immense theoretical and practical importance. I would argue that something very similar explains the wide international legal and political endorsement of human rights.

Although human rights do not depend on any *particular* religious or philosophical doctrine, they are incompatible with fundamentally inegalitarian comprehensive doctrines. Any egalitarian comprehensive doctrine, however, could in principle adopt human rights as a *political* mechanism. And, in practice, a growing number of adherents of more and more comprehensive doctrines, both religious and secular, have moved in this direction. For example, Muslims of various political persuasions across the Islamic world have elaborated Islamic doctrines of human rights that are strikingly similar to the Universal Declaration. This seems analogous to the process by which Western Christians, who prior to the seventeenth century had never expressed their political aspirations in terms of equal and

inalienable rights, gradually came to endorse political societies structured around such rights.

1.4 Duty-bearers of Human Rights

Henry Shue (1996, 51–64) argues that most rights, and all human rights, entail three kinds of duties: not to deprive the right-holder of the enjoyment of her right; to protect against deprivation; and to aid those whose rights have been violated. These duties, however, may be held by different actors.

In both national practice and international law, duties to protect and aid fall almost exclusively on the state of which one is a national.[4] Even deprivations by private individuals and groups are not typically called human rights violations. If an irate neighbor blows up a house killing a dozen people, it is murder. If irate police officers do the same thing, it is a violation of human rights. If foreign soldiers do it during war, it may be a war crime.

One might imagine different allocations of duties. The rights of children in all societies are implemented primarily through families. Many countries have significantly privatized old-age pensions. In Singapore, children have certain legal obligations to support their aged parents. Claims asserting duties of business enterprises not to deprive are appearing with some frequency today. And it does not strain credulity to imagine a world in which regional and international organizations acquire obligations to implement and enforce human rights.

In practice, however, virtually all human rights today are implemented and enforced by states operating within recognized territorial jurisdictions. Although the holders of human rights are universal, implementation and enforcement lie with states, which have duties to protect and aid only their own citizens (and certain others under their territorial jurisdiction). Neither states nor any other actors have either rights or obligations to protect or aid victims in other jurisdictions.[5]

[4] For brief accounts of the (extremely weak) international mechanisms that support implementation of international human rights treaties, see Donnelly (2003, 129–51, 173, 177), Forsythe (2000, ch. 3).

[5] A limited legal exception has emerged for genocide. Holzgref and Keohane (2003) and Wheeler (2000) provide overviews of the current state of mainstream discussions of "humanitarian intervention."

2 A History of Human Rights

In the Western and non-Western worlds alike, politics and society typically have been organized on hierarchical rather than egalitarian principles, around duties rather and rights, and around ascribed roles rather than individuals. Human rights are a "modern" invention initially developed in seventeenth- and eighteenth-century Europe and North America. The history of human rights[6] is the story of the (often violent) struggles through which political communities in the modern world have constructed a particular vision of the political requisites of a life of dignity worthy of a human being.

2.1 Early Natural Rights Ideas

Greeks of the Classical era radically distinguished Hellenes (Greeks) from barbarians. Aristotle's famous definition of "man" as a *zoon politikon* ("political animal") (*Politics* 1253a2–3) held that a truly human life was possible only in a *polis* ("city-state"). Outside the *polis*—that is, among barbarians—there were, at best, creatures capable of becoming men. And rights, for which there is no term in the language, were peripheral to Greek understandings of politics and society.

More universalistic ethical and religious doctrines attained greater prominence in Hellenistic Greece and Rome. Nonetheless, Greeks and Romans continued to distinguish themselves categorically from barbarians. (The Hebrew conception of the Jews as God's chosen people established a functionally similar qualitative distinction.) And during both the Republic and the Empire, Romans thought about and practiced politics with no reference to universal individual rights.

Medieval Christendom was ordered around hierarchical distinctions of birth, gender, religious status, and feudal obligations. Natural law expressed natural right, in the sense of rectitude, not natural rights (Strauss 1953;

[6] See also Ishay (2004), a lively and well-written history of "human rights" understood not as equal and inalienable rights but as any relatively egalitarian and moderately universalistic moral or political ideas, and Douzinas (2000), an eclectic account combining critical legal theory with postmodern and psychoanalytic perspectives. Shapiro (1986) offers an excellent critical account of the liberal rights tradition.

Donnelly 1980). The idea of equal and inalienable rights held by all individuals against society and political rulers, had it been seriously contemplated, would have been considered an abomination.

The decisive break came in the mid-seventeenth century. Tuck (1979, chs 1, 2) identifies important medieval and Renaissance precursors. The English Civil Wars provoked a wide range of assertions of equal natural rights (Haller 1965; Sharp 1983), including proto-socialist claims by Winstanley and the Diggers on behalf of the poor, oppressed people of England; Leveller tracts (Haller and Davies 1944) by Lilburne, Overton, and many others; and the famous debates at Putney in the fall of 1647 (Woodhouse 1938). In "high theory," natural rights featured prominently in Grotius, Selden, Hobbes, and Pufendorf (Tuck 1979). Locke's *Second Treatise of Government* (1689) put equal and inalienable rights at the center of a prominent and influential political theory.

In practice, "universal" natural rights were interpreted in highly particularistic ways. Religious toleration was extended only to some Christian sects. The political claims of high birth were supplemented rather than supplanted by natural rights, which were further restricted by a substantial property franchise. Women were "naturally" excluded. And none of this applied to "barbarians" and "savages."

Nonetheless, natural rights did significantly undermine feudal and aristocratic privilege. And, as later struggles have shown, the logic of equal and inalienable universal rights has a certain self-correcting character. It shifts the burden of proof to those who base their own rights on shared humanity to show why others do not qualify for those same rights. The oppressed and despised have always had to force their way into politics, usually in the face of violent resistance. But over the past three centuries, universal human rights have facilitated the entry of many oppressed groups, beginning with the bourgeoisie.

2.2 Expanding the Scope of Natural Rights

Although natural rights were prominent in seventeenth-century British political debates, the Bill of Rights (1689) refers principally to "ancient rights and liberties" and the powers and prerogatives of Parliament. The American and French Revolutions were more genuinely revolutionary, rooting sovereignty

in the people and, in their still famous declarations, basing political legitimacy explicitly on equal natural rights.

These projects too were, in practice, limited by, for example, slavery, the exclusion of women, and a (reduced but still significant) property qualification for voting. And for all their impact, they were more the exception than the norm. In the decades following the defeat of Napoleon, a conservative backlash predominated, especially on the Continent.

Nonetheless, nineteenth-century claims of human rights grew steadily more radical. And they increasingly were advanced by the popular and working classes, now not only against royal and aristocratic privileges but also against the bourgeois beneficiaries of previous natural rights claims.

This change is often presented as a shift in focus from civil and political rights to economic and social rights. Such a reading, however, misrepresents both phases. Economic rights were central to Locke's list of life, liberty, and property and Jefferson's life, liberty, and the pursuit of happiness. Conversely, nineteenth-century radicals and progressives agitated as strongly for an extension of the franchise and equal civil and political rights as for new economic and social rights.

Disagreement on the substance of economic and social rights certainly was a central line of political cleavage. Both groups, however, treated civil and political rights and economic and social rights as interdependent and indivisible. Although natural rights "for all" in practice typically meant natural rights "for us," both groups advocated the full range of (their own) civil, political, and economic rights.

Our focus on the emergence and evolution of human rights practices, however, should not obscure the fact that human rights continued to be rejected categorically by religious and secular traditionalists of various sorts, who controlled Russia and Austria-Hungary and remained powerful in most other countries. Romantics, historicists, and many nationalists saw "nations" or "peoples" as organic moral entities that were both unequal and superior to individual human beings. Scientific racism and Social Darwinism were powerful nineteenth-century movements. And so on.

In fact, even among progressives, the hegemony of human rights is, at best, only a late twentieth-century phenomenon. Most nineteenth-century struggles for political, economic, and social equality—in sharp contrast to 1776 and 1789—were waged under a different banner. For example, Bentham (2002) famously described imprescriptible natural rights as "nonsense upon stilts." Many other radicals rejected natural rights because they had been

co-opted by conservative defenders of property. Liberal nationalists stressed national rather than individual rights. Marx accepted human rights only as tactically and instrumentally valuable parts of the bourgeois political revolution that would be left behind by socialism.

2.3 Internationalizing Human Rights

As the case of the nineteenth-century working class suggests, dominant understandings of human rights have evolved primarily through new groups demanding full political recognition of their equal humanity by creating rights-based remedies to the distinctive "standard threats" (Shue 1996, 29–34) to their dignity. The twentieth century saw notable progress in recognizing and responding to discrimination against women and racial and ethnic minorities. It also introduced the victims of Western colonization into the ambit of human rights through the right of peoples to self-determination.

In many ways, however, the most radical twentieth-century innovation was the crafting of a system of *global* human rights norms. The Universal Declaration presents itself as "a common standard of achievement for all peoples and all nations," an aspiration given some real practical significance by the development of international human rights law. By the late 1970s and 1980s, the language of human rights had been reintroduced in most "progressive" political projects. With the collapse of party-state socialism in Central and Eastern Europe and of developmental dictatorships and national security states in the non-liberal Third World, a loosely liberal-democratic vision of human rights has become hegemonic. Today, no vision of political legitimacy systematically incompatible with internationally recognized human rights can hope to be taken seriously internationally. And human rights has become the leading language of resistance in all regions of the globe.

There remain marginalized and despised groups (e.g. the disabled and homosexuals) whose claims to equal rights continue to be denied. National implementation of international human rights norms excludes many from effectively enjoying their human rights because of accidents of birth. The logic of universality, however, continues to be a powerful critical resource for combating exclusionary understandings and implementations.

Universal human rights demand an unending struggle to realize an always evolving and receding vision of human dignity. Equal concern and respect—

"All human rights for all," to use the slogan of the High Commissioner for Human Rights in 1998, the fiftieth anniversary of the Universal Declaration—will always contain a certain utopian element, as we develop richer substantive conceptions of human dignity and more fully inclusive conceptions of "all" human beings. But it remains a *realistic* utopia (compare Rawls 1999, 7, 11–12, 126) that provides the means (human rights) for its own realization.

3 Theoretical Controversies

David Kennedy (2004, ch. 1) offers a brief but extensive and powerfully presented inventory of common criticisms of human rights. Space restricts us here to arguments that challenge the universality and individualism of human rights and criticize the tendency to rely excessively on (human) rights in pursuing social justice and human well-being. Although this is a reference work, my presentation here as in earlier sections eschews bland neutrality. While laying out the principal alternative views, I stake out clear substantive positions on these controversies.

3.1 Cultural Relativsm

Many authors contend that non-Western societies have indigenous conceptions of human rights that differ substantially from Western/international understandings (see, e.g., Unesco 1949; Pollis and Schwab 1980*b*; Thompson 1980; Hsiung 1985) Such arguments, however, typically confuse human rights, in the sense of entitlements that we have simply because we are human, with broader notions such as human dignity and social justice. For example, Asmarom Legesse argues that "distributive justice, in the economic and political spheres, is the cardinal ethical principle that is shared by most Africans" (1980, 127). Justice, however, involves much more than respecting rights. And the rights recognized in traditional African societies were rooted in social status rather than shared humanity. Although most non-Western societies have emphasized duties of rulers in areas currently regulated by

human rights, those duties either were not correlative to rights or were tied to rights based on social, legal, or spiritual status (Donnelly 2003, chs. 5, 7). "Individuals possess certain obligations towards God, fellow humans and nature, all of which are defined by Shariah. When individuals meet these obligations they acquire certain rights and freedoms which are again prescribed by the Shariah" (Said 1979, 73–4).

However we read the past, though, we should not emphasize it too much in interpreting and evaluating the present. It may be true, for example, that "the view of society as an organic whole whose collective rights prevail over the individual, the idea that man exists for the state rather than vice versa and that rights, rather than having any absolute value, derive from the state, have been themes prevailing in old as well as new China" (Kent 1993, 30). But culture is *not* destiny. It is dynamic and contested, constantly changing through often violent conflicts for control over social meanings. Contemporary Chinese are no more bound by such traditional understandings than contemporary Europeans are bound by their medieval and early modern traditions, which were equally distant from human rights.

Elsewhere I have argued (Donnelly 2003, ch. 4) that human rights have a structural rather than a cultural basis: They respond to the distinctive threats to human dignity and the particular social and political opportunities created by modern markets and modern states. The universality of human rights is thus functional and historically contingent. Markets and states have penetrated the globe and human ingenuity has (so far at least) proved incapable of devising more effective responses.

But whatever historical and theoretical account we adopt, the crucial fact is that more and more individuals and groups across the globe have come to interpret their religious, moral, and cultural values as supportive of, even demanding, human rights. People with extremely varied cultural traditions—consider, for example, India, Japan, France, and South Africa—have embraced practices such as freedom of religion, social insurance, and the right to education. And it is worth noting that these and most other rights in the Universal Declaration are specified in sufficiently general terms to allow varied implementations that take into account local culture, history, and tastes.

Human rights are neither tied to a particular culture nor incompatible with any egalitarian culture. Politically active individuals and groups across the globe today are increasingly grappling with the meaning, for them, of "universal" human rights (compare Preis 1996; Nathan 2001; Svensson 2003). The

universality of human rights has been, and continues to be, constructed by individuals, groups, and national and international political communities that have adopted equal and inalienable universal rights as a standard of political legitimacy.

3.2 Further Relativist Challenges

Relativist arguments need not be based on culture. Many are political. Furthermore, many ostensibly cultural arguments are made by repressive elites whose behavior offends local cultural values no less than international human rights norms.

During the cold war, the universality of human rights was often challenged by arguments that different political systems may appropriately select different subsets of the list of internationally recognized human rights. A minority in the West (e.g. Cranston 1973; Bedau 1979) rejected or radically downgraded economic and social rights. Although such arguments had no impact on, and in fact were completely contradicted by, the practice of all European states (that is, the Western mainstream), analogous criticisms of civil and political rights did dominate both ideology and practice in the Soviet bloc and much of the Third World.

Theoretically, however, there are no categorical differences between civil and political and economic and social rights (Shue 1996, chs. 1, 2; Donnelly 2003, 27–33). For example, "positive" and "negative" rights do not match up with economic and social and civil and political rights. Periodic and genuine elections, jury trials, and the presumption of innocence, for example, are positive goods and practices that the state must provide. State restraint or inaction is at best secondary to realizing these rights. Even significantly "negative rights," such as protection against torture, require extensive positive state action (e.g. police training and access to the legal system) to be effectively realized.

Today it is generally accepted that categorical exaltation or subordination of one set of rights cannot sustain political practices that support a plausible conception of human dignity. The 1993 Vienna Declaration and Programme of Action (para. 5) thus presents all human rights as "indivisible and interdependent." The underlying vision of human dignity is comprehensive and integrated, the whole being much more than the sum

of the parts, with each set of rights contributing essentially to the realization of the others.

A different kind of relativist critique presents international human rights standards as an instance of "false" universality. Cultural-political versions of such arguments usually involve a claim that human rights are "a western construct with limited applicability" (Pollis and Schwab 1980*a*). Feminists often present a more structural version of such arguments.

"Human rights are gender specific. ... Both in application and in theory, human rights are based on the male as the norm" (Peterson 1990, 305; compare Agosin 2001). The historic marginalization of women's rights issues is now widely appreciated and has become an important area of remedial action locally, nationally, and internationally (Askin and Koenig 1999). Whether a deeper masculinist bias remains—for example, in defining the boundary between public and private, in the adversarial nature of legal mechanisms of enforcement, or in the individualism of rights—continues to be a matter of considerable controversy.

3.3 Individualism and Groups

Many critics charge that human rights rest on a vision of "the isolated, lone individual, afraid of other humans" (Felice 1996, 57; compare Strauss 1953, 248; Douzinas 2000). In fact, however, many internationally recognized human rights—for example, to freedom of association, to marrying and founding a family, to organizing and bargaining collectively, to freedom of religion, and to participating in cultural life—have a primary social dimension. Countries where internationally recognized human rights are most fully implemented, such as Norway and the Netherlands, bear no resemblance to a world of "possessive individualism" (Macpherson 1962). Strong, attractive, and inclusive communities actually are facilitated by individual human rights (Howard 1995). Elements of atomistic individualism, such as the treatment of the poor in the United States, rest on and reflect systematic human rights violations rather than an unusually high degree of implementation.

It is true, however, that all the rights in the Universal Declaration and the Covenants, with the exception of the right of peoples to self-determination, are rights of individuals. The fact that much of the suffering in the world

is rooted in group membership has led many to advocate establishing new collective human rights (e.g. Marks 1981; Felice 1996). The most powerful arguments for such rights appeal to a combination of protective grounds, rooted in a history of collective suffering, and expressive grounds, based on the contribution of the group to the meaning of the lives of its members.

Many groups with strong protective and expressive claims, however, are incapable of effective agency, especially where the group is large, geographically dispersed, or heterogeneous. Consider, for example, women almost everywhere and African-Americans in the United States. "Group rights" that no one can exercise are largely an empty formula. (It is conceivable, however, that rights might enhance some groups' capacity for agency.)

In addition, if a group right is to be of any real theoretical significance or practical value, it must not be reducible to rights of the members of the group (compare Galenkamp 1993). The right to self-determination meets this condition. Most other ostensible group human rights do not.

The practical purpose of group human rights also is difficult to discern. For example, Felice claims that "[group] rights based on race and ethnicity are necessary because of the often genocidal policies of majority groups" (1996, 58). But can we really imagine a genocidal regime changing its behavior because of collective human rights held by that group?

Perhaps the most serious problem, however, is that group *human* rights must be universal—that is, held by every group of that type—but virtually all persuasive arguments for group rights depend on particular contingent conjunctions of protective and expressive arguments. For example, even the strongest defenders of minority rights do not claim that every minority everywhere ought to have group rights, let alone the same rights.

Human rights for groups cannot be categorically excluded. Beyond self-determination, an emerging exception would seem to be indigenous peoples, whose way of life is fragile, under attack, and fundamentally incompatible with mainstream legal and social institutions. Most oppressed groups, however, need not new rights, either individual or collective, but a deeper commitment to, and perhaps new strategies for implementing, already recognized human rights. It is hard to think of even a handful of additional types of groups that can advance strong protective and expressive justifications, have the capacity to exercise rights, and might achieve benefits with group human rights that cannot be achieved by effective implementation of individual human rights.

3.4 Rights, Justice, and Politics

Human rights, however, do prioritize the rights of individuals, drawing attention away from (although without denying) the legitimate interests and claims of states, societies, and families. Human rights also deflect attention from duties, responsibilities, and other individual and societal interests and values that are part of any adequate comprehensive account of the good life. We must be careful, therefore, not to exaggerate the place of human rights in our political practices, let alone in our understandings of morality or human flourishing.

Human rights are *not* a complete vision of social justice or human emancipation. They define (only) a limited range of (primarily political and legal) requisites for a particular understanding of a life of dignity. In principle, this is unproblematic. Different moral, ethical, legal, and political practices appropriately play different roles in a well-ordered society. In practice, however, human rights today often squeeze out, rather than complement, other concepts, languages, and practices. And the ways human rights are implemented often have socially and morally perverse unintended consequences.

For example, in traditional families one's life chances are largely determined by family roles. Such roles were, and remain, immensely fulfilling for many people. For others, however, they are highly oppressive. One of the great human rights accomplishments of the twentieth century was to liberate countless individuals, especially women, from the tyranny of the family. If families have changed because of the choices of their members, human rights advocates see nothing requiring apology. Unless equality and autonomy extend to the family, all other human rights are unacceptably vulnerable. But the substantial financial disincentives in the United States to caring for elderly parents at home, for example, perversely weaken families and undermine important values of respect and responsibility. More generally, when legal and political attention is focused narrowly on individual rights—especially in a litigious culture, which an emphasis on rights fosters—non-state mechanisms of provision frequently receive short shrift, potentially harming not only groups and society but individuals and their rights.

There is also an unfortunate tendency to shoehorn all important social goods into a human rights framework, implicitly treating internationally recognized human rights as a one-size-fits-all solution for all social and political problems. This can choke off creative thinking about the meaning of and strategies for realizing social justice or human emancipation. As the

hegemony of human rights insinuates itself more deeply in more and more places, we need to be especially sensitive to an inappropriate imperialism of (human) rights.

Claiming a human right does not *necessarily* halt legitimate discussion. Human rights frequently conflict with one another. Different defensible implementations of a particular right may have very different intended and unintended consequences. In extreme cases, human rights may even appropriately give way to other values. Human rights are not "considerations overriding all other considerations," "absolutes to be defended in all circumstances" (Brown 1999, 109, 110). Rights are only prima facie "trumps." The International Covenant on Civil and Political Rights (Article 4) thus permits derogations from most enumerated rights.

We must be careful to keep in view both sides of this fundamental, and inescapable, tension. Human rights are in an important sense "above" or "prior to" *ordinary* politics. In many ways, their point is to take these guaranteed goods, services, and opportunities out of the day-to-day give and take of politics. But human rights represent a *kind* of politics, not a politically neutral humanitarianism. They reshape the contours of, rather than eliminate, politics. Human rights practices—their respect no less than their violation—both reflect and alter distributions of power, opportunities, and values. The politics of human rights, and of accommodating human rights with other social values and practices, thus must remain a central theoretical and practical concern.

For most of the past three centuries, the politics of human rights has been emancipatory. Historically, the claims of families, churches, ruling elites, societies, and states have, at least from the perspective of human rights, been greatly overemphasized. Even today, far more people suffer far more, and far more intensely, from oppressive social, political, and legal duties than from oppressive or limiting implementations of human rights. And we *do* want claims of human rights, ordinarily, in their appropriate sphere, to put an end to, or at least radically restrict, further political discussion.

But all of this can be taken too far, with unfortunate consequences for human dignity, social justice, and human rights. We must avoid what Michael Ignatieff (2001) calls human rights idolatry, treating them as a be all and end all above politics. And we must recognize, even seek out, what David Kennedy (2004) calls the dark sides of virtue, the undesirable, unintended consequences of an excessively enthusiastic pursuit of human rights. Our human

rights practices must be evaluated just as critically and as intensively as we evaluate other moral, legal, and political practices.

Human rights are no more, but no less, than a standard of political legitimacy that specifies a set of social and political practices that aim to establish a framework for equal and autonomous individuals, acting separately and collectively, to make for themselves a world worthy of truly human beings.

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