6.32.4.6 HUMAN RIGHTS[1]

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Bangkok declaration, Charter, Constitution, Declaration, Dignity, Liberalism, Liberty, Natural rights, Person, Positive rights, Right to development, Social rights, United Nations.

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Summary

The concept of human rights has had a rich history, beginning with the early discussions of the seventeenth century. There have been changes in the general understanding of what constitutes a human right, and theories of the nature, source, limits, and kinds of human rights clearly reflect changes in underlying views of the nature of the human person and the relation of the person to the community. Thus, one notes a general shift, over the last 400 years, from the view of the person, as a self-interested, autonomous being requiring a freedom from external coercion reflected in a few basic civil and political rights, to a 'thicker' view of a person as social — and, in some cases, as fundamentally determined by social context — requiring a wide range of positive social, economic, and cultural rights. There has also been a movement away from providing a metaphysical or moral argument or foundation of rights, to a kind of phenomenological approach which regards rights simply as shared values or principles that people generally recognize. (Though there have been such shifts, the 'early' view of the person and of natural, human rights is still influential in philosophical and political discussion.) Despite these changes, what lies at the root of the recognition of human rights is the notion of human dignity and value. It is for this reason that appeals to or for human rights have been central to movements for political change, particularly in the twentieth century. One can expect continuing discussion and debate about the utility and value of (a discourse of) human rights as society grapples with the question of what respect for human dignity and value entails.

1. Introduction

The concept of 'human rights,' and the allied notion of 'natural rights,' have had an important place in political discourse since the late nineteenth century. The origins of the concept of human rights can, however, be traced much farther back in time, with some authors arguing that it has its roots in mediaeval or even classical Greek thought. Nevertheless, it was not until the seventeenth century (with Hugo Grotius [1583-1645] in *De Jure Belli Ac Pacis* [*The Rights of War and Peace*] [1625]) that the term 'rights' began to be clearly articulated, and not until Thomas Hobbes (1588-1679) and those who followed him (e.g., the Levellers, John Milton, John Locke, and George Savile, Marquis of Halifax) that it came to have a central role in political, social, and philosophical thought.

Broadly speaking, 'human rights' are freedoms or powers that are or can be claimed by human beings, that enable them to engage in certain activities — with (at least) correlative obligations on others not to interfere — and that are derived from the dignity and worth inherent in (or ascribed to) the human person. Such rights are frequently considered to be universal and to be necessary to the enjoyment of life.

Generally, these rights include rights to life, liberty, the security of the person, property, equal protection of the law, freedom of conscience and thought, free religious practice and expression, peaceful assembly and association, and to take part in the government of one's country. In addition, some have argued that there are other cultural and economic rights, such as rights to the free development of one's personality, to participate in the cultural life of the community, to

marry, to have a family, to social security, to work and to receive just remuneration, to rest and leisure, to housing, to a standard of living adequate for the health and well-being, and to education.

The development of the concept of human rights is largely coextensive with the development of liberalism, and liberal political philosophies are almost invariably committed to the defence of human rights. [It might be suggested that utilitarianism, which is liberal but emphasizes a collective good that takes priority over rights, is an exception to this, but this is a matter of some debate. See J.S. Mill's *On Liberty* (1859) and 'Use and Abuse of Some Political Terms' (1832).] Given that liberalism places an emphasis on human freedom and self-determination (especially the freedom to set one's own goals and to determine one's own conception of 'the good', that it attributes a fundamental value to the individual human person, and that it holds that the legitimacy of the state — its claim to rule — is derived from the will of those governed by it), liberalism and human rights have often gone hand in hand.

The notion of 'human rights' has, however, often been criticized for being vague and imprecise. Some have argued that, even if there are human rights, such rights as rights to life, to political association, to rest and leisure, to education, and so on, are not on a par. Again, there are different 'traditions' of rights — the way in which the term is used by Hobbes is quite distinct from the way it is employed by Locke, or Bernard Bosanquet, or Jacques Maritain, or John Rawls. Moreover, discussions of 'human rights' (initially) understood them to be primarily 'natural rights' — they are still frequently seen in this way — but there is a wide debate on what it means to say that a right is 'natural,' about to whom or what such rights may be ascribed, what their limits are, what their relation is to political authority, whether they are alienable, and whether the notion is, in fact, better expressed by references to the duties of others. Finally, it is not clear whether something claimed as a *human* right *is* a right that is 'innate' in the individual human person, or a right accruing to individuals as social beings, or a legal attribute of a person in a particular society or state.

Much of the contemporary discussion of human rights involves the constitutional, political and legal charters and related instruments in which they appear. The first such charters are those found in such documents as *The Virginia Declaration of Rights* (12 June 1776), *The Declaration of Independence of the United States* (4 July 1776) and Amendments I - X to the Constitution of the United States [*The Bill of Rights*] (1791); the French *Déclaration des droits de l'homme et du citoyen* [*Declaration of the Rights of Man and the Citizen*] adopted by the Constituent Assembly in 1789 and the *Constitution* of 14 September 1791, and the *Constitution of Poland* (of 3 May 1791). Perhaps the most important documents of the twentieth century are the *Universal Declaration of Human Rights*, adopted by the General Assembly of the United Nations in 1948, and the subsequent UN International Covenants on Economic, Social and Cultural Rights (1966), on Civil and Political Rights (1966), and the Optional Protocol to the International Covenant on Civil and Political Rights (1966).

2.1. Natural, Civil, and Legal Rights

Generally, when people employ the term '*human* rights' they mean some or all of the following.

a. natural rights. Traditionally, human rights — particularly natural rights — have been defended by an appeal to a 'foundationalist' moral or metaphysical justification. These are, then, rights that individuals possess in virtue of the kinds of beings they are — that is, naturally or 'essentially' (e.g., *qua* persons or *qua* rational beings). (Sometimes other conditions are included as well, such as being free, rational, autonomous, capable of having or identifying one's good, capable of articulating and acting on a plan of life — or just having the potential to possess such characteristics.) In other words, these rights are not held by individuals in virtue of some 'incidental' characteristic — e.g., being a member of a certain class or race, having a particular position or function in society, and so on. Natural rights are generally held to be rights of individuals, not of collectivities.

Such rights are sometimes said to be natural because they are discovered by reason in nature or in the `natural law' — i.e., reason 'sees' that certain beings must have certain rights in order for them to act as the kind of beings they are. Because such rights can be naturally known by all rational beings, those who can know and benefit from them must therefore respect them. These rights are, furthermore, sometimes said to be 'natural' in the sense that they would exist in a state of nature, if there ever were such a place.

On each of these models, because these rights are 'natural' to persons, they are also usually considered to be inalienable without the right-holder's consent. Examples of these rights would be the right to life and to preserve one's life, the right to pursue (one's own conception of) the good, freedom of conscience, and to be treated as a person.

Frequently, natural rights are described as *basic* — that is, as not depending on any pre-existing duties or responsibilities. Here, rather than being derived from or subject to a particular conception of the good, they are part of 'the good' and therefore serve as the standard of right and wrong action.

Natural rights are held to be antecedent to, and independent of, the state in general, and of any government or political regime in particular. As natural and ascribed to persons in virtue of them being persons, they are *moral* claims that must be respected, and serve as limits or preconditions or 'trumps' on what others — even the state — can do. For this reason, they have not only moral but legal force.

b. civil rights. These are rights that individuals are said to possess as members of political communities in general, and are part of the *ius gentium* or law of nations. These should — though, in fact, they may not, like natural rights — be respected within every particular political community. As with natural rights, civil rights are ascribed to persons simply in virtue of them being persons, but they presume a formal juridical order, though not necessarily a written or codified one. This order and these rights are universal, but are known only through the exercise of reason. Examples of such rights are rights to participate in one's own government, to political association, and to free expression and discussion (and, perhaps, to the private ownership of material goods).

c. positive* or *purely legal rights. These are the rights that human beings have simply in virtue of conventions, agreements, customs or laws peculiar to a particular state or community. These

rights may depend on the very specific functions or activities that person may have — or simply on state *fiat* — e.g., having a right to drive an automobile, to vote in the legislature or parliament, to discipline one's children, to receive a certain level of social assistance, and so on. Such rights are granted by the state and can be extended or alienated by it as well — for example, in view of social well-being or a common good. While there can be moral claims for such rights, often no metaphysical justification of rights is given. (There is some debate among philosophers and among legal theorists whether one may have a positive or legal right to engage in an activity that is immoral or is inconsistent with someone's civil or natural rights.) Because such rights are 'contingent,' some would dispute the view that they are *human* rights — though this is not the view of legal positivists, legal realists, and of an increasing number of states (see below, for an elaboration of this point). Thus, while human rights are often present in constitutions, charters, and bills of rights, and while they are often justified by the claim that they are 'natural,' their *legal* weight is derived from the fact that they are (simply) legal rights.

Despite the preceding distinction, there is a continuing debate whether there are any rights other than legal rights, and whether a particular claim to a power is a claim to a natural, or a civil, or a purely legal right.

2.2. Negative and Positive Rights

A further distinction in rights, particularly since the late nineteenth century, is based on a presumed difference between 'negative' liberty and 'positive' liberty.

One model, which emphasizes negative liberty, holds that to have liberty or to be free is simply not to be hindered in the pursuit of one's good by others. A human right, then, is simply a claim to be free from external interference. Individuals have the right to do whatever they wish so long as it does not interfere with others pursuing their rights, and the place of the state is simply to hinder those who would hinder another from exercising her or his rights.

Some argue that, in addition to negative rights, there is a second model of rights — positive rights. On this view, the development and growth of individual persons requires not just (or not primarily) freedom *from* external interference, but also freedom *to* attain some goal or result — specifically, the development of oneself as fully human. Thus, we do not have the dignity and respect due us unless we have access to, and therefore have a genuine power to choose, those things necessary to our development as persons. One's rights, then, involve more than being assured that others do not illegitimately interfere in one's pursuit of the good. They require that one have the opportunity and the means to acquiring certain goods.

It has been argued, however, that claims to positive rights require the restriction of more fundamental negative rights (and civil liberties), and that positive rights undermine fundamental negative rights. This discussion continues today.

2.3. Individualist and Collectivist Views of Rights

In line with the preceding distinction between negative and positive rights, there are two principal currents of theories of human rights. The first (and perhaps the most dominant view) is the 'individualist' current. This view is found from the time of Hobbes, but can also be attributed

to Locke, Adam Smith, and Herbert Spencer (and, perhaps, J.S. Mill) — and, in our own day, to Robert Nozick and Ayn Rand.

On this view, rights are primarily characteristics of individuals, guarantee the value and respect of individuals, and are basic in that they are constituent of each individual's conception of the good. Here, individual rights take priority over social or collective goods or interests. Thus, each individual has a right to determine her or his conception of the good, and therefore individuals can act on their rights as far as they wish, just so long as these actions do not conflict with the similar rights of others. The rights of collectivities are simply the aggregate of the rights of individuals, and the former cannot have priority over the latter. Even though collectivities have a greater number of rights, the rights are the same in kind, and so a greater number of rights does not entail a greater right. Frequently, this current reflects a view of the human person as 'atomistic' — that is, of individuals as fundamentally, morally and ontologically, independent of one another.

A second current of human rights is 'non-individualistic.' Here, it is agreed that freedom and human rights are demands of the development of human personality, but their moral and legal weight is not based simply or primarily on the value of the individual, but on the fact that these rights exist in view of a common or shared end. On this second view, human rights are important — and may even be fundamental — but individuals do not wholly determine their concept of the good, and there are certain common goods that society can expect all of its members to respect and promote. Moreover, because individuals are seen as primarily social beings, some, if not all, rights can be restricted where they would conflict with a social or common good or right.

2.4. Social or Collective Rights

While human rights are classically ascribed to individuals as individuals, as noted earlier they now often include collective or social rights. In one sense all rights are 'social,' because they exist where individuals are not alone and involve obligations on others. But in a deeper sense, social or collective rights are rights of *collectivities*, such as a *nation's* right to determine its own affairs, language rights, rights of minority groups, the right to development and permanent sovereignty over natural wealth and resources, and so on. Commonly, collective rights are considered to be more than a sum of individual rights, and can also sometimes override certain individual human rights. The ground of the priority of collective or social rights is not necessarily based on numbers. It may be based on the well being of the community as a whole, but can also be based on their necessity to human dignity or to collectivities and individuals retaining certain characteristics (language, religion, or culture) that are essential to those who are members of that language, religion, or culture.

2.5. Universal Rights

One final distinction that should be made is between 'universal' rights and the claim that human rights are culture specific and that there are no universal standards for human rights. In the former case, certain rights are held to apply to all human beings, as human beings, because they are a constituent of basic human dignity, and they are necessary to life as persons. On the other hand, those who hold that human rights are culture specific claims do not deny the existence of

universal human rights, but say that the universal applicability or the appropriateness of these rights in each culture must be considered in the context of that culture and its particular understanding of the nature of persons and their relation to society. Because of the wide variation of basic cultural or material conditions among societies and cultures, one cannot expect to find the same rights, or certain rights accorded the same priority or value, in all cultures.

3. Historical Development of Philosophical Thinking on Human Rights

3.1. Early Theories of Rights

In early theories of rights, one frequently finds an account — often a foundationalist account — of their origin and of their fundamental relation to human nature. One also often finds the claim that law is a limitation of freedom, and that the role of rights is to protect the individual not only from others, but from the law and the state.

One of the earliest influential account of rights is provided by the Englishman, Thomas Hobbes (1588-1679). According to Hobbes, liberty is "the absence of [...] external impediments of motion," and one is free when "in those things, which by his strength and wit he is able to do, [he] is not hindered to do what he has a will to do" (*Leviathan*, ch. 21). For Hobbes, human beings are capable of rationality, are self-interested, and are motivated principally by desire. For Hobbes, the "right of nature" is "the liberty each man hath to use his own power as he will himself for the preservation of his own nature [...] and consequently, of doing anything which, in his own judgment [...], he shall conceive to be the aptest means thereunto" — and this, in principle, leads to a right to everything (*Leviathan*, ch. 14). But reason (and desire and fear), Hobbes notes, recognize that certain natural laws are necessary to survival, and that one must "lay down this right to all things; and be contented with so much liberty against other men as he would allow other men against himself." This 'social contract' or pact that leads to the establishment of civil society, then, is based on a common laying down of natural right. Still, rights continue to exist within civil society. Some rights, in a second, political, sense are a product of the 'social contract' — one can think of political liberties to do what is not explicitly forbidden by law — but other rights are inalienable, such as rights to life, to physical liberty, and to security of one's person. Moreover, although law "determineth and bindeth" and is "inconsistent" with liberty (*Leviathan*, ch. 14), one's submission to law is purely voluntary, and so the authority of the law rests on the consent of the governed to lay down their rights. But, once laid down, it is unclear whether (on Hobbes' account) one could ever regain them, and thus this natural rights account is taken to be consistent with political absolutism.

A second early theory of rights is found in John Locke (1632-1704). Like Hobbes, Locke held that freedom or liberty is natural and, in some sense, pre-exists the state, and that the authority of the state is based on consent. In his *Second Treatise on Government* (1690), Locke argues that people are "by nature all free, equal, and independent," and political authority is based on consent. But, unlike Hobbes, Locke states that rights are the product of natural law — they are 'discovered' by reason in nature, and the natural law itself is often identified with reason (*Second Treatise*, sec. 6, 8, 10). These rights are, principally, a right to self preservation, to liberty, to health and goods, and to punish those who threaten them (sec. 190, 87); these rights bind all

rational beings. The paradigm of such rights is the right to property, and Locke speaks of individuals as having property in themselves. (While the right to property in general — i.e., the right to acquire and use property — is purely natural, one's right to a particular piece of property, other than oneself, is normally based in one's labour (sec. 45).) Were one to leave the context of natural law, then, one's natural rights would cease to exist.

In the *Second Treatise*, Locke states that these rights constitute a limit on law and the state. For Locke — in the minds of many of those who follow him — human rights involve freedom from the control of the state and government regulation. Rights are, as in Hobbes, fundamentally negative rights. The function of the state is to ensure that the rights of individuals are protected from interference by others — but it cannot legitimately do much more than this. Although Locke also employs the model of the social contract, unlike Hobbes, the model of the state that he provides is one governed by a ruler limited in power and bound by a constitution and by the injunction to protect certain individual rights. Locke also holds that there are conditions under which the people can exercise a natural right to rebel against their rulers.

This Lockean theory has been held to have influenced the Virginia and the US Declarations of Independence, and there are clear parallels between Locke's views and those of eighteenth century political reformers, such as Thomas Jefferson, who wrote (in the opening of the *Declaration of Independence of the United States*) that "all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness" and that "to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed [...]."

Later, in the eighteenth century, one finds authors such as Mary Wollstonecraft (1759-1797) who, in *A Vindication of the Rights of Men* (1790) and in *A Vindication of the Rights of Woman* (1792), adopted a Lockean view in arguing that the foundation of morality and of the existence of rights in men and women is their common possession of the faculty of reason, and that the best means to progress in society is by removing restrictions on the free action of individuals.

A different version of a social contact theory — one that leads to a distinctive explanation of the basis of human rights — is to be found in the Swiss French philosopher, Jean Jacques Rousseau (1712-1778). In his *Contrat social* [*Social Contract*] (1762), Rousseau continues the prior emphasis on the innate liberty of human beings, but holds that this liberty is a purely physical and contingent one. For Rousseau, genuine freedom is possible only by 'each person giving himself up to everyone,' and thereby establishing a civil society that is a 'moral and collective body' reflecting a 'general will' that is also present in every individual. While one gives up "natural freedom and an unlimited right to do anything he wants and can get," by entering into 'civil society' one "gains [...] civil [and moral] freedom and the ownership of everything he possesses" (*Contrat social*, I. 8). In short, individual freedom and rights are possible only through social life, and there is no fundamental conflict between liberty and the law.

While Rousseau does not develop an extensive account of human rights, his influence on the discourse of rights is significant. One finds, in his writings, some individualist, but also some 'collectivist' arguments that importantly influenced the theories of rights found in Kant, Hegel, and the British Idealists. Rousseau is also held to have greatly influenced the distinctive account

of natural rights that one finds in the French *Déclaration des droits de l'homme et du citoyen* (1789). Like the Lockean account, the authors of the French *Déclaration* held that "Men are born and remain free and equal in rights … [and that the] aim of all political association is the conservation of the natural and imprescriptable rights of man [… including] liberty, property, security, and resistance to oppression." But, here, while rights are held to be "natural, inalienable and sacred ('imprescriptable')," they are also subject to the law, which is understood as "the expression of the general will." In the *Déclaration des droits*, as in Rousseau, it is the general will, and not the individual person, that is the ultimate source of rights.

This distinctive approach to natural rights theory is developed in the work of Immanuel Kant (1724-1804) and, especially, in his *Metaphysische Anfangsgründe der Rechtslehre* [*The Metaphysical Elements of Justice*] (1797), Part I of the *Metaphysik der Sitten* [*Metaphysics of Morals*]. Rights — specifically, the innate right to freedom and all that follows from this — are based on the human person's character as a free and autonomous being. The role of these rights is fundamentally 'negative' — that is, their function is to remove external constraint. Though Kant does refer to 'positive freedom,' the source of this freedom is the individual will, and is not dependent on others. The authority of the state and law is not based on an individual explicit or implicit consent, as in Locke, but on the nature of will — and of a 'united' or common will. (This also anticipates, in some respects, Hegel's and the later idealist understanding of the basis of political authority.) Moreover, while individual rights and liberty can be said to exist 'in a state of nature' — that is, in a situation where there is no established legal order — they constitute a "wild lawless liberty," and one has a *duty* to leave this 'state.' Because of the importance of law to freedom and rights, Kant argues that revolution, which would involve a return to a lawless state of nature, is forbidden.

3.2. Nineteenth Century Discussions of Rights

There are four principal perspectives on human rights in the nineteenth century. The first is characteristic of utilitarianism. Jeremy Bentham (1748-1832), and James (1773-1836) and John Stuart Mill (1806-1873), argued for the existence of and value of rights but, while the restriction of 'natural liberty' was deemed to be a *prima facie* injustice (J.S. Mill, *Utilitarianism*, ch. 5), they denied that such rights were 'natural.' In this, the utilitarians follow David Hume (1711-1776), Adam Smith (1723-1790), and, to an extent, Edmund Burke (1729-1797) (who defended traditional rights and values in *Reflections on the Revolution in France* [1790] against a Lockean 'social contract' model of rights and freedom).

Bentham, for example, argued that the French *Déclaration des droits de l'homme et du citoyen* was dangerous and had "anarchical consequences." He also held that "[n]atural *rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, — nonsense upon stilts," (*Anarchical Fallacies*, ed. Bowring, Vol. 2, p. 501) — a view shared by many utilitarians. Nevertheless, while law is clearly necessary to social order, by its very nature law is a restriction of liberty and is painful to those whose freedom is restricted. (*An Introduction to the Principles of Morals and Legislation*, ed. Bowring, Vol. 1, p. 85). Because liberty has an important value, it requires the existence of a sphere of freedom from the control of the state and government regulation. Here, then, Bentham and his followers defended principally a theory of rights, reflecting the value of 'negative liberty.' While Bentham denied that there were *natural* rights, he

recognized a wide range of rights — though these were based on the law, that is, the command of the sovereign. Bentham's view was developed and extended by John Stuart Mill, and in his *On Liberty* (1859), Mill appears to provide a defense of individual rights where the function of the state is to ensure that individuals are protected from interference by others in their legitimate pursuit of their own goods — but cannot legitimately and ought not do anything more than this. Mill allows for the existence of moral rights, but explicitly rejects the possibility of a 'social right,' arguing that "there is no violation of liberty which it would not justify" (*On Liberty*, ch. IV). Given this emphasis on negative liberty, it is not surprising that utilitarianism has often been associated with an economic doctrine of *laissez faire*.

The *laissez faire* and positivist view of human rights, associated with Bentham and against Rousseau, can also be seen in the work of the Swiss political theorist, Benjamin Constant (1767-1830). In "De la Souverainté du Peuple" (1815) and "The Liberty of Ancients Compared with that of Moderns" (1819), Constant provided a defense of negative liberty (the liberty of the moderns), though with a proposal to promote an extension of that liberty. Following Condorcet, Constant writes that "The ancients [...] had no notion of individual rights," but emphasized the active participation of citizens in public power. But, in modern times, "The citizens possess individual rights independent of all social or political authority, and every authority which violates these rights becomes illegitimate. The rights of the citizens are individual liberty, religious liberty, liberty of opinion, in which is included its publicity, the enjoyment of property, guarantee against all that is arbitrary. No authority may infringe upon these rights without tearing up its own title" ("De la Souverainté du Peuple"). Constant argued that the then-existing society must somehow bring together the Liberty of the Ancients (the right of active participation in public power) and that of the Moderns ("the enjoyment of security in private pleasures" in a private sphere and "to develop our own faculties as we like best").

A second view of rights in the nineteenth century is articulated by Herbert Spencer (1820-1903). In line with Locke, Spencer argued that individuals have rights to basic liberties that are universal and inalienable without one's consent, based on a 'law of life' and 'in virtue of their constitutions' as human beings (*Social Statics*, p. 77). (Interestingly, Spencer acknowledges that rights are not inherently moral, but become so only by one's recognition that they are binding on both oneself and others.) These rights included rights to life, liberty, property, free speech, the equal rights of women, universal suffrage, and the right 'to ignore the state.' Spencer rejected utilitarianism and its model of distributive justice because he held that they rested on an egalitarianism that ignored desert and, more fundamentally, biological need and efficiency. Spencer further maintained that the utilitarian account of the rights and the authority of the state was also inconsistent.

A third view of rights is reflected in the writings of the British Idealists Bernard Bosanquet (1848-1923), T.H. Green (1836-1882), and David G. Ritchie (1853-1903). Influenced by the nineteenth century German philosopher, Georg Friedrich Wilhelm Hegel (1770-1831), but also by the Greek classical tradition of Plato and Aristotle, the idealists rejected the utilitarian positivist view of law and rights, maintaining that the source of the authority of a right was not the mere command of the sovereign. Yet the idealists also argued that there was no reason to hold that rights were 'natural,' in the sense that they could be ascribed to individuals independently of their relation to some goal or purpose, or that they could exist without being in

some way recognized by society or the state. Rights exist, and have moral weight, only so far as they are essential to the achievement of a common interest or end — the best life — that is, only so far as they are recognized by what Bosanquet called (following Rousseau) the general will. Although one could (as Green noted) speak of rights as 'natural' in a broad sense — as rights which are "necessary to the end which it is the vocation of human society to realise" (*Lectures on the Principles of Political Obligation*, sec. 9) — individuals are primarily social beings, and rights are assigned in light of one's social function or roles, rather than simply the biological fact of being human.

Because rights have to be recognized by the state in law, there was no rigid distinction to be made among different kinds of rights, including between 'moral' and 'legal' rights. Thus, for Bosanquet, a right "has both a legal and a moral reference." Rights are claims "which can [... and] ought to be capable of enforcement at law"; they "are claims recognised by the State, *i.e.* by Society acting as ultimate authority, to the maintenance of conditions favourable to the best life." Rights reflect "the external incidents, so far as maintained by law [...] of a person's position in the world of his community" and are "adjusted each to each like suits of clothes" (*The Philosophical Theory of the State*, ch. 8). Consequently, individuals' rights are neither absolute nor inalienable.

For Bosanquet and Green, the role of the state is primarily to ensure negative rights — the hindrance of hindrances — but the state may also promote (what Green called) positive rights — i.e., rights which provided the material conditions for liberty and the development of individual moral character. For the idealists, then, there was no incompatibility between liberty and the law. Moreover, because the state is the agency that recognizes rights, strictly speaking, there could be no rights *against* the state. Nevertheless, Bosanquet acknowledged that, where social institutions were fundamentally corrupt, even though there was no *right* to rebellion, there could be a *duty* to resist.

A fourth principal perspective on human rights in the nineteenth century is found in the work of Karl Marx (1818-1883) and his followers. In addition to the earlier challenges to the doctrine of 'natural rights' by Burke (who was particularly critical of the French Revolution, and who considered "rights talk" to be simply inflammatory rhetoric) and by Bentham (who considered it to be unnecessary, vague, anarchical, and dangerous), Marx provides a further critique, principally in his *Critique of the Gotha Program* [The Program of the General Association of German Workers at Gotha] (1875). Although Marx favoured improving the life and material prospects of workers, he argued that human or 'equal rights' were "ideas which in a certain period had some meaning but have now become obsolete verbal rubbish." The idea of an equal, human right is simply a "bourgeois right." "Right can never be higher than the economic structure of society and its cultural development conditioned thereby." Since human interests under capitalism vary from one society to another, and within societies themselves, they cannot be universal. In short, the discourse of human rights simply serves class interests.

In the nineteenth century, then, one finds a more significant division of opinion on who or what can have rights — whether only individual human beings can have rights, or whether there can be 'collectively' held social rights — and whether these rights are simply 'negative' or a mixture of 'positive' and 'negative.' This division is more fully present in twentieth century discussions of rights.

3.3. Twentieth Century Discussions of Rights

3.3.1. Refinements in the Concept of Rights

Discussions in the philosophy of law in the early part of the twentieth century led to a number of attempts to clarify the concept of right — though, in the Anglo-American tradition, little effort was made to argue for or defend its prescriptive character outside of the context of the law. Several major figures, such as Sir Paul Vinogradoff (1854-1925) ("The Foundations of a Theory of Rights"; *Common-Sense in Law* [1914]), Sir W. David Ross (1877-1971) (*The Right and the Good* [1930]), and the American legal theorist from Yale University Law School, Wesley Hohfeld (1879-1918) (*Fundamental Legal Conceptions* [1919]), provided important analyses of the concept of rights.

Hohfeld, for example, distinguished four kinds of rights — rights, liberties, powers, and immunities — and their correlative duties. Rights — or, more specifically, what Hohfeld called 'demand-rights' — entail a specific obligation on others towards the person who holds the right. These are distinct from 'liberties,' which exist where the person who has the 'liberty' is free to do or not do something — where others have no claim that that person do or not do it — but where others also do not have a duty not to interfere — e.g., in the sense of not being forbidden from also competing for it. (One might think of the 'liberty' to be a candidate for political office.) These and the related distinctions have been frequently drawn upon in later, twentieth century, political philosophy and the philosophy of law.

3.3.2. Positivism

In the late nineteenth and early twentieth centuries, some of the discussion of human rights moved away from a concept of natural rights to one influenced by legal positivism and legal realism. Positivists separate law and morality, and argue that traditional view of 'natural rights' conflates 'rights which exist' with 'rights which ought to exist.' For positivists, there are no fundamental moral, natural, or human rights other than legal rights, and all rights must be enacted in law in order to have authority or weight. While rights may have had their foundation in moral claims, there is no essential or logical connection between law and rights and morality. This view of the nature of human rights was classically presented by John Austin (1790-1859) (*The Province of Jurisprudence Determined* [1832]), following the influence of Bentham, and, in the twentieth century, by US Supreme Court Justice Oliver Wendell Holmes, Jr. (1841-1935) and, more recently, the legal philosophers H.L.A. Hart (1907-1992) (*The Concept of Law* [1961]), Joseph Raz at Oxford, and Jules Coleman at Yale Law School. Another scholar whose work falls broadly within a positivist approach is Austrian legal philosopher Hans Kelsen (1881-1973). Though, technically, Kelsen rejected both natural law theory and legal positivism, in *Allgemeine Staatslehre* [*General Theory of Law and State*] (1925), *Reine Rechtslehre* [*Introduction to the Problems of Legal Theory*] (1934), and the posthumously published *Allgemeine Theorie der Normen* [*General Theory of Norms*] (1975), Kelsen argued for a separation of law and morals (and thereby 'right' from classical 'human right'). Instead, law reflects a fundamental *Grundnorm* ("ground rule") which is universal, but independent of morality.

While more recent 'positivists' reject the "command theory" of law which underlies Austin's positivism, they maintain that morality and values are only indirectly relevant to law, and that law and rights have an obligatory character quite separately from moral principle. Nevertheless, the notion of basic human rights need not be abandoned. In fact, some recent authors have argued that a positivist conception of rights is 'theoretically liberating,' because it avoids the 'Eurocentric' character of 'natural rights' (see Paul Q. Hirst, *On Law and Ideology*, 1979). On the positivist view, then, human rights are simply those 'interests' which a legal system seeks to protect, and cannot exist independently of the law.

3.3.3. Jacques Maritain and the Renewal of Human Rights

Although positivism and legal realism dominated discussion of human rights in the Anglo-American world in the early part of the twentieth century, it was opposed by legal scholars, such as Roscoe Pound, and also by both politicians and philosophers, such as Jacques Maritain (1882-1973).

Maritain's work is important for two reasons. First, he defends the most complete account of human natural rights from a pre-modern, Thomistic natural law, perspective. Second, he had a seminal role in the articulation of charters of rights, such as the United Nations Declaration of Human Rights of 1948. Drawing principally on the metaphysics and political philosophy of St Thomas Aquinas, Maritain argued that there was a natural law in humanity that is unwritten but immanent in human nature that reflected the end of human beings. This end prescribes the duties but also the rights of human beings. While this was the philosophical foundation and justification for the existence of human rights, Maritain held that one could — as many nations did — recognize human rights without agreeing on any particular account of their *foundation* or justification (even Maritain's). Nevertheless, Maritain was critical of earlier articulations of rights, particularly those enunciated in the French *Déclaration*, which he said were enveloped "in ambiguity."

Maritain provides an analysis of human rights as, fundamentally, natural rights. Nevertheless, he goes beyond some classical views by making an important distinction between the individual and the person. On Maritain's view, human beings, as individuals, are part of a larger social order and have duties and rights as part of that order. Yet human beings are also persons — beings who, because they are capable of intellectual activity and freedom and have a supernatural destiny, have dignity, cannot be subordinated to the social order, and must be treated as 'ends.' One has rights as part of this order as well, but they can take priority over social duties. While Maritain distinguished among 'natural rights,' rights based on the 'common law of civilization,' and positive rights, he acknowledged that rights not only of the 'human person as such,' but also of the civic person and of the working person could be basic and fundamental. These rights were also "fundamental and inalienable" and "antecedent" (though not in a temporal or a moral sense) to the state and civil law and, in this way, he extends the list of human rights significantly beyond that found in many liberal theories. One consequence of Maritain's views on natural law is that he favoured a progressive, democratic and liberal view of the state, and there is an openness to 'positive rights.'

3.3.4. Contemporary Liberalisms

In the Anglo-American world, from the 1920s until the 1950s, positivist and Marxist critiques of the discourse of rights, and a marginalization of normative value theory, resulted in relatively little work being done by philosophers on human rights.

The American civil rights movements of the 1950s and 1960s, and liberation and rights movements in South Africa and Asia beginning in the 1950s, ignited a wider interest in human rights issues. The activities of Martin Luther King of the United States, Aung San Suu Kyi of Burma (Nobel Prize Winner in 1991), Archbishop Desmond M. Tutu of South Africa (Nobel Prize, 1984), and Nelson Mandela of South Africa (Nobel Prize, 1993) brought, and has kept, the notion of 'human rights' in the public eye. At approximately the same time, one finds essays by H.L.A. Hart and by John Rawls, beginning in the late 1950s (culminating in Rawls' magisterial *A Theory of Justice* [1971]), and Robert Nozick's controversial *Anarchy, State and Utopia* (1974), reflecting a major shift in focus in philosophy and a return to normative political philosophy.

By the early 1970s, within the liberal tradition, there is a renewed interest in the notion of human rights. This has resulted in four central 'schools' in the Anglo-American tradition which have had a significant impact on discussions of human rights around the world — first, a Rawlsian contractarian tradition (extended by Ronald Dworkin), second, a Nozickean libertarian tradition (that also shows the influence of the writer Ayn Rand), third, rights-based traditions that advocate a broad range of 'positive rights,' and that draw on a variety of inspirations, such as the work of Ludwig Wittgenstein (in the moral theory of A.I. Melden) and Kant (in the writings of Alan Gewirth), and finally, accounts of human rights as 'socially constructed,' but still universal (Jack Donnelly).

3.3.5. Rawls and Dworkin

Rawls acknowledges a debt to the work of Locke, Kant, and Rousseau, and he thinks that an explanation of the origin and limits of human rights can be given, though he specifically eschews a metaphysical or moral foundation for them. In *A Theory of Justice* (1971), Rawls aims at generating a conception of 'justice as fairness' as an alternative to utilitarianism, and identifies two principles of justice that are the product of a 'contractarian' or 'social contract' procedure. The first principle is: "each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all." (These basic liberties have a strong political focus — e.g., freedom of thought, association, religion, etc.) But since inequalities sometimes produce greater incentives — something which benefits all — Rawls recognizes a second principle, namely: "Social and Economic inequalities are to be arranged such that they both: a) are to the greatest advantage of the most disadvantaged [which Rawls calls the 'difference principle'] and, b) are attached to offices and positions open to all under conditions of fair equality of opportunity." To satisfy these principles, redistribution of resources is justified, and there is a strong egalitarian tendency in Rawls' work. Thus Rawls' account of human rights can be said to include 'positive rights,' and have provided a basis for arguments to rights to social welfare. Whether Rawls holds that there are natural rights that are part of the context in which the principles of justice are articulated is a matter of some debate. He maintains that "[e]ach member of society is thought to have an inviolability founded on justice or, as some

say, on natural right, which even the welfare of everyone else cannot override" (*A Theory of Justice*, p. 28) and states that claims to equal justice are natural rights in the sense that they "depend solely on certain natural attributes the presence of which can be ascertained by natural reason pursuing common sense methods of enquiry" (*A Theory of Justice*, p. 505). Even if these rights and liberties turn out not to be absolute, they are fundamental; from the above description, they would also be universal and (Rawls says) can be extended to international law and the law of peoples.

Following Rawls, Ronald Dworkin and his student Will Kymlicka have developed a more explicitly equalitarian concept of justice and rights. In *Taking Rights Seriously* (1977), Dworkin articulates a rights-based political theory that "places the individual at the center" and that describes rights as "trumps" on certain actions of the state, requiring, for example, that the state treat all citizens "with equal concern and respect," but in a way that still allows for collective goods and goals (such as affirmative action) to be pursued. In more recent work, such as *Freedom's Law: The Moral Reading of the American Constitution* (1996), Dworkin continues to defend a conception of rights that recognises that individuals have basic rights of autonomy, of freedom of thought, of political expression and association, but where policies promoting general equality can also be defended.

3.3.6. Nozick and Libertarianism

Although he argues for the existence of absolute, inalienable natural rights, unlike Locke and Spencer, Robert Nozick does not claim that such rights are derived from natural law; rather, they are entailed by the natural capacity of persons to lead integrated and meaningful lives (*Anarchy, State and Utopia*, pp. 50-51). Nozick identifies a number of natural rights: to "life, health, liberty" and "possessions," and to punish in proportion to any transgression of these. These rights — which appear to be modeled on the right to a particular piece of property — reflect one's moral worth and dignity, but are 'negative' — that is, involve nothing more than 'freedom from the interference of others.' (This is a fundamental and defining principle of *libertarianism*.) Additional particular rights can be justly acquired only in one of three ways: by initial acquisition (e.g., labor), by transfer, or by rectification (i.e., in compensation for past violations of rights). Nozick holds that all human beings possess the same basic natural rights, and that these, along with the entitlements they give rise to, provide a "moral space around an individual" (*Anarchy, State and Utopia*, p. 57) and set "the constraints in which a social choice is to be made" (*Anarchy, State and Utopia*, p. 166). They are ascribed properly only to individual human persons and — in keeping with the Kantian principle that persons are autonomous ends, and not merely means — normally may not be encroached upon without the right-holder's consent. Thus, one cannot justify the existence of anything more than a 'minimal' state, whose sole function is the protection of the 'negative' rights of its members.

This view of human rights is close to that of the popular writer Ayn Rand (1905-1982). It has had a particular appeal to conservatives in developed countries, and has been adopted and developed by other libertarian authors, such as Tibor Machan, Douglas Den Uyl and Douglas Rasmussen. In *Individuals and their Rights* (1989), Machan provides an 'Aristotelian egoist' foundation for his libertarian account of rights, based on an argument that bears a strong resemblance to that of Spencer. (Interestingly, Machan believes that one can speak of human

nature, but he denies that it is 'timeless,' 'unchangeable,' and 'fixed', that it provides a metaphysical ground for rights, or that there is a single conception of the human good.) The rights that Machan defends are individualist, negative rights; it is only with such rights that individuals "can proceed to pursue their happiness in the diverse ways they should" (*Individuals and their Rights* p. 53). Machan defends private entrepreneurship and "the corollary economic system of capitalism." One can even pursue 'moral wrong,' so long as it does not interfere with the rights of others. He also argues against a right to well-being and against taxation. Government is restricted to assuring the respect of one's "negative rights," and has no business in intervening to ensure one's moral development. Nevertheless, some libertarian authors allow for a more extensive account of rights that is sensitive to the claim for a broader range of rights, such as Loren E. Lomasky's *Persons, Rights, and the Moral Community* (1987).

3.3.7. Human Rights, Moral Relations, and Agency

There are three principal approaches to human rights in recent philosophical literature that focus on moral relations and moral agency: one grounds rights in moral relations (e.g., A.I. Melden), a second seeks to ground rights in the nature of human agency (e.g. Alan Gewirth), and a third bases rights on the concept of humans as 'project' makers (e.g. Henry Shue).

Melden, for example, locates the context and ground of rights in the life of the moral community. Hence, there is an essential relation between the rights of a person and the role they have in the life of that agent; Melden holds that the ascription of rights depends, at least to some extent, on the *recognition* of one as a member of the moral community — that we are "the reasonable object of the moral interest of everyone else." The denial of human rights, like the breaking of a promise, is wrong because it is not treating individuals with the dignity they deserve as capable of being full participants in the life of a moral community. In his *Rights and Persons* (1977), Melden argues that, aside from special rights (such as the receipt of promises) that one may acquire, humans have a *basic* inalienable right "to conduct their own affairs in pursuit of their interests," which presupposes the right to life and the right to a moral education (so that one may become a full moral agent). There are a number of additional human rights which are analytic consequences of this basic right (e.g., resistance to oppression, and to redress and relief from interferences). Melden also argues that since every person's moral interest is that the interests of all are protected, one must support affirmative action programs. Human rights are fundamental and, even if overridden, infringed or refused, leave a residue or "trace." Melden's view, then, allows for a much broader range of rights than found in libertarian authors, and also provides one with a means of establishing a priority among rights.

Alan Gewirth adopts an almost Kantian view on human rights, arguing for a number of 'basic' rights based on characteristics of human agency. In a number of books — *Reason and Morality* (1978), *Human Rights* (1982), and *The Community of Rights* (1996) — Gewirth (much like H.L.A. Hart) argues that human beings, as agents, need a certain level of freedom and well-being in order for them to act as agents — that is, to act in a rational, voluntary and purposive fashion for some good or goods. Freedom and well-being are generic features of human action and they must be present for agency to be possible. All agents *must*, therefore, hold that they have a right to these generic features of human action for, otherwise, they could not act. Now, Gewirth continues, one cannot identify these 'goods' as *rights* for oneself alone; one must admit that

others have them as well, since all agents have the same requirements. Thus Gewirth's (moral) Principle of Generic Consistency is that one must "Act in accord with the generic rights of your recipients as well as yourself" (see *Community of Rights*, p. 19). While one must have the fullest generic rights of which one is capable, this does not mean that everyone has the same generic rights *in full*. Gewirth distinguishes between actual, prospective, and potential (e.g., children) agents, with each having some degree of rights.

These rights extend beyond a narrow list of negative rights. Gewirth argues that having a right to well being requires having (and having a right to) different kinds of goods. Some of these goods are basic and indispensable to the right to well being itself, such as a right to life and to physical and mental integrity. But some of these goods are 'additive' — that is, they increase one's capacity and ability to act purposefully (e.g., rights to moral and intellectual education). The Principle of Generic Consistency leads, then, to positive rights to welfare ("productive agency"), to employment, to private property, to economic democracy, and to political democracy, and, thereby, to what Gewirth calls "the supportive state." This suggests that there is no fundamental conflict — as some libertarians have argued — between negative and positive rights. Still, despite his defence of generic (and other basic human) rights as 'natural' and 'fundamental,' Gewirth admits that human rights are "only *prima facie*, not absolute" (*Human Rights*, p. 57), and can be overridden.

In *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (1980; 1996), Henry Shue defends an account of 'basic rights' that, he believes, would be acceptable to both liberals and libertarians.

For Shue, an individual is fundamentally a being who pursues projects. But to be able to pursue any projects whatever, a person needs three basic guarantees or basic rights — specifically, rights to (physical) security of the person (i.e., not to "be subjected to murder, torture, mayhem, rape or assault," but also to have "environmental security"), subsistence (since, without it, humans could enjoy no other right), and liberty (to choose one's ends or goals — to make one's own projects). These three basic rights serve as "the rational basis for a justified demand that the actual enjoyment of a substance be socially guaranteed against standard threats." All individuals ought to be protected from forces that would prevent them from exercising the rights they have. These rights and duties are reciprocally owed to one another; each owes "the same measure of respect to others that they owe to him."

Each of these rights is 'positive,' for each entails (correlative) duties on others to avoid depriving, to protect others from deprivation, and to aid the deprived. Those who advocate purely 'negative' rights forget, Shue argues, that even 'negative' rights (such as the right not to be harmed) require that there be some 'positive' institutions that safeguard or secure them (such as the criminal law and the related enforcement agencies). Rights are to be guaranteed by those institutions which are "the agents of our interests" — namely, governments — and should be respected not only at the national but at the international level. The respect of rights can, therefore, properly be a part of foreign policy.

Though rights are positive, they do not require or entail 'welfare rights,' however, because an individual's right to subsistence can be respected simply by ensuring that nothing is preventing

that individual from acting on her or his own to provide for her or his own subsistence.

Like Gewirth and Melden, for Shue, rights are ascribed to individuals in virtue of a characteristic of moral personality — specifically, the capacity to pursue projects. Yet in the case of those who do not obviously engage in projects (e.g., infants), a right can exist as well — either because it is the correlative of obligations another owes them (e.g., because that person was herself at one point, as an infant, the recipient of such a right), or simply because, without any such right, those defenseless beings would suffer serious harms (which cannot be justified).

3.38. Human Rights as Socially Constructed

Some authors, such as Jack Donnelly (in *Universal Human Rights in Theory and Practice* [1989] and later work), have argued that one can rightly speak of universal human rights, without being committed to any moral or natural foundationalism.

Donnelly acknowledges that human rights are not natural or inevitable, are the product of historical accident, and may change. Rights, he says, are a set of social practices that are designed to achieve certain substantive objects or underlying values. Principal among these values is the conception of the human being as autonomous and equal — a view that today has an almost universal acceptance. According to Donnelly, rights happen to have been the way — though they are simply one way — of enshrining this value. Thus, despite having an unusual, contingent, historical origin, and despite being a "social construction," by the end of the twentieth century, the concept of human rights has become "deeply rooted" and is recognised as legitimate in almost every nation. As a result, the discourse of rights is authoritative. But while human rights are effectively universal, Donnelly admits that they are not fixed or final.

For Donnelly, then, human rights serve in contemporary society as a regulative political ideal of equal and autonomous individuals pursuing their own conceptions of the good. The 'practice' of the enforcement of such rights is still (and will likely long be) left to nation states themselves — which sometimes results in problems for the respect of rights in some societies. For enforcement of rights to be most effective at an international level, there would have to be a broader conception of political community, and a sense of cosmopolitan political solidarity. Nevertheless, in today's world, rights are morally and politically authoritative. Our awareness of them is concomitant with our awareness of them as prescriptive and that we ought to work with others towards their recognition. Since most states recognise the normative 'practice' of universal human rights, there is, Donnelly would argue, little point to raising the question of whether they exist.

3.3.9. Conclusions

Though they clearly differ in their respective accounts of the nature and extent or range of rights, many of the philosophical theories of human rights advanced in the twentieth century generally recognize the dignity and value of the human person and the importance of liberty. Moreover, many of these theories claim that human rights can be defended even without a metaphysical or 'thick' moral foundation. Where these theories tend to conflict with one another is over such concerns as what liberty entails (e.g., whether it involves general obligations to others and the existence of positive or social `welfare' rights) and whether the theory articulated is ultimately a

moral or (simply) a political one.

3.4. Contemporary Challenges

Although the notion of human rights continues to be employed in philosophical thinking on human rights, it is certainly not universally accepted and, particularly in the late twentieth century, it continues to meet with a number of criticisms.

Some continue to argue that there are problems with the notion of human rights itself — that there is no human nature or natural law from which rights can be derived, and that claims to rights need to be expressed within a legal system to have any force or weight, with the consequence that such rights cannot be, by their very nature, universal. The notion of human rights, distinct from legal or constitutionally guaranteed rights, is, then, a vague and useless — if not an altogether dangerous — idea, and there is nothing to be gained by an appeal to it.

Some argue that theories of human rights, and the accompanying view of liberalism, reflect a gender-specific and gender-dominant view of the person and of social relations — this is a critique that has been advanced by a number of feminist theorists.

Some have objected that the argument for human rights does not go far enough to satisfy the demands of justice — that it is insufficient from a moral point of view, and that it fails to recognise fully, and even contributes to, the suffering of marginalized groups. Recently, those defending 'green' politics have maintained that human rights and its attendant notions are outdated — that, in a world undergoing ecological crisis, human rights neither do nor can serve to provide instruments to address threats to life on a world-wide scale.

Critics, particularly from developing countries, hold that the discourse of human rights is the product of 'western' ideology — that such a discourse arose in a specific culture in a relatively recent epoch, and that it has no relevance to (and in fact conflicts with) the equally-legitimate values and traditions of other cultures. Indeed, some have argued that the discourse of universal human rights is a tool of nations (particularly, of the United States) to carry out a self-interested political agenda. Thus, in a pluralistic and culturally diverse world, it does not make any sense to speak of *universal* human rights.

Finally, some (such as the British international relations specialist, Chris Brown) draw attention to all of these criticisms — both the philosophical or 'conceptual' and the 'pragmatic' or political. Convinced by the claims of "cultural pluralism," Brown believes that rights discourse in the west has been successful only because it is parasitic on a distinctively western, liberal notion of "ethical community" that cannot be found in many non-western nations. Sympathetic to Richard Rorty's description of human rights as simply a "culture" rather than as a set of universal moral claims, Brown allows that, at best, only a "demythologised Hegelianism" — i.e., a gradual expansion of the boundaries of the western moral community — could ultimately lead to a set of transcultural general moral principles which could be called 'rights,' though even here there would always be 'local differences.'

Despite the preceding and other criticisms, appeals to human rights continue to be made. Clearly, these challenges call for a further elaboration and discussion of the principles of human rights. If

they are to be retained, one must ask on what basis they can be defended or justified. And, if they are to be abandoned, are there other moral and political notions that serve to address the same issues and that can avoid the kinds of criticisms raised against human rights?

4. Constitutions and Declarations

4.1. Foundational Documents

Many countries recognize in law, or in constitutional documents or declarations, the existence of fundamental human rights and freedoms. In using such terms as 'declaration' or 'recognize,' the intention is to distinguish certain rights from others, 'created' by the state. In such cases, human rights guaranteed under national and international human rights declarations and covenants are nevertheless also considered to be legal rights that have status within the positive law.

As noted above, the principal constitutional documents or declarations which have exercised a broad influence on both the subsequent political discussion of human rights and the articulation of a variety of national and international charters of rights, were — in the 18th century — those of the United States, France, and Poland and — in the twentieth century — the United Nations Declaration, and its subsequent instruments. While these documents reflect prior philosophical discussions of human rights and cannot be properly understood without reference to them, the documents have had an impact that goes far beyond these discussions .

4.2. United States, France, Poland

Among the earliest sets of documents in which human rights were declared or defined are the constitutional documents of the United States, Poland, and France.

4.2.1. The *Declaration of Independence* and the *Constitution of the United States*

In the United States, a Lockean view of natural rights inspired reformers such as Thomas Jefferson, and its influence is found in such texts as the *Virginia Declaration of Rights* (12 June 1776), the *Declaration of Independence of the United States*, and in the *Constitution of the United States* (September 17, 1787) and the first ten Amendments to the Constitution (*The Bill of Rights*) (1791).

The opening words of the US Declaration state the fundamental place of individual human rights:

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness — That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.

In earlier versions of the US Declaration, and in the Virginia Declaration, the authors included a basic human right to "the means of acquiring and possessing property," rather than the pursuit of happiness. As the US Declaration evolved, however, it came to be held that property was a means to happiness, rather than an end, on a par with life and liberty.

In the US Declaration, there are at least three, basic, inalienable, human rights, along with a recognition of the fundamental equality of human beings. But while it is claimed that the "laws of nature" entitle a people or nation to a political independence or "equal station" with other peoples or nations, basic human rights have no explicit justification — there is, for example, no claim that human rights are based on natural law. These rights are, rather, 'self evident.' From these rights came a right to political representation and a right to resistance and rebellion (after petition for redress). (Though the Declaration suggests that a withdrawal of consent to the government is a possible last resort, even then there is a *prima facie* duty to 'declare' the reasons for this withdrawal of consent.) While containing a largely individualistic account of rights, it is interesting to note that these foundational documents do not state whether the consent from which the government derives its power is individual or collective and, in the Bill of Rights, two kinds of human rights seem to be distinguished: rights of *the people* (e.g., to assemble, to keep and bear arms, to be secure in their possession), and rights of *individuals* (e.g., the free exercise of religion). Moreover, while the rights listed here are often seen as 'negative rights,' they have been used as a basis, in later legislative acts and judicial decisions, to justify more extensive positive rights.

4.2.2. *Declaration of the Rights of Man and the Citizen*

A similar set of basic human rights and liberties are recognized in the 1789 *Déclaration des droits de l'homme et du citoyen* [*Declaration of the Rights of Man and the Citizen*], drafted principally by Emmanuel Sieyès, and reflected in the French Constitution of 14 September 1791 (which established a representative government and a constitutional monarchy).

Much like the US Declaration, in its first two articles the French *Déclaration* affirms that

Men are born and remain free and equal in rights […] The aim of all political association is the preservation of the natural and imprescriptable rights of man […to] liberty, property, security, and resistance to oppression.

Human beings, then, are born free and equal in respect of their rights, but the *Déclaration* identifies both basic rights and duties. The *Déclaration* also makes a distinction between rights which *all* people have — such as "No person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law" — and the rights and duties enjoyed by *citizens* — that "any citizen summoned or arrested in virtue of the law shall submit without delay" (Art. VII).

Although the aim of political society is again stated to be the preservation of these rights, there is much less indication than in the US Declaration of the absolute character of these rights. For example, in the French *Déclaration* , law is an expression of the will of the community — the *volonté générale* or general will (Art. VI) — and the source of power is in the community as a whole, not the individual. Again, while the *Déclaration* assures that "the exercise of the natural

rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights" (Art. IV), the appropriateness of these limitations is determined by law in light of "utility" or of what is "publicly necessary" or necessary to the public good. This suggests that there is a priority of the community over the individual, and, therefore, of collective rights over individual rights. This legal and constitutional basis for the recognition of a common good permits a more extensive range of 'positive rights' than generally allowed by the American constitutional documents.

4.2.3. *The Bill on Government*

Though short-lived, the Polish Constitution (*The Bill on Government*) passed by the Polish Sejm (Parliament) on 3 May 1791 was the first in Europe, preceding the French Constitution of 14 September 1791 by several months. It was in force, however, for just over a year; soon afterwards King Stanislaw August Poniatowski was overthrown by foreign intervention, and Poland partitioned in 1795 (until 1918).

Like the French and US constitutions, the Polish Constitution states (Art. V) that "All authority in human society takes its origin in the will of the people." It legally recognized the existence of "the peasants," and allowed for freedom of religion. Nevertheless, it also ensured the property rights and authority of the nobility and, particularly, "preserve[d] sacred and intact the rights to personal security, to personal liberty, and to property, landed and movable, even as they have been the tide of all from time immemorial; affirming most solemnly that we shall permit no change or exception in law against anyone's property" (Art. II). And while it recognized the existence of "the peasants," it did not declare that the peasants had rights — seeing the well-being of the peasant class as based on "justice, humanity and Christian duty, as from [their] own self-interest properly understood." It also established (Art. I) a national religion — the "Roman Catholic faith with all its laws" — and punished "Passage from the dominant religion to any other confession [..] under penalties of apostasy." Despite having recognized a number of rights, it cannot be considered a genuinely liberal constitution on a par with those of France and the United States.

4.3. The United Nations

The Universal Declaration of Human Rights, drafted by an international committee of philosophers and statesmen (including Eleanor Roosevelt, widow of the US President Franklin D. Roosevelt, the Canadian — and author of the first draft — John Peters Humphrey , René Cassin of France, and Charles Malik from Lebanon), and inspired by the philosophical views of Jacques Maritain, was approved by the General Assembly on December 10, 1948. It has had an important place and role in the discussion of human rights in the decades that have followed. While it contains a number of the rights enumerated in earlier declarations and charters, it provides a much more extensive list of rights, including 'positive rights' to cultural, economic, and social well being, absent in earlier eighteenth century models.

The Universal Declaration explicitly identifies well over two dozen human rights. The principal rights are "the right to life, liberty and security of person" (Art. 3). Some of the related rights enumerated early in the Declaration are political and civil: security and the legal protection or

guarantee of one's rights — such as the prohibition of torture and of "cruel, inhuman or degrading treatment or punishment" (Art. 5), "the right to recognition everywhere as a person before the law" (Art. 6), "to equal protection of the law" (Art. 7), to the presumption of innocence (Art. 11), to "a fair and public hearing by an independent and impartial tribunal" (Art. 10), forbidding *ex post facto* laws (Art. 11) and the insistence that "No one shall be subjected to arbitrary arrest, detention or exile" (Art. 9). Other rights focus on principles which follow from liberty — e.g., Article 4 (forbidding slavery and the slave trade), Article 12 (individuals not to be "subjected to arbitrary interference with [one's] privacy, family, home or correspondence") and, particularly, a series of rights guaranteeing the right to residence and a nationality, free movement, the right to marry, to have a family, to property, to divorce, to freedom of conscience and thought, and to religious practice, and a right to asylum from persecution for 'political crimes' (Art. 14). There are political rights to freedom of opinion and expression (Art 19), to freedom of peaceful assembly and association (Art. 20), and to take part in the government of [one's] country [...] by universal and equal suffrage" (Art. 21).

There are also cultural and economic rights, necessary for the "dignity and the free development of [one's] personality": the right freely to participate in the cultural life of the community (Art. 27), the right to social security (Art. 22) including the right to work, the right to just remuneration, and the right to equal pay for equal work (Art. 23). One also has a "right to rest and leisure" (Art. 24), a "right to a standard of living adequate for the health and well-being " (Art. 25), and a right to education (Art. 26). Finally, more broadly, "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" (Art. 28). But the Declaration also notes that "Everyone has duties to the community in which alone the free and full development of his personality is possible" (Art. 29).

Following the UN Declaration in 1948, several 'covenants' and 'protocols' have been established, which develop and extend the list of rights appearing in the Declaration. Principal among these are the UN International Covenants on Economic, Social and Cultural Rights (1966), on Civil and Political Rights (1966), and the Optional Protocol to the International Covenant on Civil and Political Rights (1966), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Convention on the Elimination of All Forms of Discrimination Against Women (1979), and the 1989 Convention on the Rights of the Child. One might add, as well, the four conventions concerning treatment of individuals in wartime, signed at Geneva, 12 August 1949 (the 'Geneva Convention').

In general, the rights outlined in these later covenants and protocols repeat those in the Declaration, although some — such as the right to property — are not always explicitly reaffirmed.

There has been some question as to whether such a wide range of rights diminishes the importance of the more fundamental rights and whether it might pose problems in establishing a priority of rights. There has also been a concern about both the practicality and the status, as human *rights*, of the list enumerated in the Declaration.

In this elaboration of rights, it is clear that there is a shift from guaranteeing 'negative' rights, to asserting a number of positive rights. But with the wider range of rights, and the fact that many

countries do not have the material means to provide or secure most of them, doubt has been cast on whether the rights expressed in the Declaration should be counted as rights at all. For some, rather than listing a series of morally or legally binding principles or rules, the Universal Declaration represents (simply), in the words of the Preamble, "a common standard of achievement for all peoples and all nations."

4.4. Other International Conventions and Instruments

Aside from the United Nations Declaration, covenants, and protocols, a number of other international agreements on rights have been established.

4.4.1. The Americas

In North and South America, principal among the international agreements addressing human rights are the "American Declaration of the Rights and Duties of Man," adopted by the Ninth International Conference of the Organization of American States (OAS), in Bogotá, Colombia, in 1948, and the "American Convention on Human Rights," signed at the Inter-American Specialized Conference on Human Rights of the OAS, in San José, Costa Rica, on 22 November 1969. In both cases, the range of human rights enumerated go far beyond those of the US Declaration and Bill of Rights, and resemble, in many respects, those of the United Nations. Like human rights declarations and charters in general, the rights enumerated are based upon attributes of one's human personality; like recent declarations, they also explicitly list a wide range of corresponding duties.

4.4.2. Western Europe

In Western Europe, the principal human rights document is the "European Convention on Human Rights" (of 4 November 1950), to which one must add all its Protocols, as well as the 1961 "European Social Charter" of the European Community (revised 3 May 1996). (Enforcing this charter is the primary function of The European Court of Human Rights.) The principal rights that are recognised in the Convention on Human Rights are the traditional ones: including the right to life, liberty, and security, the right to a fair trial, to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, the right to marry, right to an effective remedy, and the prohibition of discrimination. But the Social Charter also recognizes a wide range of workers rights, including the right to just conditions of work, the right to appropriate guidance and facilities for vocational training, the right to social security and to social and medical assistance, the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the right to be informed and to be consulted within the workplace, the right to housing, and the right to protection against poverty and social exclusion.

4.4.3. Africa

The principal document on human rights in Africa is the "African Charter on Human and Peoples' Rights," approved by the eighteenth assembly of heads of state and government, in Nairobi, Kenya in June, 1981. This charter recognizes that "fundamental human rights stem from the attributes of human beings," but it also recognizes a set of "peoples rights" — and that it is

"the reality and respect of peoples rights [that] should necessarily guarantee human rights." This document makes an explicit claim to a "right to development" (entailing economic, social and cultural rights), and that civil and political rights not only cannot be dissociated from, but require, the prior satisfaction of economic, social and cultural rights. Moreover, continuing a trend in the articulation of statements of human rights, the African Charter explicitly notes that "the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone."

4.4.4. Asia

There has been no pan-Asian charter or declaration of rights, although the Bangkok Declaration of Asian states (March-April 1993) suggests the beginnings of a consensus on the issue. The Declaration, which drew support from Iran to Mongolia, but with particular support from China, argued that the articulation and respect of rights cannot occur in a vacuum, and that charters of rights must be interpreted with due attention to differences in culture and tradition. Culture and tradition can, in fact, allow individual states to give priority to 'social,' economic, and cultural rights over civil and political rights, such as freedom of speech, association, religion, and so on.

One fundamental assumption here is that human rights are *not* natural, inalienable, and ascribable fundamentally to individuals, but are (as argued in China's leading newspaper, the *People's Daily* [on 17 March 1997]) "conferred" by society — families, communities and governments. The priority of the basic freedoms articulated in the UN Declaration and other instruments, it is argued, is based in a tradition of law and a concept of the person that are European — and, further, influenced by European and American political and economic interests.

The Constitution of the People's Republic of China, adopted on 4 December 1982, represents just this view. Human rights, on this account, are not natural, but granted by the state. Moreover, not only is the enjoyment of rights dependent upon the performance of "duties prescribed by the Constitution and the law" (Ch. 2, Art. 33, sec. 3), but the "exercise [...] of their freedoms and rights may not infringe upon the interests of the state, of society, and of the collective, or upon the lawful freedoms and rights of other citizens" (see Art. 51 and following). Rights, then, are not inherent, to be enjoyed by virtue of being human, but are rather simply benefits conferred by and enforced at the will of the state.

4.4.5. The Vienna Declaration

In response to the claim of the 'relativity' of rights, reflected (some claim) in the Bangkok Declaration, the Vienna Declaration — the concluding document of the World Conference on Human Rights (25 June 1993) — states that certain conditions, such as the need for economic development, cannot be used to ignore or violate human rights. Thus, the United Nations continues to emphasize that human rights are universal, indivisible and interrelated.

4.4.6. Bills and Charters of Rights in Individual States

One finds charters or declarations of rights, or constitutional guarantees of rights, in the foundational documents of many of the nations of the world. Canada, Australia, France,

Germany — both in its 1919 Weimar constitution and in its post-war *Basic Law* (1949) — Australia, and even countries where these is no single formal constitutional document, such as the United Kingdom, have incorporated human rights acts into law (e.g., the 1998 Human Rights Act [UK], which incorporates the European Convention on Human Rights into law in the United Kingdom). The particular weight and authority of human rights within these documents vary, but it is interesting that the concern to establish such charters shows no sign of abating.

4.5. Conclusions

In general, the purpose and function of these declarations, charters, and constitutions is to recognise and to formally express basic human rights so that they have a clear place in law and society. The earliest charters focus on rights and on the duties of others that arise out of them. As these charters and declarations develop, and as they become binding at the international level, the emphasis on fundamental duties becomes more obvious, and there is a gradual acceptance of the view that human rights are neither absolute nor inviolable, and that the 'interests' of the community can properly sometimes limit them.

In the evolution of these charters and declarations, one notes the increasing presence of 'positive rights' and social or collective rights, so that the notion of human rights has come to include such rights as language rights and the rights of minorities to act on principles inherent in, or to protect, their cultures.

5. The Implementation of Human Rights

5.1. Agencies

There are a number of agencies or groups that are involved in the implementation and enforcement of human rights. For those countries in which charters or bills of rights appear in their basic or constitutional documents, the first instance is in the national courts of law, including the constitutional or supreme courts. In many countries, the task of implementation and judgment has also been taken on by specially appointed Human Rights Commissions or Tribunals.

On an international basis, human rights issues are sometimes treated by The International Court of Justice, the principal judicial organ of the United Nations, whose seat is at the Peace Palace in The Hague (Netherlands). Although the International Court deals only with cases among states, and not between a state and individuals, some of its cases — such as the recent C*ase Concerning Application Of The Convention On The Prevention And Punishment Of The Crime Of Genocide (Croatia V. Yugoslavia)* — clearly address human rights issues. There is, as well, a current (1999) proposal from the UN High Commissioner for Human Rights to create a Permanent International Criminal Court that would have, as its focus, international human rights protection.

On a regional basis, and corresponding to regional charters or declarations of rights, legal institutions, such as The Inter-American Court of Human Rights and The European Court of Human Rights, have been established.

Established by the Organization of American States, the Inter-American Court of Human Rights (whose seat is in San José, Costa Rica) has as its function the application and interpretation of the American Convention on Human Rights. In Europe, the *Cour européenne des droits de l'homme* [European Court of Human Rights] is a similar international institution which, in certain circumstances, can receive complaints from persons claiming that their rights under the European Convention on Human Rights, or in four supplementary Protocols, have been violated. (Here, to demand redress, individuals must normally first have exhausted all possible legal remedies in the state concerned.)

As well, the task of educating and promoting human rights — and in some cases the examining of complaints — has been undertaken by a wide range of international agencies, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), the writers organization, PEN international, Amnesty International (concerned primarily with prisoners of conscience), various national Civil Liberties Unions (such as the American and Canadian CLUs), and the Red Cross.

5.2. Difficulties in the Implementation of Human Rights

5.2.1. Determining Priorities in Rights

On the most general level, there are two principal difficulties in implementing human rights in many countries. First, there is disagreement about which rights are genuinely human rights. It has been argued, in some countries, that the only legitimate human rights are the fundamental 'negative' rights, and that others extend the authority of the collectivity in an illegitimate fashion. Second, there is much debate about the priority within human rights as a whole. Some critics have argued that the apparent preference in the west of civil and political rights over social, cultural, and economic rights, is unjustified, and that, in the 'developing' world, economic rights to provide the basis for material life must take priority over other rights.

5.2.2. Limited means

A second principal difficulty in the respect of human rights is the lack of material means within societies to provide certain rights. While many civil rights and political rights, understood as essentially 'negative rights,' may be in themselves relatively inexpensive to assure, the consequences for the growth and development of societies may be such that they would indirectly result in a significant maldistribution of resources. Moreover, in many developing countries, positive rights, such as cultural and economic rights (e.g., rights to social security, to housing, to adequate medical care) may simply be beyond the material and financial resources available.

5.2.3. Authoritarian Regimes and Cultural Relativism

A major difficulty in the implementation of human rights is the existence of totalitarian or anti-democratic regimes that consider claims to such rights to be a threat to their authority. These regimes now often draw for support on a distinct, but complimentary view — that the existence of substantially different local and cultural values is sufficient to challenge the notion of universal human rights. This latter view is supported by the research of anthropologists and

sociologists who defend the existence of a cultural relativism, and by related philosophical discussion that suggests that there can be no trans- or cross-cultural ethical or political norms.

As noted earlier, philosophers and politicians, principally from Asia and Africa or adopting a Marxist or 'post modern' perspective, have argued that the notion of universal human rights reflects primarily European or 'western' values, such as the rule of law, the equality of human beings, and the inherence of rights in the individual, and that these, in turn, reflect a range of political and economic interests that are not applicable outside 'the west.' On their view, rights are not inherent in, or ascribed to individuals just in virtue of their humanity, but are benefits allocated and enforced at the discretion of the state and, therefore, have no trans-cultural authority.

Again, as noted earlier, it has been argued that, even where rights are recognized as universal, economic and social rights take priority over political and civil rights. Thus, the "right to subsistence and development" is more fundamental than rights to peaceful assembly, speech, and religious practice. On this basis, some governments should have insisted that they are free to give certain goals priority over the protection of (other) human rights.

Furthermore, if rights are correlative to or are held to be based on the observance of duties (as they are in many authoritarian regimes), then in order to enjoy rights, one must perform (or be willing to perform) certain duties or must not infringe upon not only the freedoms and rights, but even interests of others, such as the state. But as it is the state which determines what counts as a duty or as such an infringement, individuals inevitably have relatively few rights or a relatively limited sphere in which to exercise them.

In general, then, by appealing to cultural relativism, authoritarian governments have had license to silence their critics in the name of the respect of more basic, human rights.

5.2.4. Responses to Difficulties in Implementation

As noted above, many international bodies have maintained that considerations, such as local culture and tradition, may not be used to justify abridgement of human rights, and that human rights cannot be 'selected' in such a way that entails that they are not universal, indivisible and interrelated. Thus, claims to a prior social 'right to development' have been challenged (for example, by Pitman B. Potter, in *China Rights Forum*, fall 1996) as giving undue attention to economic growth, "which not only entrenches a flawed view of development generally, but also works to further the subjugation of disadvantaged groups for whom the right to development ought to operate most strongly."

In response to the resistance to recognize, or to implement, human rights to free expression, assembly, and conscience, efforts have been made, by some 'developed' countries, to tie investment and foreign aid to the extent to which a country respects human rights. This has met with at best marginal success. Only in a few cases has it been possible to co-ordinate business and government interests so that it has some effect on improving the respect of human rights (e.g., in South Africa, in the 1980s), and even there the impact of such measures was arguably not sufficient to effect change.

6. Trends in the Discussion and Political Recognition of Rights

6.1. Philosophical Trends

Debates concerning the metaphysics and epistemology of rights are now relatively infrequent. It is revealing, for example, that the work of Alan Gewirth in providing a naturalist foundation of rights has elicited relatively little support in the philosophical community. Moreover, at present, there is a general reluctance to describe human rights as absolute, morally fundamental, and universal, although there are some exceptions — e.g., in the libertarian and in the 'Thomist' philosophical traditions. In addition to the challenges noted above, the 'communitarian critiques of rights by authors such as Alasdair MacIntyre (*After Virtue* [1981]) and Mary Ann Glendon (*Rights Talk - The Impoverishment of Political Discourse* [1991]) have maintained that a preoccupation with rights (particularly individual civil rights) neglects or is inconsistent with the importance of the community and the common good. Feminist authors continue to argue that an emphasis on rights is both gender biased and ignores more collective-based, less confrontational, feminine ways of articulating moral relations.

Discussions of rights today are frequently focused on matters concerning 'group rights,' such as the rights of minorities (on language — and the language of education in particular — to retaining customary cultural and religious practices, and to self-determination) and of ethnic groups (e.g., aboriginal rights, particularly in Canada, Australia, Scandinavia, and the United States), and their compatibility with individual rights. As these debates bear on questions of citizenship and nationhood, it is likely that such discussions will continue. (This shows the generally acknowledged shift from seeing human rights as negative to seeing them as involving some positive rights and, in general, one can expect future discussions of rights to work from the assumption that individual rights can meaningfully be described and ascribed *only* within a social context.) The discussion of the extension of rights — though not distinctively human rights — is likely to continue as well, and one finds constant reference to questions of whether animals, artificial intelligences, and eco-systems can be rights-holders.

6.2. Political Trends

It is interesting to note that at the same time that there is a recognition in charters and declarations of social and collective rights, there is also an increasing tendency to pluralism and to demands for the toleration and protection of individual rights to diversity against social uniformity. (For example, the UN Declaration and other charters, which guarantee the right to marry and to have a family, have also been called on to address the demands for same-sex marriages and for the protection of non-traditional family relations. Perhaps this will lead to a refinement of what is to count as a basic, human right, as distinct from a liberty or from a merely legal right.) Whether and how these apparently disparate tendencies in the understanding of rights will be able to be reconciled are political questions that will undoubtedly be examined in the twenty first century.

Debate over the universality of human rights is unlikely to be resolved in the short term, but the persistence of both national and international organizations in emphasizing the interrelatedness and universality of human rights is certain to continue. The ongoing activities of the European,

Inter-American and International Courts, and the proposal from the UN High Commissioner for Human Rights to create a Permanent International Criminal Court that would focus on international human rights protection, suggest that human rights issues will continue to occupy public and political interest. Again, the forces of globalization and globalism would suggest that a discourse of rights will be reflected even in those countries where the concept has been attacked or challenged.

Still, to understand how appeals to the legitimacy of universal human rights can be sustained in the face of cultural diversity and criticism, appeals will have to be made to the de facto recognition by people in all countries — even if these people are not in the majority — of the value of the notion of human rights, independently of any particular justification. Should there be a move to abandon a discourse of human rights, however, it remains to be seen whether there are any other moral or political notions that can adequately represent the concern that states and individuals respect the dignity of human persons.

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