OXFORD

ON HUMAN RIGHTS

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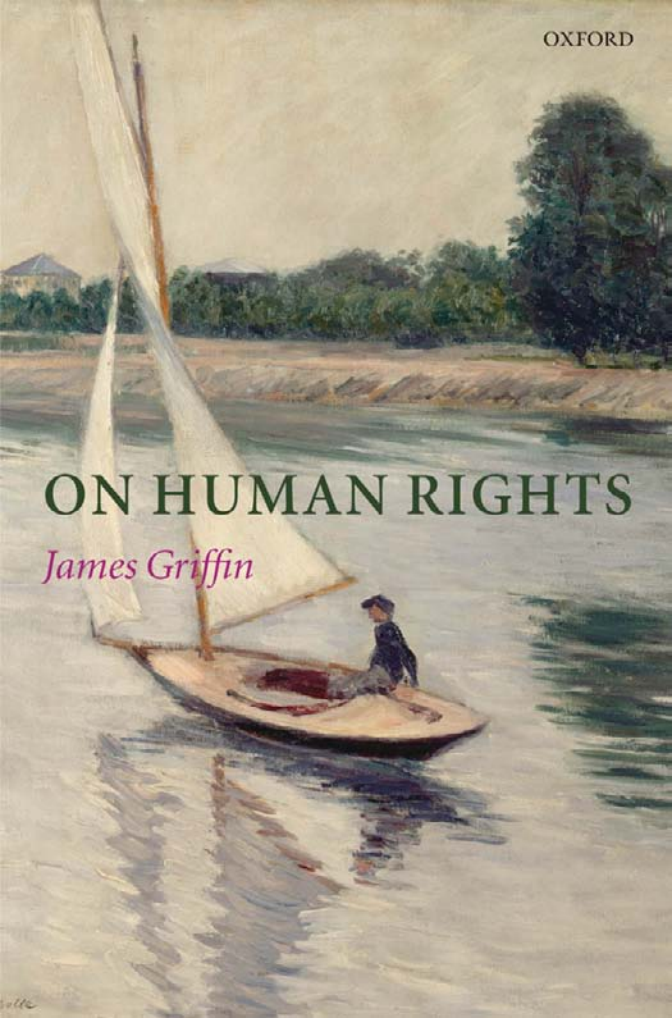

The same conceptual point applies in their case: one will have no grasp of these two goods unless one understands certain things about how people interact in groups. That interaction is built into the concepts. And these goods support not only basic rights to living autonomously and at liberty, but also derivative rights that are equally conceptually dependent upon group interaction: rights to minimum education, to exchange of ideas, to assembly, to democratic participation, and so on. Take the last right. In certain social circumstances I have a right to a fair say in social decisions. An obvious form for the recognition of this right to take in many modern circumstances is a derived right to vote. This social good—our having an equal say in social decisions—repeats all of the features of the supposed group goods. Any social structure for fair influence on decision is non-excludable: all agents in the group may avail themselves of it. It is non-rivalrous: your voting does not stop me from voting. It is jointly produced: it is because we all (or most of us) play by the rules that it exists. And it has that additional feature that group goods, in this further special sense, are supposed to have: that the only accurate description of the good must bring in the good to members of the group considered not just as individuals, or even as an aggregation, but as individuals considered together as interacting parts of a functioning whole. The description would have to include how one person accepts the weight given to the views of a second *because* the second person accepts the weight given to the views of the first, and so on.

So we have not yet managed to identify the kind of group good that will underpin a group right. To that end, let me now return to Raz's account of a right: in particular, to how he elaborates it into the conditions for the existence of a group right—just what we need but have not yet found.

To the core of his explanation of rights in general, he adds this further condition.[17] In the case of a group right, he says,

> the interests in question are the interests of individuals as members of a group in a public good and the right is a right to that public good because it serves their interests as members of the group.

For instance, a 'nation' can, in certain circumstances, have a right to self-determination. Each member of the nation may have an interest, as an individual, in its self-determination, because its self-determination may be bound up with the flourishing of its culture on which the individual's sense of identity depends.[18] The individual alone, however, does not have a right

to the group's self-determination, because that single person's interest is not sufficient to justify imposing such a considerable burden upon others. The interest of the whole group, however, might be. And the interests of the individuals that might build up sufficiently to justify imposing that burden upon others would be, Raz thinks, not individual goods that accrue to them as individuals, but more diffuse group goods that accrue to them only in virtue of their being members of the community. Membership of certain groups, especially cultural groups, is of great importance to their members. A good life depends importantly upon the successful pursuit of worthwhile goals and relationships, and they, in turn, are culturally determined.[19] So the 'pragmatic' and 'instrumental' case, as Raz describes it, for the existence of a group's right to self-determination would go along these lines.[20] The 'prosperity and self-respect' of what Raz calls 'encompassing groups'—say, cultural groups membership in which has a large role in one's self-identification and one's sense of possibilities—are of enormous value to us.[21] An encompassing group does not necessarily have to be self-determining in order to prosper; it may prosper as part of a liberal multinational state. But in less favourable historical circumstances, the only, or much the most satisfactory, way of ensuring its prosperity may be through its being self-governing. Then one has all that one needs for the existence of a group right to self-determination. [22]

That, I think, is Raz's well-wrought argument. It has the great merit of seeing the kind of thing that is needed in order to establish the existence of a group right. Still, I have my doubts about it.

First, are Raz's existence conditions sufficient? Why do they not prove too much? According to Raz, we have a claim, in certain historical circumstances, to self-determination because we have a more general interest in 'the prosperity and self-respect' of our encompassing group, and we have that interest because each of us has a major interest in having a healthy sense of identity and a satisfactorily large array of ways of life open to us. This suggests that standing behind the proposed right to self-determination, in those special circumstances in which such a right arises, is a broader right that one has to the prosperity and self-respect provided by one's encompassing group. And that broader right seems, indeed, to qualify as a group right on Raz's list of existence conditions. Our interests in a healthy sense of identity and in having a good array of options from which to choose seem to justify imposing on certain agents (viz. those political entities with the power to allow or deny our group a political setting in which it can prosper) the burden of allowing it. And the interests involved are our interests as members of the group in a

public good. And the interest of a single member would not be sufficient on its own to justify imposing that heavy burden on others. The trouble with this is that it seems to justify a right to even quite high levels of 'prosperity'. It seems to justify any level, no matter how high, in which the benefits are great enough to justify imposing the burden. Now, the word 'prosperity' here does not mean just material wealth, although that must be a large part of it; it means whatever contributes to an encompassing group's prospering. Still, the benefits of a robust sense of identity and a rich array of options in life are characteristically so enormous that they are likely to justify imposing the burden on others to allow it. But this loses what seems to me an important intuitive feature of both individual human rights and, presumably, closely related categories of rights such as group rights: namely, that such rights have to do not with any increase in the satisfaction of interests capable of justifying a duty on others, but with the satisfaction of only special kinds of interests and with their satisfaction only up to a certain point. In the case of human rights, for instance, we have a claim not to any form of flourishing but to that more austere condition: what is necessary for our status as agents, which includes autonomy, liberty, and some sort of minimum material provision. That element of austerity, that reference to a minimum, must not be lost. We have a right to material and cultural resources up to a point beyond which, though more would importantly enhance our lives, they are not a matter of right. How does Raz accommodate that essential feature?

The answer, I think, must be: through his notion of a 'duty'. The interests, he says, have to be sufficient to impose a duty on others, and the sort of duty he has in mind is not merely another reason for action, able to be merged in an overall balance of reasons for action. It is, as we saw earlier, a reason of a special kind, one that excludes a certain range of reasons from consideration. Not every aspect of a person's well-being will have this exclusionary effect. A paradigm case of an exclusionary reason is a promise. But our case now is a human right to minimum provision or to the survival of one's culture. Where on the spectrum from the most modest provision of material and cultural resources to the most lavish do we pass from interests that impose a duty, in this sense, to those that do not? Raz would say, I suppose: when the interests stop supplying an exclusionary reason. But the case of material and cultural resources has none of the clarity of the case of promising; it is not, as with promises, that the whole point of the reasons present here is to exclude a certain range of other reasons. And one kind of reason can exclude others in many different senses: by totally silencing them, by outweighing them

in all but the most extreme circumstances, by characteristically outweighing them, and so on. We must know which sense is relevant to rights. We do not understand what a right is until we understand roughly where along such spectra we are to make the break. The personhood account can tell us: the break comes when the material and cultural resources are no longer necessary for normative agency. But Raz's more formal existence conditions—interests justifying the imposition of exclusionary duties—leave it unclear.

My second, closely related doubt is that when Raz gives us examples of group rights, he makes them plausible as rights just to the extent that he appeals to familiar first-generation rights. Consider again his case for a right to self-determination. In certain historical circumstances, says Raz, I would have an interest in the self-determination of my encompassing group. 'At least in part', he says, 'that interest is based on a person's interest in living in a community which allows him to express in public and develop without repression those aspects of his personality which are bound up with his sense of identity as a member of his community.'[23] I have an interest in membership in a developed culture, because it supplies me with options in life, and they are protected by the right of the individual to autonomy. I have an interest in openly expressing, without fear of repression, what I am and wish to be, because that is central to my agency, which is protected by our individual right to liberty. This begins to look like a case for rights, because it stresses our being able to choose and our being free to live as we choose. But those are familiar cases of first generation rights. It is true that these rights are based on interests that we have as members of a group, but so is our right to a vote, which is also first-generation. Much the same can be said of another example that Raz gives. The British people, he says, have a right to know how Britain was led into the Falklands War.[24] That, too, we have as members of our group; the citizens of France, for instance, do not have a right to this information about Britain. But a British citizen has a right to it because a citizen of any country cannot have an effective voice in important political decisions without such knowledge. But that, too, is a first-generation right.

Let me mention a final doubt. Raz's most sustained argument for a group right is his case (made jointly with Avishai Margalit) for national self-determination.[25] But it seems to me just that: a moral case (and a good one too) for granting self-government to certain nations.[26] The further claim that it is a matter of right need not, and should not, be made. A right can be outweighed by another right or by sufficiently important considerations of

the general good. But Raz's case for self-determination is not like that. It does not first establish a right, and then consider possible overriding conditions. It is, rather, an all-in moral case. According to Raz, what we must show is that, in particular historical circumstances, self-government is necessary both for the prosperity of a certain encompassing group and for its members' participation in it,[27] that the encompassing group forms a substantial majority in the territory to be governed, that the new state is likely to respect the fundamental interests of its inhabitants, that it will not gravely damage the just interests of other countries, and so on until the all-in case is made.[28] The analogy with the case for individual human rights, therefore, breaks down here; Raz makes no claim that a nation, in virtue of its nature, attracts the protection of a right (compare: a person or an agent, in virtue of what they are, attract the protection of individual human rights). It is just as well that he makes no such claim. A nation, as such, does not have a right to govern itself, even an overrideable one. A nation that is respected and flourishing as part of a liberal multinational state does not have a right to secede. If there is a right here at all, it seems to me to be a right that, as I suggested earlier, is only one element in a case for self-determination: namely, a right to the conditions necessary for the members of an encompassing group to have an acceptable array of options in life and the freedom to pursue the ones they choose. But this is just the right that reduces to various first generation rights. My final doubt, then, is this: self-determination does not seem to me to be a *right*, and the right that is indeed part of its backing does not seem to me to be a *group* right.

I wonder whether Raz is not taking as group rights what are really derived individual rights—rights derived from applying basic individual human rights to particular social circumstances.[29] In any case, his attempts to motivate his proposed examples of group rights appeal to what are no more than such derived rights.

So, to sum up my thoughts so far, the first general kind of case for group rights—their derivation from group goods—seems to me unsuccessful.

15.4 ANOTHER CASE FOR GROUP RIGHTS: THE JUSTICE-BASED ARGUMENT

Other writers arrive at group rights in a different way. They base them on considerations of justice. My view is that this second argument largely

succeeds as an argument, but that it is not an argument for group rights. What this second case says is better said, I think, not forced into the language of rights.

The argument that I have primarily in mind has some claims in common with Raz's, but its direction is quite different. Will Kymlicka puts it like this.[30] The survival of a people or culture or ethnic or linguistic group is of enormous value to its members. It is the basis of their sense of identity—their sense of who they are and what they might become. The range of options open to one is determined by one's culture, by the examples and stories that it provides, from which one learns about the courses of life it is possible to follow. We all 'decide how to lead our lives by situating ourselves in these cultural narratives, by adopting roles that have struck us as worthwhile ones, as ones worth living …'.[31] 'Loss of cultural membership, therefore, is a profound harm that reduces one's ability to make meaningful choices'.[32]

For society at large to treat a minority culture as of negligible importance, for it to reflect back upon its members a demeaning picture of themselves, for it to deny the culture any concern for whether it lives or dies can, as Charles Taylor has put it, 'be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being'.[33] To be held in low esteem by society at large easily turns into holding oneself in low esteem, and persons then become compliant in their own oppression.[34] Lack of recognition for one's group can be a grave harm, which society at large should not inflict upon any of its members.

There is a constant danger that, in one way or another, a dominant culture in a society will stifle minority cultures. The markets and majority rule will usually work in its favour, and its very vitality can sap the strength of minority cultures, even to the point of their extinction. Minority cultures can unfairly, even if by no one's conscious wish, end up with many fewer resources than the majority culture. Unfair deprivation is a prima facie ground for erecting special protections around a minority group or for giving it special privileges. For instance, if its voice is unheard in the legislature, perhaps it should be given special representatives;[35] or perhaps its central government should adopt a federal structure or find some other way of devolving powers to smaller communities. Or if the market works to their disadvantage, perhaps minorities should be given special subsidies. The acknowledgement of minority rights can, in these ways, serve to prevent or correct the injustice.[36] These are just some of the possible means; the end, however, is always the same: rectificatory justice.[37]

By grounding group rights in justice, we can explain why there are also minority cultures that do *not* attract protection. When the Boers in South Africa sought, through apartheid, to protect their minority culture against being swamped by the black majority, they had no case. Apartheid itself was unfair. And that is also why a group is usually not justified in imposing certain restrictions internally on its own members, such as a ban on leaving the group, even if it promotes its own survival. Such bans are usually violations of liberty. So, as Kymlicka puts it, we 'should endorse certain external protections, where they promote fairness between groups, but should reject internal restrictions which limit the right of group members to question and revise traditional authority and practices'.[38]

This second case seems to me stronger than the first. But what is it a case *for*?

First, as it stands, the case is grossly oversimplified. The loss of cultural membership does not, in itself, reduce one's ability to make meaningful choices. All that one needs for meaningful choice is *some* culture, and if, as is often the case, a minority culture is in decline because it is being supplanted by a majority culture, one can, depending upon how much dislocation is involved in the process, still have *a* culture available to one. And the better the culture is—that is to say, the richer it is, the more examples it supplies and stories it tells, the more humane those stories are—the better off one is in that respect. It is true that there may well be things that could be said in one's original language that cannot be said in the language that supplants it. But the question is not whether there are such things, but to what extent they are central to one's being able to conceive the important choices in life. They might be; they might not be; and even if they are, one might still on balance be better off in the new language. We cannot tell in advance. All of that has to be decided case by case.

And one must not oversimplify, or sentimentalize, what it means to people to abandon an old culture for a new one. Cultures can, and must, be criticized. Some cultures are authoritarian, intolerant, sexist, distorted by false belief, dominated by unjust caste or class systems. Some people willingly emigrate, leaving behind one culture for another, as they hope, better one. They might have small sense of loss and great sense of gain. Other people—say, natives who see their culture destroyed by colonists—may have great sense of loss and small sense of gain. People's experiences are hardly uniform. And there is the important question of what sense one *should* have when one's original culture changes substantially, or becomes mixed with another, or

gives way to another. One will not know what one should feel until one evaluates what is happening, and in all of these cases what is happening is likely to be immensely complex, and the proper assessment of it hard to make.

Also, it is easy to exaggerate the extent to which our deliberation about our options in life depends upon our own particular culture. What that deliberation most needs is a sense of what things in general make a human life good. I have written about this elsewhere, so I shall merely state my view.[39] There are certain things that make any characteristic human life good: accomplishing something in the course of one's life, deep personal relations, certain kinds of understanding, enjoyment, and so on. Each of the items on this list needs a lot of explanation, so much so that they become in effect terms of art. There are not always words in English, as it is now, that will quite serve to name these individual values; to some extent, one has to invent a vocabulary. And this new vocabulary applies to characteristic human life: not British or American or Chinese or Sudanese life, but human life. It is a grotesque oversimplification to say that having a sense of meaningful options in life requires access to one's original culture, when no culture or language, as it stands, has quite the vocabulary we need, and when the vocabulary that deliberation can lead us to is, with qualifications, cross-cultural.[40]

There is something worryingly passive about the agent who figures in these arguments for the importance of cultures. According to these arguments, our culture gives us our options; we merely receive them as an inheritance. But this picture leaves out our active critical life. We examine life; we criticize our inheritance. Of course, we do it in our own language. But this does not mean that we are condemned to a life either so deeply embedded in our particular culture that we have no access to views originating outside it, or so detached from any particular culture that we have critical resources too feebly abstract to settle much. We do not have to be either inside or outside a culture; that is a false dichotomy—one the wide acceptance of which is puzzling in our current cosmopolitan conditions, in which most of us would be hard put to name the culture of which we are ourselves members. A very great deal of our critical vocabulary for ethics has still to be developed, and much of it will be neither the thick terms from a particular cultural perspective nor the thin terms of the spare rational agent of much modern philosophy. What we especially need are the key terms of a successful account of human well-being, still largely unsettled, and of realistically described agents living satisfactory lives in a realistically described society, also still largely unsettled. Once this

critical vocabulary has been developed and we look back on our original conceptual framework and ask whether we are inside or outside it, I think that we are likely to drop the question as ill drawn. We shall have substantially expanded our original conceptual framework; it is enough to say that. We can expect other people in other cultures to have been equally critically active. And we can, with some justification, expect points of convergence between us.[41]

So far I have been concentrating on the sources of personal identity (in the suspect, loose sense of the term found in these discussions) and capacity for choice. But there are, of course, many other reasons for protecting cultures than those. If one's culture dies, especially if records of it are few or are themselves destroyed, one loses touch with one's roots. For some people this is not felt as a great loss, but for others it is. Often one's sense of loss will depend upon how secure one's sense of self is within one's current society and how much respect the society shows one. And often one's loss of cultural roots is something that is inflicted upon one. There is a great difference ethically between one's voluntarily abandoning one's culture and a dominant group's destroying it. In general, no one should deny another autonomy—for instance, the autonomy to amend their culture, as they see fit. But the values here are not the survival of a culture, admirable or not, but autonomy and good ways of life. What we should cite here is not the right of a group that its culture survive, but one's right autonomously to choose and freely to pursue one's conception of a good life, both of which are individual human rights.

And that seems to me to be the trouble with all of these arguments. They are arguments about matters of the greatest importance, but they are not arguments for anything as general as a right of a group that its culture survive.

Without doubt, for society at large to deny a minority group proper recognition, to regard it as of little importance, inflicts a great harm upon its members. But this is not a reason to confer upon it and upon all cultural groups a general right to the survival of their culture,[42] but a reason to give it, and indeed everyone, equal respect: every human life matters and matters equally, regardless of gender, race, or ethnic group. This is a case for the irrelevance of a culture, not for society's guaranteeing its survival. It may be that in some cases the only practicable way for a society to avoid inflicting this harm on people is to ensure the survival of the identity of their group. But, as it is certainly not always so, this argument cannot be an argument for the

universal right of cultural groups to the continued existence of their culture. Every individual must be granted equal respect. Individuals and groups must be granted autonomy. But cultures must be open to criticism, and therefore to constant change, even to the point of a natural death.

Indeed, a culture is alive only if it is open to any change that its members think desirable, even if what survives is no longer the 'same' culture. A society intent on preserving a minority culture is actually severely limited in its options. Once one tries to preserve a culture, one has to decide what constitutes it, and that very decision tends to fix it as it happens to be at one moment in time. Embalming is a form of preservation, but it is not a form of life.

My appeals to the politics of sameness (e.g. the *universal* human right to autonomy) run the risk, of course, of missing the point of someone, such as Charles Taylor, who is promoting, precisely, a new 'politics of difference'. '[W]ith the politics of difference', he says, 'what we are asked to realize is the unique identity of this individual or group, their distinctness from everyone else.'[43] His idea is that when this distinctness is destroyed by a dominant or majority identity, the group loses touch with the ideal of authenticity; it loses touch with its own authentic ways of being. Individuals should be accepted as what they are, and not made to conform to a model appropriate to someone else; for example, women should not be forced, on pain of failure in their careers, to adopt modes of being appropriate for men. Still, when we autonomously choose a conception of a good life, whether or not it is compatible with the models given to us by our cultures, we are hardly sacrificing our authenticity.

The second case for group rights can be summed up like this: our culture is the source of our identity; some cultures are at an unfair disadvantage to others and need protection. What is important in this argument is not best expressed in terms of the right of a group that its culture survive. To say that a group has a right to the survival of its culture is to suggest that a culture deserves the strong sort of ethical protection that overrides all but the most pressing competing ethical concerns. But the demands on a society to protect a culture are not of this nature. The story is much more complicated than that; the demands upon society are much more complex, less categorical, than that.

Nor does the fact that some cultures are at an unfair disadvantage provide a case for a general right to the survival of one's culture. Rights do not cover the whole moral domain, or even the whole domain of justice. Not all legal rights

that legislators enact have corresponding moral rights. Not all moral claims that one person makes upon another, or one group upon another, involve rights. Minorities often make successful moral claims upon the majority society, but it is often better to see those claims as based on considerations of justice—usually on fair distribution—rather than on rights. These last claims raise general issues, to which I now want to turn.

15.5 EXCLUSION

One suggestion that has emerged so far is that many supposed group rights are best not seen as rights at all, and some others can be reduced to individual rights. Let me say more about these two possibilities: exclusion and reduction.

It may seem high-handed of me to dismiss many supposed minority rights as not really rights. Or it may seem that I am making only a trivial verbal point: that whereas I choose to define 'rights' so as to exclude many reputed minority rights, others choose to define 'rights' in a way that includes them. But I am not just arbitrarily choosing a definition of rights. Of course, there is an element of stipulation in anyone's proposal about what 'rights' are, but there are constraints on this stipulation. A case must be made for it—in terms of fidelity to the tradition, or of theoretical or practical pay-off, or whatever. Well-chosen stipulations are not high-handed; in the case of rights, they are sorely needed.[44]

I said before that human rights do not exhaust the whole moral domain, or even the whole domain of justice.[45] For example, human rights encompass procedural justice in courts, but not distributive justice (except for the minimum provision for the needy required by the right to welfare, which still leaves much of distributive justice untouched), or retributive justice (with similar exceptions), or many forms of fairness. Recall the case of a minority culture that is losing out in the marketplace and in the normal workings of a democratic legislature; the majority culture, say, gets a great deal of financial support, while the minority culture gets none, and its art and literature are decaying from neglect. The principle of equal distribution of resources may well require some sort of rectification, say in the form of a special subsidy. Now it seems to me that there will often be a strong case to that effect, but a case, I am suggesting, based in equality, not in rights. There is an obvious reply to me. The deprived minority, it says, has a moral claim on resources,

and a natural way to express a claim is in terms of rights. After all, when Hohfeld produced his taxonomy of rights, the class of rights that he called rights 'in the strictest sense' were claim rights. The weakness in this reply, however, is that it is distinctly counter-intuitive to express *all* claims in terms of rights. If one spouse is being gratuitously nasty to the other, the latter has a (moral) claim on the former to stop. But not all moral obligations are spoken of as giving rise to rights; this one, for instance, is not.

Of course, we can use the word 'rights' so that its domain of application coincides with the whole domain of moral obligation,[46] but I think that we ought not to. It seems to me that an account of general moral rights should be able to pass a redundancy test. The word 'rights' should not just provide another way of talking about what we can already talk about perfectly adequately. 'Rights' should mark off a special domain within morality, and there should be sufficient motivation to mark it off. The pass level for the redundancy test is, of course, fuzzy.[47] It is obviously a matter of judgement when a motivation is 'sufficient'. But making the domain of rights coextensive, by definition, with the whole domain of moral obligation, for which we already have a perfectly adequate vocabulary, fails the test. True, we could use the word 'rights' to mark the contrast between obligation and supererogation. But I myself doubt that this motivation is sufficient. We already have vocabulary to mark the distinction between duty and supererogation without conscripting the word 'rights' for the job. Besides, this use would be at variance with the philosophical tradition of rights. Certainly in the mainstream of the tradition the term 'rights' has a different and more specific job.

My argument here is an appeal to linguistic intuition. Is nothing more rigorous available? I have proposed excluding many forms of distributive and retributive justice from the class of moral rights. Is not the more rigorous procedure that we need, first, to establish what 'rights' in general are, then what the more specific 'moral rights' are, and finally what the still more specific 'human rights' are?

I doubt, though, as I said in the first chapter,[48] that this more rigorous procedure is available to us. The sense of some words can be explained verbally—that is, in terms of a definition by intension or, somewhat more loosely, by certain forms of explanation, such as 'we say that a person has a "right" when …', followed by conditions other than the extension of the word. This cannot be done, though, in the case of very many terms, the members of the extension of which have nothing stronger linking them

than Wittgenstein's 'family resemblances'.[49] These terms can, none the less, acquire satisfactorily determinate senses by acquiring fairly settled uses. I can find nothing more that the word 'rights' has than a fairly settled use, with many senses, varying from strict to loose. One can, of course, give a lexicographical definition of the term, but this is not what we need to settle our questions about the process of exclusion. We need a much more selective explanation of the terms 'rights' and 'moral rights'. We must take seriously that no one has yet come up with this more selective explanation, and not for lack of trying. It may not be possible, and certainly will not be easy, to give one. In the meantime, we should look for another way forward. Parts of the extension of the term 'human right' are widely agreed. The extensions of 'right', 'moral right', and 'human right' have developed in a fair degree of independence of one another. We do not say that a man who free-rides when filling out his income tax return violates his fellow citizens' human rights; he is a cheat, clearly, but not a human rights violator. Nor do we say, of a woman given an unjust prison sentence, either too little or too much, that her human rights have been violated; she has, though, not been fairly treated. What we say in ordinary speech is reinforced in this regard by the most consequential statements about human rights in our time: the Universal Declaration of 1948 and virtually all subsequent documents of national and international law of human rights. These documents include procedural justice but not all of distributive justice, or of retributive justice, or of many forms of fairness. And if these sorts of justice are excluded from the domain of human rights, would they not, by parity of reasoning, also be excluded from other forms of moral rights, such as moral group rights?

This hardly exhausts ways to resist my programme of exclusion.[50] But I cannot myself find any compelling reason, all things considered, to include claims to rectificatory justice, as such, in the class of rights. It is better—if for no other reason than so much clearer—to go on speaking of justice for deprived groups rather than of their having group rights.

15.6 REDUCTION

Other group rights, I think, can be dissolved by reduction. I shall take a quick look at just one example: the right of a state to non-intervention in its internal affairs. In international law this right is closely related to the 'sovereignty' of states. According to the United Nations Declaration of 1970, all states enjoy

'sovereign equality', which among other things includes the inviolability of their territorial integrity and political independence.[51] The Declaration also announces a 'principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State', which bans 'armed intervention and all other forms of interference' in a State's 'political, economic and cultural elements'.[52] The overlap in content of the principle of sovereign equality and the duty of non-intervention is obvious.[53] Now, as individuals, each of us has various rights to non-interference: a right to autonomy (not to have our major decisions taken for us) and a right to liberty (not to be blocked from carrying out our decisions). It is an obvious thought, then, that a state's sovereignty and right to non-intervention might just be, in some way, an aggregation of these individual rights. Perhaps it is because, and only because, all of its citizens have the right that we are willing to say that a state has it.

But if the group right to non-intervention were thus reducible to these individual rights, a state would not have the right to non-intervention unless what it wanted to do expressed what its citizens wanted to do. But that is not at all the way that this particular group right has been understood. It has been thought to be unconditional. As the Declaration of 1970 puts it: 'No State or group of States has the right to intervene …, *for any reason whatsoever*, in the internal or external affairs of any other State.'[54] If this once common understanding is correct, then the group right is not reducible to these individual rights.

I doubt, though, that it is correct, and in the last two decades it has been much qualified. One can, of course, create a legal right—say, in international law—to be understood in the manner of the Declaration of 1970, but we are interested in moral rights. And a country's prima facie moral right to non-intervention depends, I want to argue, upon its expressing the wishes of its citizens, and this prima facie right itself can be overridden by other moral considerations. I think that this is the understanding of the right that best explains our quite complex, considered beliefs on this subject and the changes of the last two decades.

It is true that we accept that we often, perhaps even generally, ought not to intervene in the affairs even of a country that does not express the wishes of its citizens. But the case for that, I think, is pragmatic. Any wish to intervene runs up against enormous problems of knowledge. We seldom know enough about the intricacies of the local situation to be reasonably confident that we can see what justice requires or, even more to the point, how to bring

it about. And even if we can be tolerably assured about the short run, it is notoriously difficult in complex social and political matters to know what will happen in the long run. There is also the cold test of results. Though recent 'humanitarian interventions' have aimed at bringing relief, they have often brought more harm than benefit. Then there is the main concern of the United Nations: a firm ban on intervention makes a major contribution to world peace. These, and other considerations, mount up to a strong practical case against intervention. Indeed, they also have an important role in fixing the boundaries of the (moral) right to non-intervention.[55]

They do not, however, make the right absolute. When the genocide began between the Hutus and the Tutsis, there were calls, answered only late, for intervention. In certain cases, cases of genocide or of gross oppression or extreme disregard for the good of the people, what needs moral justification is not intervention but non-intervention. Sometimes non-intervention will be justified by the practical considerations that I just mentioned. But when one's knowledge is reasonably full, when one can help appreciably at smallish risk, then the moral case for intervening is strong. Non-intervention can then be at least as great a moral failure as a community's not intervening in the internal affairs of a family when the parents are so physically abusive as to endanger their child's life.

The view that I have sketched can be summed up like this. The moral right to non-intervention depends upon a country's wishes manifesting its individual citizens' wishes. If that is missing, then the right does not even exist. Even if it does exist, the right can still be overridden, though the practical pitfalls show that exceptions should be only in especially clear cases. This, in effect, constitutes a reduction of the group right to non-intervention to individual rights to autonomy and liberty. It is hardly the whole story about when intervention is justified, but it is the prologue.

15.7 WHAT IS LEFT?

There are accounts of human rights other than the personhood account. There are other possible conceptions of, and arguments for, group rights, than the ones I have discussed here. My conception of group rights is moral (in contrast to legal), non-reductive, and non-excludable. But other writers have stipulated other senses for the term. One might think,[56] for instance, that 'the important question' is not whether there are group rights in my sense, but

whether there are 'legitimate interests which people have, emerging from their ethnocultural group membership, which are not adequately … protected by the familiar set of liberal-democratic civil and political rights as reflected, say, in the American Bill of Rights …'. And one might stipulate that 'group rights' are the protections of these interests, if there are such. But that is not the, or even an, important question; the answer is too obvious. Of course there are legitimate interests not adequately protected by classical eighteenth-century political rights. I have pointed that out throughout this book. Examples are certain matters of justice (distributive and retributive), of fairness, and of the quality of life, all of which are of great importance and none of which is a matter of a human right. Not all human interests ground rights. For example, one might, as a result of one's ethnocultural membership, lag behind the rest of society in income, although one's income still be comfortably above the level needed for normative agency; one would, none the less, have a legitimate interest in ending this injustice. Now, would our adopting this stipulation for 'group right' give us a better ethical vocabulary? I think not. This much broadened use would often be deeply counter-intuitive. For reasons that I gave earlier,[57] it would be better in these cases, because much clearer, to speak directly of 'justice', 'fairness', 'human well-being', and of what society should do in light of these.[58]

Clearly, though, there is at least one stipulation other than mine that cannot be gainsaid. One's question might reasonably be:[59] Are there moral grounds on which a good society should grant *legal* rights to certain groups? And of course there are: justice, fairness, well-being, and so on. And there is no threat of loss of clarity in our speaking of 'legal group rights', because the existence conditions for legal rights and for moral rights are, and are widely understood to be, different.

As it is not possible to identify all stipulations for 'group right' that authors might make, I can end only with a challenge. After the combined workings of exclusion and reduction, are there any compelling examples left in the class of moral group rights? When putative moral group rights seem to have the status of rights, is it not because they are reducible to human rights? Can we attach sufficiently clear criteria to the term 'group rights' to make it a helpful, non-redundant addition to our moral vocabulary. Are we not better off without the third generation of rights?

Notes

CHAPTER 1. HUMAN RIGHTS: THE INCOMPLETE IDEA

1. This is occasionally denied. Joshua Cohen, in 'Minimalism about Human Rights: The Most We Can Hope For?', *Journal of Political Philosophy* 12 (2004), says that their different intensions produce markedly different extensions. 'Natural rights' are 'rights that individuals would hold in pre-institutional circumstances'; 'human rights', on his 'minimalist' proposal, are 'rights implied by the most reasonable principle for global public reason' (p. 196). On that definition of 'natural right', he thinks, a right to a fair hearing or a right to take part in government are not natural rights: they presuppose the existence of institutions. On Cohen's definition, and indeed almost everyone's, they are, however, human rights. But Cohen's claim about different extensions is historically inaccurate. For example, at the end of the eighteenth century the terms 'natural rights' and 'human rights' were in use simultaneously, and their extensions did not noticeably differ. A right to a fair hearing in a court was regarded as a 'natural', i.e. 'human', right. At its most abstract, it is a right, simply, to a fair hearing, which does not presuppose the institution of laws and courts; a randomly assembled group in the wilderness can appeal to one of their number whom they respect to settle a dispute, and the settlement, as well as the way it is arrived at, be fair. In modern circumstances the best way to ensure a fair hearing is to have laws and police and courts, and in its lists of human rights the United Nations spells out the institutions we need in considerable detail. Similarly, we have our abstract right to freedom of expression; in a society with a press we have a derived right to, among other things, freedom of the press. Natural rights, it is true, are rights that we have in the institution-free state of nature, but the image of a state of nature is meant to stress that natural rights derive not from any institutions of society—that is, not from any social status—but from our human status alone. That belief does not entail that natural rights cannot have derived forms that spell out what certain social institutions should be like in varying circumstances. See below sects. 1.5 and 2.2, 2.8.
2. Thomas Aquinas, *Summa Theologica*, 1a2ae 93, a. 6 in corp.; ibid. Q. 91 a. 2 in corp.; ibid. ad 3. For exposition, see Annabel S. Brett, *Liberty, Right and Nature*

(Cambridge: Cambridge University Press, 1997), ch. 3, sect. 'Objective Right in Aquinas'.

3. Aquinas 'never uses a term translatable as "human rights" '; see John Finnis, *Aquinas* (Oxford: Oxford University Press, 1998), p. 136; also his 'Natural Law: The Classical Tradition', in Jules Coleman and Scott Shapiro (eds.), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford: Oxford University Press, 2002), sect. 8. None the less, Finnis says, 'Aquinas clearly has the concept. He articulates it when he sums up the "precepts of justice" by saying that justice centrally … concerns what is owed to "everyone in common" or "to everyone alike" … rather than to determinate persons for reasons particular to them' (*Aquinas*, p. 136). But whether Aquinas has our modern concept of 'human rights' depends upon what that concept is. Finnis makes the domain of rights equivalent to the domain of justice, but there is good reason, to which I shall come shortly (sect. 2.6), for doubting that this is true of our modern notion of human rights. We regard the domain of human rights as overlapping that of justice, but not as congruent with it. Furthermore, 'justice' is a highly elastic term, sometimes referring to a quite limited part of morality and at other times stretched to cover all, or most, of morality. Aquinas uses it broadly. As Finnis explains it, 'Common good is the object of general justice. General justice can be specified into the forms of *particular justice*, primarily fairness in the distribution of the benefits and burdens of social life, and proper respect for others … in any conduct that affects them' (*Aquinas*, p. 133; italics original). This, again, does not seem to give us the modern sense of 'human right'. The United Nations uses the term 'human rights' to include principles of procedural justice (e.g. in courts), but not principles of distributive justice generally ('the distribution of the benefits and burdens of social life'). And few persons nowadays use 'human right' of anything as broad as 'respect for others in any conduct that affects them'. I return to this matter later, as indicated above.
4. My interest, in this brief historical survey, is in writers with breadth of influence rather than depth of thought. Hobbes had the latter, but, given his widely unwelcome views about human motivation, not nearly the amount of the former that the writers I shall mention had.
5. Hugo Grotius, *On the Law of War and Peace*, trans. Francis W. Kelsey (Oxford: Oxford University Press, 1925), Prol. 11, p. 13.
6. Samuel Pufendorf, *On the Law of Nature and Nations*, trans. C. H. and W. A. Oldfather (Oxford: Oxford University Press, 1934), II. iii. 13, p. 201.
7. The phrase comes from Kant's essay 'Idea for a Universal History with a Cosmopolitan Purpose', Fourth Proposition: 'the unsocial sociability of men, i.e. their propensity to enter into society, bound together with a mutual opposition which constantly threatens to break up the society'. See *Kant: On History*, ed. and trans. Lewis Beck White (Indianapolis: Bobbs Merrill, 1963),

p. 15; and H. S. Reiss (ed.), *Kant: Political Writings*, 2nd edn. (Cambridge: Cambridge University Press, 1991), p. 44.

8. For a case for this dating, see Isaac Kramnick (ed.), *The Portable Enlightenment* (New York: Penguin Books, 1995), Editor's Introduction, p. x.
9. 'The state of nature has a law of nature to govern it, which obliges everyone: and reason, which is that law, teaches all mankind … that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions' (*Second Treatise of Government*, sect. 6).
10. Early in his career, however, Locke lectured at Oxford on the subject of natural law (lectures written shortly after 1660, almost thirty years before *An Essay Concerning Human Understanding*; and not published in Locke's lifetime). In the lectures he used 'natural law' to mean 'moral rule' (Essay I), and a moral rule is objective (it is 'in conformity with rational nature' and its 'binding force' is 'perpetual and universal' (Essay VII)). See John Locke, *Essays on the Law of Nature*, ed. W. von Leyden (Oxford: Clarendon Press, 1954). See also J. B. Schneewind, *The Invention of Autonomy* (Cambridge: Cambridge University Press, 1998), ch. 8 sect. 6. Locke also had much of a theoretical nature to say about morality in the *Essay Concerning Human Understanding*, III. xi. 16–18; IV. iii. 18–20.
11. Locke, *Essay Concerning Human Understanding*, II. xxi. 55.
12. e.g. Jeremy Bentham, 'Nonsense upon Stilts', in P. Schofield, C. Pease-Watkin, and C. Blamires (eds.), *Jeremy Bentham: Rights, Representation and Reform,* in *The Collected Works of Jeremy Bentham* (Oxford: Clarendon Press, 2003). 'Nonsense upon Stilts' was hitherto known as 'Anarchical Fallacies', but has been restored to Bentham's original, ruder title in this volume of his collected works.
13. The French Declaration of 1789 is a good example of the comprehensive approach. In June 1789 the National Assembly set up a committee to prepare material for a constitution. The Constitutional Committee immediately proposed that the Constitution should be preceded by a Declaration of Rights: 'In order that a constitution should be a just one it is necessary that it should be based on the rights of all men … To prepare a constitution, therefore, it is necessary to recognize those rights which natural justice accords to each individual … and every article of the Constitution should be the consequence of one of these principles' (quoted in Gaetano Salvamini, *The French Revolution: 1788–1792* (London: Jonathan Cape, 1954), p. 143).
14. Quoted in A. E. Dick Howard, 'Rights in Passage: English Liberties in Early America', in P. T. Conley and J. P. Kaminski (eds.), *The Bill of Rights and the States: The Colonial and Revolutionary Origins of American Liberties* (Madison: Madison House, 1992), p. 3. Other colonies that followed the Virginia Charter in claiming specifically the rights of Englishmen include Massachusetts (1629), Maryland (1632), Maine (1639), Connecticut (1662), Carolina (1663, 1665),

Rhode Island (1663), Massachusetts (1691); see ibid. p. 4. On the 'Englishness' of American colonial rights, see also John Phillip Reid, *Constitutional History of the American Revolution* (Madison: University of Wisconsin Press, 1986), vol. i, ch. i.

15. By the end of the eighteenth century the terms were used interchangeably. For example, in the Preamble to the French Declaration of the Rights of Man (i.e. human rights), the National Assembly stated its resolution 'to set forth in a solemn declaration, these natural, imprescriptable, and inalienable rights'.
16. It is not that Locke wrote the *Two Treatises* in justification of the Glorious Revolution of 1688. As Peter Laslett has shown (pp. 48, 51, 58–79), it was substantially written about ten years before the Revolution, in composition, therefore, being a justification for a possible future revolution rather than for a past one. Still, in publishing the book when he did (1st edn. dated 1690, though it appeared in 1689; p. 50), Locke hoped that it would serve as justification, as is clear from his Preface. Page references to *John Locke, Two Treatises of Government*, ed. P. Laslett (London: New English Library, 1965), Editor's Introduction.
17. See e.g. the account of the proclamations of rights by the town meetings in Boston and, subsequently, in surrounding towns in 1772 and 1773 in T. H. Breen, *The Lockean Moment: The Language of Rights on the Eve of the American Revolution* (Oxford: Oxford University Press, 2001), pp. 17–18.
18. I am grateful to James Nickel for discussion of this point.
19. See below, sects. 2.9, 10.4, 10.6. For an example of the view I want here to deny, see Charles R. Beitz, 'Human Rights and the Law of Peoples', in Deen Chatterjee (ed.), *The Ethics of Assistance: Morality and the Distant Needy* (Cambridge: Cambridge University Press, 2004), sect. 2: 'The "practical" view [which Beitz favours over the "orthodox" view] … takes the doctrine and practice of human rights as we find them in international political practice as basic. Questions like "What are human rights?", "What human rights do we have?", and "Who has duties to act when human rights are violated?" are understood to refer to objects of the sort called "human rights" in contemporary international life … There is no assumption of a prior or independent layer of fundamental values whose nature and content can be discovered independently of reflection about the international realm and then used to interpret and criticize international doctrine.'
20. See Lloyd Weinreb, 'Natural Law and Rights', in R. P. George (ed.), *Natural Law Theory: Contemporary Essays* (Oxford: Clarendon Press, 1992), p. 278: 'rights are not closely associated with natural law until the seventeenth and eighteenth centuries. Even then, the association is mostly verbal. The theorists are aware of the natural law tradition and refer to it to support their arguments. But the

references are little more than window-dressing.' See also J. B. Schneewind, 'Kant and Natural Law Ethics', *Ethics* 104 (1993), p. 56: 'The vocabulary of natural law was very widely used in the seventeenth and eighteenth centuries. Its terms accordingly came to be so vague that almost any outlook on the regulation of practice could be expressed in them.'

21. For instance, how are we to identify natural laws? According to early accounts, we should have to know God's intentions in shaping human dispositions. How does the inference from natural laws to natural rights work? And do natural laws exhaust duties to oneself and to other persons? Aquinas thought so (though some human duties to God may have to rest on revelation). He regarded natural laws as equivalent to basic moral principles governing this large sense of duties, accessible to all human agents, from which many more specific moral principles can easily be deduced, although there are occasional tangled cases in which moral judgements can be arrived at only with great difficulty and only by persons of rare moral sensitivity. (See Aquinas, *Summa Theologica*, 1–2, a. 91, art. 2: 'the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore, it has a share of the Eternal Reason whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law.' See also Joseph Boyle, 'Natural Law and the Ethic of Traditions', in George (ed.), *Natural Law Theory*, pp. 11–14, 24. If we derive natural rights from natural laws, do these rights then also exhaust this range of morality? Grotius and Pufendorf seem to have thought so. Most of us today do not; we believe that they exclude the claims of charity and perhaps more. But, unlike us today, Grotius and Pufendorf drew a distinction between perfect and imperfect rights, paralleling a distinction between perfect and imperfect duties. Rights generally are moral powers derived from law. In the case of perfect rights, according to Pufendorf, we may use force to exercise our related power; in the case of imperfect rights (say, a right to bring charitable aid to the needy) we may not use force in their exercise, although someone's preventing us from exercising them might thereby be grossly inhumane. (See the discussion in Schneewind, *Invention of Autonomy*, ch. 4 sect. 8 and ch. 7 sect. 4.) If our more limited, contemporary view about the scope of rights is correct, there is then the considerable problem of distinguishing the domain of rights from this much wider domain of morality.
22. Quoted by Michael D. Baylis, 'Limits to a Right to Procreate', in O. O'Neill and W. Ruddick (eds.), *Having Children* (New York: Oxford University Press, 1979), p. 13. At the United Nations Fourth World Conference on Women (1995), Hillary Clinton claimed that it was a violation of a human right to deny women freedom to plan their own families (*The Times*, 6 Sept. 1995).

23. Judith Jarvis Thomson, 'A Defence of Abortion', repr. in R. Dworkin (ed.), *The Philosophy of Law* (Oxford: Oxford University Press, 1977).
24. John Rawls, *A Theory of Justice* (Oxford: Clarendon Press, 1972), pp. 5–11.
25. But consider: 'the eighteenth century was a period (not, perhaps, unlike our own) in which the public's penchant for asserting its rights outran its ability to analyse them and to reach a consensus about their scope and meaning' (James H. Hutson, 'The Bill of Rights and the American Revolutionary Experience', in M. J. Lacey and Knud Haakonssen (eds.), *A Culture of Rights* (Cambridge: Cambridge University Press, 1991), p. 63).
26. Thomas Paine included minimum provision of education and welfare, and also a claim to a job, in *The Rights of Man* (1791–2), and the French Declaration of 1793 (not the more famous one of 1789) included a right to education. But no welfare rights were included in the three most famous documents of the age, the American Declaration of Independence, the American Bill of Rights, and the French Declaration of the Rights of Man and of the Citizen, unless the right to property is thought to harbour welfare elements. Many governments did, in fact, make provisions for education and social security, but the provisions were made by legislation; they were merely political arrangements, not constitutional rights. Golding correctly observes that 'an explicitly recognized conception of welfare rights' existed in the nineteenth century, and in implicit form even in the Glossators' commentaries on Roman legal texts. See Martin P. Golding, 'The Primacy of Welfare Rights', *Social Philosophy and Policy* 1 (1984), p. 124. Still, welfare rights gained wide currency only fairly recently—in the early and middle twentieth century. See the Constitution (1936) of the USSR, and, most importantly, the United Nations Universal Declaration of Human Rights (1948), Arts. 22–7.
27. African Charter on Human and People's Rights, Art. 23. 1.
28. International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5, D. vi.
29. Universal Declaration of Human Rights, Art. 13. 1.
30. That conclusion emerges convincingly from Wittgenstein's discussion of 'family resemblance', in Ludwig Wittgenstein, *Philosophical Investigations* (Oxford: Blackwell, 1953), sects. 64 ff.
31. The most influential being that of Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), ch. 7 sect. 1.
32. See below sects. 2.4, 2.5.
33. For discussion of whether ancient Greek and Roman authors had the concept of 'a right', see Richard Sorabji, *Animal Minds and Human Morals: The Origins of the Western Debate* (London: Duckworth, 1993), ch. 11; Fred D. Miller jun., *Nature, Justice, and Rights in Aristotle's* Politics (Oxford: Clarendon Press, 1995), ch. 4; Tony Honoré, *Ulpian: Pioneer of Human Rights*, 2nd edn., (Oxford: Oxford University Press, 2002), ch. 3.

34. Some writers (e.g. Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd edn., (Ithaca, NY: Cornell University Press, 2003), pp. 38–9; and Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002), p. 52), go so far as to propose the checklist of human rights as the test of the legitimacy of governments, but that, I think, for reasons that I shall come to in sect. 2.6, goes too far. Briefly, my reason is that human rights include certain departments of justice (e.g. procedural justice in courts) but not others (e.g. the full range of distributive justice). A government that saw to it that its citizens reached the minimum acceptable welfare demanded by human rights but then diverted all the rest of the nation's wealth to itself would not thereby violate human rights but would hardly be legitimate. I take a 'test' of legitimacy for governments to state necessary and sufficient conditions; widespread violation of human rights is sufficient but not necessary to fail the test. See also below Ch. 14 *passim*.
35. By Gerald Mackie, Research School of Social Sciences, Australian National University, Canberra.
36. For a much more pessimistic view about what philosophy can contribute to the public culture of human rights, see Richard Rorty, 'Human Rights, Rationality, and Sentimentality', in Stephen Shute and Susan Hurley (eds.), *On Human Rights: The Oxford Amnesty Lectures 1993* (New York: Basic Books, 1993).
37. Joel Feinberg, *Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton University Press, 1980), chs. 6, 9–11. See also his earlier book, *Social Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1973), chs. 4–6. Similar views can be found in V. Mayo, 'Symposium on "Human Rights"', *Proceedings of the Aristotelian Society*, suppl. vol. 39 (1965), and H. J. McCloskey, 'Rights', *Philosophical Quarterly*, 15 (1965).
38. Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977), pp. xi–xv, 188–91.
39. In his reply to Herbert Hart's criticisms (H. L. A. Hart, 'Between Utility and Rights', in his *Essays in Jurisprudence and Philosophy* (Oxford: Clarendon Press, 1983), ch. 9), Dworkin acknowledges that the conception of the common good checked by rights need not be utilitarian: 'We need rights, as a distinct element in political theory, only when some decision that injures some people nevertheless finds prima-facie support in the claim that it will make the community as a whole better off on some plausible account of where the community's general welfare lies' ('Rights as Trumps', in J. W. Waldron, *Theories of Rights* (Oxford: Oxford University Press, 1984), p. 166). But this slight amendment does not make Dworkin's characterization of rights any less flawed.
40. Below sect. 2.6.
41. Dworkin, *Taking Rights Seriously*, pp. 191 ff.

42. Widely used because of its occurrence in the Preambles to the two United Nations International Covenants of 1966.
43. For fuller assessment of Dworkin's view of rights as trumps, see Hart, 'Between Utility and Rights', which has influenced my comments here.
44. Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974), pp. 28–33.
45. John Rawls, *The Law of Peoples* (hereafter *LP*). (Cambridge, MA: Harvard University Press, 1999).
46. *LP*, sects. 8–9, esp. pp. 64–6.
47. *LP*, pp. 30–2, 78, 122–4.
48. *LP*, p. 68; see also p. 93.
49. *LP*, p. 104.
50. *LP*, pp. 68, 78–9, 81.
51. *LP*, pp. 65 no. 2, 70, 74, 79.
52. *LP*, pp. 27, 79–80.
53. *LP*, p. 70.
54. See below, this section; also sect. 7.4.
55. *LP*, pp. 78–9.
56. e.g. from Joseph Raz and Charles Beitz. For Joseph Raz's argument see this book sect. 2.8. For Charles Beitz's argument see his articles 'Human Rights and the Law of Peoples' and 'What Human Rights Mean', *Daedalus*, 132 (2003). I discuss Raz's argument in sect. 2.8; I discuss many of Beitz's points in the course of this book; see e.g. Ch. 2 *passim*.
57. See below sects. 7.2 and 7.3.
58. *Sunday Times*, 19 Oct. 2003.
59. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), p. 77.
60. The philosophers surveyed also failed to agree on the ground of human rights, and the editors of the survey reported to the drafting commission that 'the philosophical problem involved in a declaration of human rights is not to achieve doctrinal consensus, but rather to achieve agreement concerning rights and also concerning action in the realization and defence of rights, which may be justified on highly divergent doctrinal grounds' (*Human Rights: Comments and Interpretation* (UNESCO and Westport, CT: Greenwood Press, 1949), p. 263; quoted in Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999), p. 301).

    Compare Alasdair MacIntyre: 'In the United Nations Declaration on human rights of 1949 [*sic*] what has since become the normal U.N. practice of not giving good reasons for *any* assertions whatsoever is followed with great

rigour' (*After Virtue* (London: Duckworth, 1981), p. 67). MacIntyre misses the point.

61. e.g. Cohen, 'Minimialism about Human Rights', p. 213.
62. e.g. Charles Taylor, 'Conditions of an Unforced Consensus on Human Rights', in J. R. Bever and D. A. Bell (eds.), *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999), who looks at Islam and Thai Buddhism; Norani Othman, 'Grounding Human Rights Arguments in Non-Western Culture: *Shari'a* and the Citizenship Rights of Women in a Modern Islamic State', ibid., who looks at Islam; Cohen, 'Minimalism about Human Rights', who looks at Islam and Confucianism. See also Amartya Sen, 'Human Rights and Asian Values', *The New Republic,* July 1997, and his *Development as Freedom* (Oxford: Oxford University Press, 1999), ch. 10.
63. e.g. Taylor, 'Conditions of an Unforced Consensus', on Thai Buddhism: 'the notion, central to Buddhism, that ultimately each individual must take responsibility for his or her own Enlightenment' (p. 134); 'the doctrine of non-violence, which is now seen to call for a respect for the autonomy of each person, demanding in effect a minimal use of coercion in human affairs' (ibid.), though Taylor points out that the doctrine of non-violence has consequences, e.g. far more respect for the environment, that our notion of autonomy does not have. Also, Othman, 'Grounding Human Rights Arguments', on Islam: 'The *Qur'anic* term *ibn alsabil* refers to someone who is forced to move from place to place in order to seek a more peaceful life free from oppression. That is, to endure oppression involves a double violation of divinely ordained human nature and autonomy: by the oppressor and by the victim. Implied in this is a profound affirmation of human freedom, dignity, and autonomy' (p. 189); 'The notion of *umma* refers to humankind in its entirety and diversity, and human beings are given the right of religious conscience, an entitlement to their respective religious views and commitments. This is the capacity for spirituality that all humans share' (p. 190). See Cohen, 'Minimalism about Human Rights', on Confucianism: the Confucian ethic includes an 'ideal of the kind of person we should aspire to be: someone whose cultivation is sufficient to understand the virtues and act on them … According to Tu Wei-ming, Confucianism also embraces a concept of human dignity associated with the capacity for such cultivation. And, he might have added, in at least some of its formulations, Confucianism assumes this capacity to be widely distributed among human beings' (p. 204). But Cohen stresses that the conception of human rights supported by features of Confucianism does not rely on 'a liberal conception of persons as autonomous choosers', but draws instead on 'an ethical outlook that understands persons as embedded in social relations and subject to the obligations associated with those relations' (p. 206).
64. For fuller discussion see below sects. 7.3, 7.4.