

## *Symposium: Toward International Consensus*

### Minimalism About Human Rights: The Most We Can Hope For?\*

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#### I. HOPE

AT THE conclusion of his book *Human Rights*, Michael Ignatieff says that “we could do more than we do to stop unmerited suffering and gross physical cruelty.” Efforts to halt such suffering and cruelty are, he says, the “elemental priority of all human rights activism: to stop torture, beatings, killings, rape and assault to improve, as best we can, the security of ordinary people.”<sup>1</sup> Ignatieff describes this focused concern on protecting bodily security as a *minimalist* outlook on human rights. And he distinguishes human rights minimalism from more expansive statements about the content of human rights and more ambitious agendas for their promotion—agendas that might extend both to a richer array of civil and political rights, and to social and economic rights.

The 1948 Universal Declaration of Human Rights presents one such more ambitious agenda. Its account of human rights extends well beyond minimalist assurances of bodily security, to comprise rights associated with the rule of law (Arts 6–11), political participation (Art. 21), work (Art. 23), education (Art. 26), and culture (Art. 27). And neither of the 1966 Covenants on human rights (which entered into force in 1976) is a minimalist charter—certainly not the Covenant on Economic and Social Rights, but equally not the International Covenant on Civil and Political Rights, with its provisions on self-determination (Art. 1), rights of peaceable assembly and freedom of association (Arts 21, 22),

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<sup>1</sup>Michael Ignatieff, *Human Rights as Politics and as Idolatry* (Princeton, N.J.: Princeton University Press, 2001), p. 173.

political participation (Art. 25), and equality before the law (Art. 26).<sup>2</sup> In response to the criticism that minimalism is simply a political strategy—and not an especially plausible one—for defusing authoritarian objections to human rights by reminding authoritarians that they do not have to do very much to stay in compliance, Ignatieff denies that minimalism is simply strategic. It is, he says, “the most we can hope for.”<sup>3</sup>

In the *Critique of Pure Reason*, Kant says that the three great philosophical questions are: “What can I know?”; “What should I do?”; and “What may I hope?”. The first question expresses the interests of our reason in its theoretical use; the second question expresses the interests of our reason in its practical use. The third joins the interests of both theoretical and practical reason: given the demands of morality and what we know about how the world does and might work, what sort of world, we ask, is it reasonable to hope for, and to strive to achieve?<sup>4</sup> The world that the minimalist imagines—a world without torture and with genuine assurances of bodily security for all—is no small hope, and I do not wish here to dispute Ignatieff’s assertion about elemental priorities—about the relative importance of rights of bodily security. But I do wish to dispute the idea that human rights minimalism is “the most we can hope for.” Minimalism may be more than we should ever reasonably expect. But hope is not the same as expectation. And human rights minimalism draws the boundaries of hope too narrowly.

This is a large thesis, and I do not propose to argue for it fully. Instead, I will concentrate here on one apparently attractive route to minimalist conclusions. The route I have in mind begins with an emphasis on the value of toleration and an acknowledgement of ethical pluralism, and ends in human rights minimalism. Ignatieff suggests this argument when he says that: “The universal commitments implied by human rights can be compatible with a wide variety of ways of living only if the universalism implied is self-consciously minimalist. Human rights can command universal assent only as a decidedly ‘thin’ theory of what is right, a definition of the minimal conditions for any life at all.”<sup>5</sup> If human rights are to apply to all, as basic demands on social and political arrangements, then it seems desirable that they be acceptable to all: that they command “universal assent.” And if we want them to be acceptable to all, then—in view of the wide range of religious, philosophical, ethical, political outlooks that are now endorsed in different societies, and that we can expect to persist into the indefinite future—the content cannot be very demanding, perhaps no more than a statement of the protections required “for any life at all.”

<sup>2</sup>For the Declaration and Covenants, as well as other human rights conventions and charters, see the “Annex on Documents” in Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals*, 2nd edn (Oxford: Oxford University Press, 2000).

<sup>3</sup>*Human Rights*, p. 173.

<sup>4</sup>Immanuel Kant, *Critique of Pure Reason*, trans. Paul Guyer and Allen Wood (Cambridge: Cambridge University Press, 1998), A805–B833.

<sup>5</sup>*Human Rights*, p. 56.

This case for human rights minimalism suggests a dilemma for more expansive conceptions of human rights. According to the dilemma, we can be tolerant of fundamentally different outlooks on life or we can be ambitious in our understanding of what human rights demand, but we cannot—contrary to the aims of many human rights activists—be both tolerant and ambitious. Just as some people argue that deep disagreement pushes us to a minimalist conception of democracy, with an emphasis on electoral competition, or a proceduralist view of justice, the suggestion is that, in the case of human rights as well, disagreement dissipates substance. I disagree with the thesis about democracy and justice, and also want to dispute the thesis about human rights. I deny that more ambitious projects of human rights are bound to be objectionably intolerant.

So the proposed route to minimalism begins in toleration and ends in a very thin set of normative principles. To assess it, I need first to describe it more precisely. And describing it will require a distinction between two views that play a role in theoretical discussions of human rights. Both have a claim to the title “minimalist,” but they are very different from one another in content and role.<sup>6</sup>

I will call the first view *substantive minimalism*, which is a position about the content of human rights and, more broadly, about norms of global justice. The central idea of substantive minimalism is that human rights are confined to protections of negative liberty: and, even more particularly, to ensuring against restrictions on negative liberty that take the form of forcible intrusions on bodily security.

The second view I will call *justificatory minimalism*. Here, in contrast with substantive minimalism, we have a view about how to present a conception of human rights, as an essential element of a conception of global justice for an ethically pluralistic world—as a basic feature of what I will be referring to as “global public reason.” Justificatory minimalism is animated by an acknowledgement of pluralism and embrace of toleration. It aspires to present a conception of human rights without itself connecting that conception to a particular ethical or religious outlook; it minimizes theoretical aspirations in the statement of the conception of human rights with the aim of presenting a conception that is capable of winning broader public allegiance—where the relevant public is global. The conception is presented, as Rawls suggests in his account of overlapping consensus, as a “module,” and the case that the module can win support from different ethical and religious traditions is a matter of argument within those traditions, with, of course, different traditions offering different lines of argument.<sup>7</sup> (I will make some remarks later about how such argument might proceed.)

In the service of a practical reason, then, the justificatory minimalist minimizes philosophical depth. That ambition is important, but it needs to be properly

<sup>6</sup>I believe that Ignatieff uses the term “minimalism” to cover both; *Human Rights*, pp. 55–6.

<sup>7</sup>John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), pp. 12, 145. My emphasis in this paragraph on how the human rights conception is presented follows Rawls’s account of the second feature of a political conception of justice. See *Political Liberalism*, p. 12.

understood: and in section II of this essay I will discuss and reject what I will refer to as “skeptical” and “empirical” variants of justificatory minimalism, and propose an alternative formulation which does not—contrary to the line of thought sketched above—have substantively minimalist implications.

Of course justificatory minimalism is not the only proposed route to substantive minimalism, with its focus on rights associated with bodily security. Five considerations are commonly offered for resisting more demanding lists of human rights, for example, social and economic rights, as well as a richer class of civil and political rights:

- They threaten to overtax the resources and disperse the attention required for monitoring and enforcing human rights;
- More expansive lists of social and economic rights cannot be fully realized because their realization is simply too costly, and for that reason are not genuinely speaking lists of *rights*;
- Because rights correspond to obligations, and we cannot give determinate content to the obligations associated with social and economic human rights in advance of their institutionalization, there are no economic and social rights;<sup>8</sup>
- Expansive lists threaten an (undesirable) substitution of legal principles for political judgments, of often uncompromising rights claims (“rights talk”) for informed and more supple political deliberation and judgment; and (a partly related point);
- Expansive lists threaten to subordinate the political self-determination of peoples (within acceptable limits) to the decisions of outside agents, who justify their interventions in the language of human rights.

Though I will say something about the fourth and fifth of these considerations near the end of this essay, my principal focus here is on the thought that pluralism and toleration, expressed in the idea of justificatory minimalism, lead us to a substantively minimal account of human rights.

## II. JUSTIFICATORY MINIMALISM

The central idea of justificatory minimalism is that a conception of human rights should be presented autonomously: that is, independent of particular philosophical or religious theories that might be used to explain and justify its content. Jacques Maritain—perhaps the central figure in mid-20<sup>th</sup> century efforts to reconcile Catholic social thought with democracy and human rights, and who participated in discussions leading to the Universal Declaration—formulated the idea as follows: “Yes, we agree about the rights, but on condition that no one

<sup>8</sup>For discussion of the merits of this line of argument, see Onora O’Neill, *Bounds of Justice* (Cambridge: Cambridge University Press, 2000), chap. 6; Henry Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy* (Princeton, N.J.: Princeton University Press, 1980); Amartya Sen, “Towards a Theory of Human Rights,” unpublished.

asks us why.” The point of developing a conception of human rights, capable of being shared by adherents to different traditions, he said, was to create agreement “not on the basis of common speculative ideas, but on common practical ideas, not on the affirmation of one and the same conception of the world, of man, and of knowledge, but on the affirmation of a single body of beliefs for guidance on action.”<sup>9</sup>

Maritain’s point of view makes considerable sense if we think of a conception of human rights as designed to play a certain practical role, to provide “guidance on action,” as he puts it. The practical role, as I will understand it, is to provide a broadly shared outlook, across national boundaries, about the standards that political societies, in the first instance, can be held to with respect to the treatment of individuals and groups; and correspondingly, the treatment that individuals and groups can reasonably demand, and perhaps enlist assistance from outside in achieving. Or if not a shared outlook, at least a broadly shared terrain of deliberation about the standards to which political societies can reasonably be held, and when they are appropriately subject to external criticism or interference. An account of human rights is one element in an ideal of *public reason* for international society.<sup>10</sup> Because that society comprises adherents to a wide range of distinct ethical and religious outlooks, justificatory minimalism, with its ideal of autonomous formulation or presentation, is an intuitively plausible desideratum. And its point is not simply to avoid a fight where none is necessary; the point is to embrace the value of toleration.

### A. HUMAN RIGHTS: CONTENT, ROLE, AND RATIONALE

To develop these points more fully, I need first to say something more about what a conception of human rights is, and about what I have described as its practical role. Think of such a conception, then, as having three elements.

The first is a statement of a set of rights, of the sort that we find in the Declaration and the Covenants: there are many such statements, and substantial disagreement about which rights belong on the list: about whether human rights include social and economic rights, and if so which ones; but also about whether there is a human right to democracy, and, if not, what kinds of representation and accountability might be matters of basic human right.<sup>11</sup>

<sup>9</sup>Cited in Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001). On the background of Maritain’s views of human rights in broader efforts to rethink the fundamentals of Catholic social thought—especially the relative significance attached to notions of the human person and the common good—see John T. McGreevy, *Catholicism and American Freedom: A History* (New York: Norton, 2003), chap. 7.

<sup>10</sup>Rawls refers to the public reason of the “society of peoples” in *The Law of Peoples* (Cambridge: Harvard University Press, 1999), pp. 54–7. I do not wish here to engage the issue of whether “peoples” are the moral agents in international society. Thus the less theoretically committed term “international society.”

<sup>11</sup>On the human right to democracy see Thomas Franck, “The emerging right to democratic governance,” *American Journal of International Law*, 86 (1992), 46–91. Rawls rejects the right to democracy as a basic human right in favor of a weaker requirement of organized group consultation.

Such disagreement is of course the normal situation when it comes to issues of justice: disagreement comes with the territory, and should not be taken as a sign of a deficiency. We can assume that the disagreement is genuine—not simply a matter of people talking past each other, as it would be if different proposed lists of rights represented so many different ways of assigning meaning to the term “human rights.” Nor need we interpret the disagreement as showing that statements of human rights are simply ways of presenting power and interest in normatively attractive garb. Instead, there may be broad agreement about the practical role of human rights as global, public standards, disagreement about the content of the rights suited to that role, and a practice of argument that aims to clarify and perhaps narrow the terms of disagreement. Thus global public reason—and the idea of human rights in particular—provides a terrain of deliberation and argument about appropriate norms (specifically, I will suggest below, about the requirements of treating individuals as members), not a determinate and settled doctrine awaiting acceptance or rejection.

Second, the role is to present a set of important standards that all political societies are to be held accountable to in their treatment of their members: it offers, in the language of the Declaration, “a common standard of achievement for all peoples and all nations.”<sup>12</sup> A statement of human rights presents, as is commonly said, a set of limits on internal sovereignty, or—perhaps better—presents conditions on which a state’s internal sovereignty is acknowledged.<sup>13</sup> The idea that there are such limits on internal sovereignty is often said to be a fundamental departure from the Westphalian conception of sovereignty that prevailed from the mid-17<sup>th</sup> century until the end of World War II. Stephen Krasner has suggested an alternative view. Krasner points out that the norms of Westphalian sovereignty were persistently violated throughout the period of Westphalian sovereignty by externally guaranteed protections of rights. According to Krasner, the change at the end of World War II is best understood as a shift from abridgements of sovereignty in the name of minority group rights to abridgements in the name of individual rights, rather than a shift in the basic conception of sovereignty itself. Krasner is certainly right to emphasize that protections of minority rights were abridgements of conventional norms of internal sovereignty. But more recent developments seem to have changed the content of the regnant norms, and not simply the pattern of “organized hypocrisy” in their abridgements.

In any case, human rights standards represent a partial statement of the content of an ideal of global public reason, a broadly shared set of values and norms for assessing political societies both separately and in their relations:

<sup>12</sup>Universal Declaration of Human Rights, in Steiner and Allston, *International Human Rights in Context*, p. 1376.

<sup>13</sup>See Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, N.J.: Princeton University Press, 1999). I am indebted to Thomas Christensen for discussion of the point in the text.

a public reason that is global in reach, inasmuch as it applies to all political societies, and global in its agent, inasmuch as it is presented as the common reason of all peoples, who share responsibility for interpreting its principles, and monitoring and enforcing them. The precise ways of exercising that responsibility—who exercises it (international courts and other institutions, regional bodies, individual states, non-governmental organizations) and with what instruments (ranging from monitoring, to naming and shaming, to sanctions, to force)—varies widely. Often, acting on the principles of global public reason may consist simply in observing the implementation of its principles by separate political societies, or perhaps in assisting in their implementation. The more immediate responsibility for interpreting and implementing the principles will—as the Declaration and Covenants emphasize—typically fall to those political societies themselves, in part—though not only—because of the value of collective self-determination affirmed in Article 1 of the Covenant on Civil and Political Rights.<sup>14</sup>

Now it might be argued that the human rights identified by principles of global public reason are identical in content to the basic natural rights that individuals would have even in a pre-institutional state of nature. But—and here I follow an illuminating discussion by Charles Beitz<sup>15</sup>—that claim about identity of content, whatever its merits, should not be presented as issuing directly from a *conceptual* identification of human rights with natural rights. These concepts are fundamentally different, as is evident from the fact that many of the rights enumerated in the Universal Declaration and the 1966 Covenants—including rights to a fair hearing and the right to take part in government—have institutional presuppositions, and thus could not be rights in a pre-institutional state of nature, assuming there are such rights. Instead, a claim about identity of content between human rights and natural rights would need to be defended through a substantive normative argument to the effect that the rights implied by the most reasonable principles for global public reason—the standards of individual treatment appropriate to use in holding political societies accountable—are, contrary to the Declaration, the very same rights that individuals would hold in pre-institutional circumstances. That conclusion, if true, would be surprising. Why should reasonable norms of global responsibility, in a world with separate political societies and substantial interactions—economic, political, cultural—across and among those societies, have the same content as the norms for a very different setting, in which there are no organized

<sup>14</sup>Thus Article 2 of the Covenant on Civil and Political Rights requires states to adopt the “legislative and other measures” needed to give effect to the rights; Steiner and Allston, *International Human Rights in Context*, p. 1382.

<sup>15</sup>Charles Beitz, “Human rights as a common concern,” *American Political Science Review*, 95 (2001), 269–82; “What human rights mean,” *Daedalus*, 132 (2003), 36–46; “Human rights and *The Law of Peoples*,” unpublished.

political societies and institutions at all?<sup>16</sup> My point here, though, is not to dispute the thesis that human rights are identical in content to natural rights, but simply to characterize its status.

A third element in a conception of human rights is an account of why the rights have the content that they have. A conception of human rights is not given simply by a list of rights together with an account of the role of human rights, but also by some view about why certain rights are suited to that role: why it is appropriate to require that political societies ensure those rights. It is here that justificatory minimalism has real bite. Given the practical role of a conception of human rights, we need to avoid formulating the rationale for human rights (as well as their content) by reference to a particular religious or secular moral outlook. So we should avoid saying that, for example, human rights are preconditions of the autonomous moral agency prized by Kantians, or for fulfilling divinely imposed obligations, whether the preferred statement of the obligations is found in Thomistic or Lockean natural law theory, or some formulation of the shari'ah.

Instead, I propose that human rights norms are best thought of as norms associated with an idea of *membership or inclusion* in an organized political society. The relevant notion of membership is a normative idea—it is not the same as, for example, living in a territory—and the central feature of the normative notion of membership is that a person's interests are taken into account by the political society's basic institutions: to be treated as a member is to have one's interests given due consideration, both in the processes of authoritative decision-making and in the content of those decisions. Correspondingly, disagreements about human rights may be seen as proceeding on a shared terrain of political argument, and can be understood—unlike disputes about the content of natural rights—as disagreements about what is required to ensure membership—about what consideration is due to each person in a political society.

The importance of the notion of membership in an account of human rights is suggested by the breadth and substance of the rights in the Universal Declaration and the Covenants—including rights to education, work, and cultural inclusion, as well as assembly, expression, and participation. To be sure, some human rights (to life and to personal security, for example) are not tied only to membership, but are more plausibly associated with demands of basic humanity, irrespective of membership. But the guiding thought behind the more capacious list seems to be that an acceptable political society—one that is above reproach in its treatment of individuals—must attend to the common good of

<sup>16</sup>One might argue that human rights are the result of applying natural rights to the circumstances of an organized political society. So, for example, the right to equality before the law might be derived from a natural right to bodily security, along with some reasonable assumptions about the conditions for protecting that right in a society with a legal system. I do not find this argument compelling, but cannot pursue the reasons here.



those who are subject to its regulations, on some reasonable conception of that good, and ensure the goods that people in the territory and subject to political rule need in order to take part in the political society. Human rights claims, then, identify goods that are socially important because they are requirements of membership. Failing to give due consideration to the good of members by ensuring access to these goods is tantamount to treating them as outsiders, persons whose good can simply be dismissed in making laws and policies: no-accounts, with no part to play in the political society.

One rationale for the emphasis on membership is suggested by the idea of political obligation. Thus, on a plausible account of political obligation, attending to the common good, on some interpretation of that good, is necessary if the requirements that a political society imposes on people under its rule are to have the status of genuine obligations and not mere forcible impositions. If an account of political obligation along these lines is correct—and it certainly is more plausible than a theory of obligation that ties political obligations to justice—then the rights that are required if individuals are to be treated as members would be identical to the rights that are required if the requirements imposed by law and other regulations are to be genuine obligations.

Two final points of clarification. First, in emphasizing that acceptable arrangements acknowledge rights as a way to acknowledge and uphold the status of membership, I do not wish to deny that human rights protections were particularly animated by more specific concerns about genocide, torture, and other extreme forms of cruelty. But as the Declaration and Covenants indicate, the concerns were not confined to those evils, but included other forms of social exclusion, perhaps understood as both objectionable in themselves and as opening the way to more hideous forms of treatment. Second, in associating human rights with membership in an organized political society, I do not mean to exclude the thought that those rights can also be understood as articulating the conditions of membership in a more global society. But much of our lives as “global citizens” continues to be lived within particular political societies, with distinct institutions, even as it is substantially affected by external decisions and practices. So if national and transnational institutions worked to ensure reasonable conditions of membership in organized political societies, they would thereby go some distance to ensuring the rudiments of global membership as well.

A conception of human rights, then, has three elements: a statement of what the rights are; an account of the role of human rights as standards of practical reason that can be used by a range of different agents in assessing all political societies in their treatment of their members; and a view about why the rights are as they are, given that role. The idea of justificatory minimalism is that each of these elements—including the account of membership and affirmation of its importance—should all be presented autonomously or independently, so that they can be affirmed by a range of ethical outlooks, for the varying reasons

provided by the terms of those different outlooks, and then used as a basis for further argument about and elaboration of the content of human rights.

### B. JUSTIFICATORY MINIMALISM: NEITHER SKEPTICAL NOR EMPIRICAL

To appreciate the force and plausibility of this requirement of autonomous formulation, we need to distinguish justificatory minimalism from two positions—skeptical and empirical—with which it might be conflated.

The first position is a set of familiar nihilistic or skeptical claims about the need for so-called anti- or post-metaphysical political theorizing. Those claims deny the truth or reasonableness or knowability of traditional views about the foundations of human rights in philosophical theories about human nature or religious conceptions of the human person or right conduct. Thus Richard Rorty describes such views as “human rights foundationalism,” and urges that we put such foundationalism behind us—like all other efforts to shore up any of our practices, by suggesting that anything can or should be said on their behalf other than “that’s how we do things these days around here,” for some suitable specification of “here.”<sup>17</sup>

But justificatory minimalism is founded on an acknowledgement of pluralism and a commitment to toleration. Neither *anti-foundational* nor *post-metaphysical*, it simply does not take a position for or against any particular foundational view, whether religious or secular, about the content and importance of human rights, nor does it make any claims about whether such views can (or cannot) be known to be true. It is *unfoundational*, rather than anti-foundationalist. Justificatory minimalism does not require denying anything, whether about truth or knowledge, much less asserting (with Rorty) that pragmatic arguments for human rights should replace metaphysical ones, as though Rortyeen pragmatism, or its antecedents in Romantic conceptions of self-creation, is somehow less committal than other metaphysical theories.

Instead, because human rights ideas are intended to provide part of a framework of political deliberation whose practical role, as a partial specification of the content of a global public reason, requires that it be shared among people who endorse very different ethical positions, we ought to free the statement of the outlook from its connection to any one of those views. No unnecessary hurdles should be placed in the way of adherents of different traditions who wish to embrace the ideas. When the Universal Declaration came before the United Nations in 1948, proposals to include references in the Declaration to God or nature were rejected by the body, at the urging of C. K. Chang.<sup>18</sup> Those views were not rejected as false or outdated. Instead, the Declaration was presented in

<sup>17</sup>Richard Rorty, “Human rights, rationality, and sentimentality,” in *On Human Rights*, ed. Stephen Shute and Susan Hurley (New York: Basic Books, 1993).

<sup>18</sup>For discussion, see Glendon, *World Made New*.

a way that left adherents of different views to work out the relations between their broader philosophy of life and the account of human rights. And working out those relations is important for adherents, and thus of practical importance for the acceptance and efficacy of the human rights idea.

Having said this, I also need—and here I come to the second distinction—to set justificatory minimalism off from the view that ideas of human rights are somehow to be “found” within each religious and moral tradition, or located at the intersection of those different traditions, taking their content as fixed and given: say, in the spirit of H. L. A. Hart’s “minimum content of natural law” or the reiterated moral ideas suggested by Michael Walzer’s “moral minimalism.”<sup>19</sup> Call this the *empirical interpretation* of justificatory minimalism.<sup>20</sup> If this interpretation were correct, then we might plausibly expect substantive minimalism to follow. After all, what more could be expected to lie at the de facto intersection of different ethical traditions than prohibitions on infringing on bodily security—and, more generally, assurances of the conditions of any life at all? If we are looking to assure that a conception of human rights is actually accepted from within a wide range of different traditions—not simply that it be acceptable—then the content is likely to be driven down to a minimum.

But justificatory minimalism is not about locating the de facto intersection of different ethical traditions, taking those traditions as fixed and given. That idea in any case has uncertain content, inasmuch as each ethical tradition has competing formulations, with often sharp contests within the tradition about which formulation is best—a point that is tirelessly reiterated by postmodernists and postcolonialists. Instead, the formulation of a conception of human rights is, as I have said, an independent normative enterprise, which aims to present reasonable global norms and standards to which different political societies can be held accountable—more particularly, I have suggested, an account of the conditions of membership. In pursuing that enterprise, we recognize in general terms that global public reason is intended to provide a public reason for people who belong to different ethical traditions. But the specifics of those traditions are not in view. To see the force of the idea that the normative enterprise is independent, suppose—with Rawls’s *Law of Peoples*—that we think of the principles of global public reason as the object of an initial compact among different peoples (or among the members of those peoples). Then the idea of justificatory minimalism would be modeled by an agreement made with awareness of the fact that there are fundamentally different religious and ethical traditions, each with competing formulations. But the agreement would not be

<sup>19</sup>See H. L. A. Hart, *Concept of Law*, 2nd edn (Oxford: Oxford University Press, 1994), pp. 193–200; Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (South Bend, Ind.: University of Notre Dame Press, 1994), chap. 1.

<sup>20</sup>The empirical interpretation parallels a conventional misunderstanding of Rawls’s conception of an overlapping consensus. For discussion of the misunderstanding, see Joshua Cohen, “Moral pluralism and political consensus,” *The Idea of Democracy*, ed. David Copp, Jean Hampton and John Roemer (Cambridge: Cambridge University Press, 1993), pp. 270–91.

made with awareness of the content of those traditions or their political distribution.

Because the formulation of the ideas and principles of global public reason is not undertaken with an eye to finding common ground among determinate ethical traditions, the enterprise of showing that those ideas and principles can win support within different ethical traditions may require fresh elaboration of those traditions by their proponents—where it is understood that the point of a fresh elaboration is not simply to fit the tradition to the demands of the world, but to provide that tradition with its most compelling statement.

To illustrate this point about fresh elaboration, consider first the fit between constitutional democracy, with its conception of individual rights and principles of religious toleration, and the evolution of Catholic natural law theory associated with Vatican II. With its “Declaration of Religious Freedom,” the Catholic Church rejected the traditional doctrine that “error has no rights” (the “exclusive rights of truth”), and the associated thesis that religious toleration is an accommodation to political weakness. Instead, the Church embraced a principled commitment to religious toleration founded on an idea of the “dignity of the human person.” The idea of a special dignity owing to our creation in God’s image was always a centerpiece of Catholic doctrine. But according to the traditional interpretation of that doctrine, “as a rational and moral being, man is constituted in his proper dignity by his adhesion to what is true and good.” Because human dignity was associated with living in the truth, “the erroneous conscience has no right to external social freedom. . . . In particular, it has no right publicly to propagate or disseminate its belief.”<sup>21</sup>

To bring a principled commitment to religious toleration into Catholic social thought, it was not possible to deny that the truth lay in Catholic doctrine: thus, as the Declaration on Religious Freedom reaffirms, “God Himself has made known to mankind the way in which men are to serve Him, and thus be saved in Christ and come to blessedness. We believe that this one true religion subsists in the Catholic and apostolic Church.”<sup>22</sup> Instead the conception of human dignity needed to be reinterpreted so that human dignity imposed significant limits on how the state could treat those who are not living according to the truth. Thus, human dignity was seen as issuing in an account of political legitimacy that imposed principled limits on the state’s authority in matters of religious faith and practice. Dignity still is understood to impose a “moral duty” to “seek the truth” and “adhere to the truth.” But while the “one true religion subsists in the Catholic and apostolic Church,” the pursuit and embrace of truth must—as

<sup>21</sup>John Courtney Murray, “The problem of religious freedom,” in *Religious Liberty: Catholic Struggles With Pluralism* (Louisville, Ky.: Westminster, 1993), p. 131.

<sup>22</sup>See “Declaration on Religious Freedom,” *The Teachings of the Second Vatican Council: Complete Texts of the Constitutions, Decrees, and Declarations* (Westminster, Md.: Newman Press, 1966), pp. 366–7. The quotations in this paragraph all come from the Introduction to the Declaration, and from its first chapter, on the “General Principles of Religious Liberty.”

modern cultural and political experience has brought home—comport with the dignity owing to our nature as free persons “endowed with reason and free will and therefore privileged to bear personal responsibility.” And this requires immunity from “external coercion,” as well as “psychological freedom.” Those who reject the truth are as entitled to this immunity as those who embrace it, and those who embrace the truth must seek it through free inquiry, and follow it “by a personal assent.”

Once more, this reinterpretation was not seen—and certainly not expressed—as simply a result of a practical need to accommodate Catholic doctrine to the brute facts of modern political life—in particular, the minority status of Catholicism in most countries—and to encourage trust in Catholic commitment to respecting religious pluralism. Instead it was presented as animated by a need to reformulate political ideas in light of fundamental truths about the human person that modern “cultural and political experience” had made manifest.<sup>23</sup> To be sure, external circumstance—including the experience of constitutional democracy and stable religious pluralism—prompted the doctrinal changes, and the political ideas about principled religious toleration originated outside Catholicism. For that reason, these ideas might be described as “borrowed” and as pragmatic adjustments. But such descriptions obscure the importance to proponents of presenting the new view as a reasoned doctrinal argument: the changes were argued for as matters of compelling doctrinal evolution, and to that extent as matters of internal principle rather than simple external borrowing.

### III. TWO ILLUSTRATIONS

To illustrate further this point about the fresh elaboration of a doctrine in relation to an autonomously formulated account of human rights, I want to consider two illustrative cases: Confucianism and Islam. My aim is to show how the fundamentals might be interpreted in a way that supports a conception of human rights—and the elaboration of that conception on a shared terrain of argument—though neither view includes rights as fundamental elements.<sup>24</sup> In neither case do I aim to show that the best interpretation of either outlook leads to an endorsement of human rights; that argument proceeds within Confucianism and Islam themselves. And in neither case do I aim to show

<sup>23</sup>In the case of revealed religions, a large issue about the relationship between revelation (including the manifestation of truths about human beings) and history looms in the background—about whether the whole truth is revealed at a determinate moment in history or is instead revealed over the course of history. I do not propose to explore this disagreement here.

<sup>24</sup>The same of course can be said for utilitarianism and for perfectionist views founded on an Aristotelian understanding of human nature and human flourishing. For proposals about how to bring ideas about rights without parentage in positive legislation into utilitarianism, see John Stuart Mill, *Utilitarianism*, chap. 5 and H. L. A. Hart, “Natural rights: Bentham and John Stuart Mill,” in *Essays on Bentham* (Oxford: Oxford University Press, 1982), chap. 4.

that we can identify which rights are human rights by deriving them from within these different doctrines: on the view I sketched earlier, working out the content of human rights is a matter of specifying the preconditions of membership. Instead the aim is to show that the terrain of deliberation about the nature and content of human rights can be occupied by a proponent of these doctrines.<sup>25</sup>

## A. CONFUCIANISM

In a collection on *Confucian Traditions in East Asian Modernity*, Tu Wei-ming says the following two things about Confucianism: that “In its political philosophy the Confucian tradition lacks concepts of liberty, human rights, privacy, and due process of law;” and that “the Confucian concern for duty is not at variance with the demand for rights.”<sup>26</sup> Putting the two comments together, the point seems to be that though the Confucian tradition does not have a conception of human rights, to be discovered by inspecting its contents—say, reading such classical texts as the *Analects*—such a conception can nevertheless be brought within its sphere. I think that this assertion is correct, and want to sketch a way of doing that. If what I say is right, the conclusion would not be that the idea of human rights is essential to Confucian moral and political thought, but that the central ideas associated with the Confucian tradition can be presented in a way that supports a conception of human rights. The fundamentals are not hostile to the idea of human rights, at least not when they are understood as aspects of membership in an acceptable political arrangement.

To see why not, think of Confucianism as having three main elements: a philosophical anthropology (theory of human nature), an ethic (understood broadly, to include rules of conduct, appropriate human ends, and ideals of character), and a political conception about the proper role and form of government.<sup>27</sup>

1. The central element in the account of human nature is the idea of human beings as standing in relations of various kinds to others: in particular, relations to others in a family, extending across generations, but also political relations (say, relations between rulers and officials, or officials and those subject to their decisions). Thus persons are not conceived of as free and equal individuals, or as principally choosers of their ends (as in a comprehensive liberal philosophy

<sup>25</sup>To be sure, we have a strong case that that terrain cannot be occupied if paradigmatic human rights are incompatible with the doctrine.

<sup>26</sup>See his “Epilogue,” *Confucian Traditions in East Asian Modernity*, ed. Tu Wei-Ming (Cambridge, Mass.: Harvard University Press, 1996), p. 347.

<sup>27</sup>My statement of the elements of Confucianism draws on the Four Books (*Analects*, *Great Learning*, *Doctrine of the Mean*, and *Mencius*). See *The Four Books*, trans. James Legge (New York: Paragon, 1966); *The Analects of Confucius: A Philosophical Translation*, trans. Roger Ames and Henry Rosemont (New York: Ballentine, 1998). For helpful discussion, see the Introduction by Ames and Rosemont to *The Analects*, pp. 1–66; Kwong-Loi Shun, *Mencius and Early Chinese Thought* (Stanford, Calif.: Stanford University Press, 1997).

of life), but as standing in relations from which their ethical identity and obligations derive.<sup>28</sup>

2. The ethic includes at least four important elements:

- (i) An account of the responsibilities associated with human relationships, say, duties of filial piety and brotherly respect that are required to ensure the proper ordering of those relations: The ruler must rule, the minister minister, the father father, and the son son” (12.11).<sup>29</sup>
- (ii) An account of self-cultivation—of education in the broadest sense—that enables the person who stands in these relations to understand and fulfill the responsibilities associated with them. In the case of the political relation, fulfilling these responsibilities may require refusing to serve, when the demands imposed by the ruler are wrong.
- (iii) An account of the human virtues—humaneness (*ren*), wisdom, fidelity, loyalty, and observance of ritual (*li*)—required for conduct that fulfills the responsibilities ingredient in human relationships.
- (iv) An ideal of the kind of person we should aspire to be: someone whose cultivation is sufficient to understand the virtues and act on them (the “gentleman” or “exemplary person”). According to Tu Wei-ming, Confucianism also embraces a conception of human dignity associated with the capacity for such cultivation. And, he might have added, in at least some of its formulations, Confucianism assumes this capacity to be widely distributed among human beings.

3. Finally, the political conception includes an account of the responsibilities of political officials to care for the common good of subjects: “Make sure there is sufficient food to eat, sufficient arms for defense, and that the common people have confidence in their leaders” (12.7; also 5.16, 6.30, 13.9, 20.2). This responsibility is in part an expression of the duties associated with the position of official and the relations of official to subjects, and in part an expression of the requirements of the virtues—in particular the demands of virtue of humaneness (*ren*)—as applied to the case of the official.

As this last observation about the implications of the virtue of humaneness for official conduct indicates, I do not mean to suggest—in separating out the ethical conception from the political—a sharp distinction within Confucianism between personal and political virtues and responsibilities. Confucianism rejects any such fundamental distinction and instead affirms continuity between the virtues associated with familial relations and political virtues: “It is all in filial conduct! Just being filial to your parents and befriending your brothers is carrying out the work of government” (2.21). Or again: “It is a rare thing for

<sup>28</sup>On the view of human nature, and its metaphysical background, see Ames and Rosemont, “Introduction,” pp. 23–9.

<sup>29</sup>I have included all references to the *Analects* in the text, and I cite the Ames and Rosemont translation.

someone who has a sense of filial and fraternal responsibility to have a taste for defying authority. And it is unheard of for those who have no taste for defying authority to be keen on initiating rebellion. Exemplary persons (*junzi*) concentrate their efforts on the root, for the root having taken hold, the way will grow therefrom. As for filial and fraternal responsibility, it is, I suspect, the root of authoritative conduct (*ren*)” (1.2).

These elements, of course greatly simplified, enable us to see how Confucianism can be interpreted to support a conception of human rights. Consider the Universal Declaration, in particular, the Articles requiring rights to life, liberty, and security; condemning slavery, torture, degrading treatment, arbitrary arrest and detention; and mandating rights to an adequate standard of living.<sup>30</sup> Three considerations within the Confucian view support such rights.

First, basic human rights can be thought of as conditions for fulfilling the obligations associated with human relationships: slavery, torture, and threats of arbitrary arrest, as well as poor health, lack of education, and absence of sufficient economic means, will all infirm the ability of people to confidently fulfill the obligations that flow from their relationships. As a bearer of such obligations, a person can claim both that others *ought to* assure them freedom from arbitrary arrest and detention, and also that those others owe it *to the person* with the obligations to provide such assurance. The essential point is that the relational or role-based obligations, essential to the ethical view, explain why the assurances must be provided. The idea is not simply that people benefit from a generalized obligation to be humane and decent, though that is true, too: more than that, they can demand certain kinds of treatment as conditions for fulfilling the obligations they are assumed to have, given their social position and the responsibilities associated with it. They do not make the demands independently from those obligations, but in their name.<sup>31</sup>

To be sure, the need to make such demands on others might be interpreted as a sign of an ethical or political deficiency, as resulting from the failure of officials and others to act according to the ethically appropriate standards for their position: “The master said, ‘In hearing cases, I am the same as anyone. What we must strive to do is to rid the courts of cases altogether’” (12.13; also 12.17, 12.19, 13.6, 13.13). Moreover, “Exemplary persons (*junzi*) make demands on themselves, while petty persons make demands on others” (15.21). But under less than ideal conditions—the only conditions we have experienced—the

<sup>30</sup>On Confucianism and the right to an adequate standard of living, see Stephen Angle, *Human Rights and Chinese Thought: A Cross-Cultural Inquiry* (Cambridge: Cambridge University Press, 2002), pp. 244–5.

<sup>31</sup>In this case, the human rights belong, as Rawls puts it, to “an associationist social form . . . which sees persons first as members of groups—associations, corporations, and estates. As such members, persons have rights and liberties enabling them to meet their duties and obligations and to engage in a decent system of social cooperation.” Rawls, *Law of Peoples*, p. 68.



demands can permissibly be made as a way to ensure that one receives proper benefits. “If proper in their own conduct, what difficulty would they [officials] have in governing? But if not able to be proper in their own conduct, how can they demand such conduct of others?” (13.13)<sup>32</sup>

Second, if human worth turns on being in a position to fulfill responsibilities, then people can demand of others—as a condition of acknowledging that worth—that those others assure the conditions required for fulfilling the responsibilities associated with their position. Once more, under ideal conditions the demand will not be necessary: “Exemplary persons (*junzi*) cherish fairness” (4.11).

Third, the basic human rights flow as well from the responsibility of officials to care for the common good: say, the peace and security of the people. How, we might ask, can officials fulfill their responsibility of caring for the good of members if they fail to provide the protections required by a code of human rights? Consider in this light Mencius’ claim that “If beans and millet were as plentiful as water and fire, such a thing as a bad man would not exist among the people.” Or his opposition to an excessive use of conscripted labor and to savage penalties: both in the name of government guided by the virtue of humaneness (*ren*).

These three considerations suggest reasons for supporting a conception of human rights without relying on a liberal conception of persons as autonomous choosers, but instead drawing on an ethical outlook that understands persons as embedded in social relations and subject to the obligations associated with those relationships. The notions of persons standing in relations and bearing duties associated with positions in those relations remain fundamental: rights are understood to flow from the demands of those duties and an account of the worth of human beings that is tied to their fulfilling social responsibilities. This ethical outlook can be interpreted as providing support for an independently elaborated conception of human rights—developed autonomously, as an account of what is owed to members—without relying on the idea that persons are fundamentally choosers of their aims, or that obligations are self-imposed, or that individuals have special worth or dignity because they possess a capacity to formulate and revise their aims.

A notion from Rawls helps to clarify the point. The various liberalisms, he says, represent individuals as “self-authenticating sources of valid claims”—as agents who are entitled to make claims on their institutions, where those claims are “regarded as having weight of their own apart from being derived from duties

<sup>32</sup>The line of argument noted in the text is not the only one available within Confucianism. Angle points to two alternative strategies of early twentieth-century Confucian argument for “ethical aggressiveness: struggling to exercise those abilities and receive those benefits that properly belong to one”; Angle, *Human Rights*, chap. 6. Throughout, Angle rightly distinguishes the idea that doctrinal evolution sometimes represents a response to external provocations from the idea that such evolution consists simply in embracing ideas that are external to an ethical tradition.

and obligations specified by a political conception of justice, for example, from duties and obligations owed to society.” Other political conceptions do not embrace the idea of individuals as “self-authenticating sources of valid claims,” and hold instead that “claims have no weight except insofar as they can be derived from duties and obligations owed to society, or from their ascribed roles in a social hierarchy justified by religious or aristocratic values.”<sup>33</sup> Confucianism appears to be a view of this latter kind, with obligations derived from ascribed roles, although it is not for that reason hostile to rights of the kind incorporated into the Universal Declaration. So the terrain of argument of a global public reason that comprises a conception of human rights is available to its adherents.

So the terrain of argument of a global public reason that comprises a conception of human rights seems to be available from within Confucianism. Once more, I do not say that we can “find” a conception of human rights in this ethical tradition. Instead, there are ways of elaborating an ethical outlook that is nonliberal in its conception of the person and political society, but that is also consistent with a reasonable conception of standards to which political societies can reasonably be held. Similar elaborations can be (and have been) developed for other ethical traditions.

## B. ISLAM

Thus consider, more briefly, the case of Islam.<sup>34</sup> Here, in contrast with Confucianism, persons are not conceived of as in the first instance members of groups or a community. Instead, individuals themselves are the ultimate locus of responsibility and accountability: “And fear the day when ye shall be brought back to Allah. Then shall every soul be paid what it earned, and none shall be dealt with unjustly.”<sup>35</sup> Or again: “But how will they fare when we gather them together against a day about which there is no doubt. And each soul will be paid out just what it earned” (3:25). And “On the day when every soul will be confronted with all the good it has done and all the evil it has done, it will wish there were a greater distance between it and its evil” (3:30). Moreover, the fundamental duty of commanding right and forbidding wrong is assigned to individuals: “command right and forbid wrong, and bear patiently whatever may befall thee” (31:17). In his study of this duty, Michael Cook says that it assigns to “each and every legally competent Muslim an executive power of the law of

<sup>33</sup>Rawls, *Political Liberalism*, pp. 32–3.

<sup>34</sup>For an illuminating discussion of approaches to interpretation within Islamic law, see Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh* (Cambridge: Cambridge University Press, 1997), esp. chap. 6, which describes both contextualist/historicist and holistic styles of interpretation.

<sup>35</sup>*Qur'an*, 2:281. I have used *The Holy Qur'an*, trans. Abdullah Yusuf Ali, tenth edition (Beltsville, Md.: Amana Publications, 1999). Hereafter, references are in the text.

God,”<sup>36</sup> as Lockean natural law theory assigns the executive power of the law of nature to each person.

Despite the focus on individually responsible agents, trouble for an idea of human rights might be seen as emerging from a way of interpreting the fundamental conception of God as sovereign.<sup>37</sup> Thus suppose we think of God as exercising His authority by setting down strictures (expressed in shari’ah) that provide a fully detailed specification of the right way to live, a dense order of normative requirements that determine, for every possible circumstance of choice, the right way to act.<sup>38</sup> Suppose, too, that God has created human beings with the intellectual capacities required for understanding those requirements and also with the exalted status of vicegerents (2:30), who are assigned, among others, an obligation to promote justice: not simply to act rightly, but also to “command right and forbid wrong.”

Now it might be argued that fulfilling this obligation, which is assigned to all, actually requires a variety of basic rights: that if individuals are to fulfill the moral demands of vicegerency, by forbidding wrong and promoting justice, they must have rights of expression and association, and perhaps rights of participation, as well as the circumstances of health, education, and security that are preconditions for fulfilling their obligations. But that attractive conclusion does not follow so easily. For the contents of right and wrong are given in the first instance by the densely ordered strictures of this non-latitudinarian God. So the submission to God’s will that is Islam arguably consists in individual rectitude and an enforcement of the rectitude of others, where rectitude involves compliance with those strictures, as expressed in some formulation of shari’ah. And although God “careth for all” and is “truly the cherisher of all,” “Allah loveth not those who do wrong” (3:57).<sup>39</sup>

This line of thought suggests, in barest outline, a case from within Islam that works against the idea that political societies must ensure conditions of social membership for each person. It seems instead to favor extending basic rights only for those who can be expected to act rightly—freedom of opinion for those with correct opinions, freedom of assembly for those who assemble to forbid the wrong. So it might be said that each person has a determinate personal responsibility under the law to “cleanse and purify” his appetites and “make

<sup>36</sup>See Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge: Cambridge University Press: 2000), p. 583.

<sup>37</sup>I have been helped in my discussion here by Khaled Abou El Fadl, “Islam and the challenge of democracy,” *Boston Review* (April–May 2003).

<sup>38</sup>See Kevin Reinhart’s Introduction to Laleh Bakhtiar, *Encyclopedia of Islamic Law: A Compendium of the Major Schools* (Chicago: KAZI Publications, 1996), p. xxxiii.

<sup>39</sup>Qutb’s account of freedom of conscience and responsibility seems to be of this kind. See Sayyid Qutb, *Social Justice in Islam*, trans. John B. Hardie (Oneonta, N.Y.: Islamic Publications International, 1953). Thus freedom of conscience is a matter of, among other things, freedom from false worship, fear (of death, injury, and humiliation), and false social values (pp. 53–68). The fundamental metaphysical idea in Qutb’s view—his idea of the absolute unity of existence—appears to limit any role for basic human rights.

them follow the path of righteousness,” and that there is no case for rights that permit departures from that path.<sup>40</sup>

But an alternative elaboration of these fundamentals suggests a different conclusion. Three points are essential to the alternative. The first is a distinction between the true propositions of law—that is, standards of right conduct—as set down by God and the historically situated human interpretation of those laws, which is both fallible and contextual. Failure to acknowledge and give sufficient weight to the distinction between law and human interpretation is a form of idolatry, a failure to distinguish sovereign and vicegerent. But drawing the distinction creates space for the disagreement and error that inevitably comes with the territory of human interpretive activity, and also for efforts to improve understanding of right conduct and reinterpret those requirements under changed conditions.

The second is a distinction between human responsibility and God’s responsibility. The human responsibility is to seek to understand what is right and provide moral instruction, whereas God is responsible for entering final judgment on the sincerity of belief and righteousness of conduct. Associated with this distinction is the principle that there is to be “no compulsion in religion” (2:256). Usurping final judgment—and compulsion in religion is a form of usurpation—is another form of idolatry: “can they, if Allah wills some penalty for me, remove his penalty? Or if he wills some grace for me, can they keep back His grace” (39:38). By accepting these two distinctions—while also acknowledging the commanding responsibility to command right and forbid wrong—we have a case for wider assurances of basic rights, as conditions of membership and of the appropriate exercise of responsibility, rather than for extending them only to those who have what are presumed to be correct beliefs, as given by some interpretation of shari’ah.

The third idea is that a diversity of religious communities is a natural human condition: “To each among you have We prescribed a law and an open way. If Allah had so willed he would have made you a single people. But His plan is to test you in what He hath given you; so strive as in a race in all virtues. The goal of you all is to Allah; it is He that will show you the truth of the matters in which ye dispute” (5:48). If the first two points suggest a basis for a wider extension of rights within an Islamic community, with diverse interpretations of the law, the third—joined to the rejection of compulsion in religion and the idea that Allah cherishes all, loves all who do good, and “means no injustice to any of His creatures” (3:108)—suggests a basis for supporting a conception of human rights as part of a public reason of global reach.

Once more, then, the terrain of global public reason is available. That terrain is not the exclusive property of the “network of free-thinking, autonomy-asserting individualists,” who belong to the party of “Lockian [sic] individual

<sup>40</sup>Qutb, *Social Justice*, p. 80.

liberty,” and insisting that it is both an intellectual error (for the reasons sketched above in the remarks on Vatican II, Confucianism, and Islam), and an objectionable form of intolerance.<sup>41</sup>

#### IV. SUBSTANTIVE MINIMALISM

I have been sketching a way to interpret the idea of justificatory minimalism, as neither skeptical nor empirical, and showing how the autonomous presentation of a conception of human rights might enable that conception to win support from a range of ethical and religious outlooks: as my examples should make clear, the autonomously presented conception is not simply *consistent with* those outlooks, but is supported by certain interpretations of them. What then about substantive minimalism? Does autonomous formulation lead to the minimalist focus on rights associated with personal security?

I have provided the beginning of an answer already, by distinguishing justificatory minimalism from a search for *de facto* points of overlap. Substantive minimalism may seem straightforwardly plausible as a statement about the overlap of competing ethical outlooks—as an account of normative strands that run through all of them (recall, once again, Hart’s “minimum content of natural law” or Walzer’s “moral minimalism”). But its plausibility diminishes on the account of justificatory minimalism I have suggested here. The content of human rights is left open to an independent argument about conditions of membership that proceeds on the terrain of global public reason.

To pursue the question further, however, I first need a point of clarification. I have been identifying substantive minimalism with the view that human rights are essentially confined to rights of bodily security, or, more generally, to the rights that are required “for any kind of life at all.”<sup>42</sup> Minimalism, thus understood, is not identical to the view—endorsed, for example, by Rawls in *Law of Peoples*—that human rights are only a “proper subset” of the rights embraced by any of the reasonable views of justice for a democratic society.<sup>43</sup> More precisely, substantive minimalism is one instance of the proper subset view, but other instances embrace more expansive sets of rights than minimalism—say, rights to an adequate standard of living, to adequate levels of health, education, and housing, and to some form of political representation and accountability—though not a full complement of liberal–democratic rights, including full equality of political rights.

There are, I think, good reasons for endorsing the proper subset view—for thinking that standards of human rights should differ from and be less demanding than standards that we endorse for our own society. But these reasons operate from within an autonomously presented conception of human rights,

<sup>41</sup>See Thomas M. Franck, “Are human rights universal?,” *Foreign Affairs* 80 (2001), p. 195.

<sup>42</sup>Ignatieff, *Human Rights*, p. 56.

<sup>43</sup>*Law of Peoples*, pp. 78–81.

and reflect the political values associated with that conception: in particular, the elements of a reasonable conception of membership and its demands. They are not the results of a search for *de facto* points of intersection or common normative strands among competing ethical outlooks. And they do not lead to substantive minimalism. I do not propose to make a specific case here about what they lead to: instead, my aim is simply to sketch some reasons for endorsing the proper subset view that do not carry us to Substantive minimalism and that also are not founded on the skeptical or empirical interpretations of justificatory minimalism.

Suppose then, by way of example, that you endorse the first principle of Rawls's theory of justice, requiring equal liberties of conscience, expression, association, and participation. You might still, for three reasons, resist the idea that this principle of justice should be an element of global public reason, that it should be applied to the whole world as a human rights principle, so that a society must satisfy it to be beyond reproach—that is, for three reasons think that different norms are suited to different cases of political association, and that, for example, an Islamic democracy with restrictions on office-holding or political party formation would not violate, for that very reason, human rights, even if it is unjust.

First, a plausible element of any conception of human rights is a principle of collective self-determination, of a kind stated in Article 1 of the Covenant on Civil and Political Rights. The satisfaction of this principle requires that collective decisions be based on a process that represents the interests and opinions of all those who are subject to the society's laws and regulations. Suppose that that principle is satisfied, and, moreover, that the outcomes of the process do not produce gross infringements of other fundamental interests. Then we should resist the idea that the political society should be held to a standard of justice that is rejected by its own members and may have no real resonance in the culture, even if we think that that standard represents the truth about justice.

But the case for this conclusion—that the society, though unjust, is beyond reproach from the point of view of global public reason—seems stronger to the extent that the political society can plausibly claim that it does accommodate and advance the good of all those subject to its laws and regulations, by providing more than minimalist guarantees of bodily security—say, assurances of decent levels of health, education, and economic security, and some form of political accountability. That is, the case is stronger to the extent that the society can be seen to provide the basis for some recognizable form of collective self-determination, and not to be simply a form of group domination (even if the group domination exists alongside minimalist assurances).

A second consideration turns on the distinction between what justice requires and what people in a society have an obligation to do. It is widely agreed—in political philosophy and in life—that the members of a society have obligations

to obey regulations even when those regulations are not fully just. But now suppose the members of a society have an obligation to obey—that is, the institutions meet the normative standards, whatever they are, that suffice for political obligation but fall short of justice. Then outsiders ought to show some reluctance to pressure for changes, and certainly a reluctance to intervene more forcefully or forcibly in the name of the more demanding norms of justice. Surely it is not permissible for outsiders to forcibly intervene to change arrangements with which members are obliged to comply. So if human rights standards are standards for treating members whose violation warrants stringent external criticism (and perhaps intervention), then the distinction between standards of justice and standards of obligation exerts some additional downward pressure on the content of those standards.

A third point concerns toleration. If you endorse a liberal principle of equal liberties, such as Rawls's first principle, then you think that non-liberal political arrangements—such as an ideal Islamic democracy—are unjust. But you also endorse the idea that, on complex normative issues, reasonable people disagree: a commitment to toleration is another part of your political outlook. The idea of tolerating reasonable differences suggests that the standards to which all political societies are to be held accountable will need to be less demanding than the standards of justice one endorses. This point about toleration does not imply relativism about justice: the point is not that justice is relative to circumstance, or consists, as Michael Walzer once said, in fidelity to local cultural understandings. Instead, the point is that a political society can, within limits, be unjust but beyond reproach, from the point of view of an acceptable global public reason. Of course there are limits on toleration: and an aim of the conception of human rights is to set out those limits. But the observation here is simply that, once we take into consideration the value of toleration, we will be more inclined to accept differences between what we take to be the correct standards of justice—and the rights ingredient in those standards—and the human rights standards to which all political societies are to be held accountable.

Of course the value of toleration is not absolute, but it is profoundly important. Its importance is owed in part to the connections between the respect shown to a political society, when it is treated in global public reason as beyond reproach, and the respect shown to members of that society, who ordinarily will have some identification with that political society and its way of life. Not extending toleration has serious costs, and those costs must sometimes be paid. But the costs are real: in Rawls's forceful words, "lapsing into contempt on the one side, and bitterness and resentment on the other, can only cause damage."<sup>44</sup> "Only" puts the point too strongly. But the point remains: the presence of these costs operates to create some distance between the requirements of justice and the rights that are part of a doctrine of human rights.

<sup>44</sup>Ibid., p. 62.

But while these three considerations all work to limit the requirements of human rights to a proper subset of the requirements of justice, none of the three leads to substantive minimalism. Indeed the first point—about collective self-determination—suggests something very different and much more demanding: that the rationale for not insisting that international standards match standards of liberal justice is that such insistence would be incompatible with collective self-determination. But as I indicated earlier, the requirements of collective self-determination—whatever their precise content, and while they are less demanding than norms of democracy—extend well beyond the demands of minimalism. For example, any reasonable conception of collective self-determination that is consistent with the fundamental value of membership and inclusion, will—as with the Declaration and the Covenant on Political and Civil Rights—require some processes of interest representation and official accountability, even if not equal political rights for all.

## V. CONCLUSION

To conclude: justificatory minimalism aims to avoid imposing unnecessary hurdles on accepting an account of human rights (and justice), by intolerantly tying its formulation to a particular ethical tradition. It is left to different traditions—each with internal complexities, debates, competing and conflicting traditions of argument, and (in some cases) canonical texts—to elaborate the bases of a shared view of human rights within their own terms. To be sure, it is desirable that that view be capable of winning wide support, from different ethical traditions, and that it be acceptable from within those traditions, even if it is not accepted by them in their historically prominent formulations. As An-Na'im says, "If international human rights standards are to be implemented in a manner consistent with their own rationale, the people (who are to implement these standards) must perceive the concept of human rights and its content as their own. To be committed to carrying out human rights standards, people must hold these standards as emanating from their worldview and values."<sup>45</sup>

But we do not specify the concept or the content of a human rights conception by looking to worldviews and values, taking them as determinate, fixed, and given, and searching for points of de facto agreement. Instead, we hope that—as is so often the case—different traditions can find resources for fresh elaboration that support a conception of justice and human rights that seems independently plausible as a common standard of achievement with global reach. That, and not substantive minimalism, is the best we can hope for. Or at least that wide acceptability is something we may reasonably hope for, consistent with a theoretical knowledge of human pluralism and a moral commitment to respecting it.

<sup>45</sup>Abduallahi Ahmed An-Na'im, "Conclusion," *Human Riights in Cross-Cultural Perspectives: A Quest for Consensus*, ed. Abduallahi Ahmed An-Na'im (Philadelphia: University of Pennsylvania Press, 1992), p. 431.



25. Joshua Cohen, "Minimalism About Human Rights: The Most We Can Hope For?" (2004) 12:2 J Political Philosophy 190 at 192.

26. For instance, Nickel favours Minimalism because it ensures that human rights are concerned only with "every severe problems"; see Nickel, supra note 3 at 56. Griffin focuses on the Minimalist value of personhood partly because of its "special importance"; see Griffin, supra note 4 at 36. Miller focuses on things that are "an essential element in human life", and thus he favours a Minimalist, needs-oriented account of human rights; see Miller, supra note 2 at 412.

27. Nickel, supra note 3 at 56; Beitz, supra note 1 at 109.

28. Maurice Cranston, "Are There Any Human Rights?" And he distinguishes human rights minimalism from more expansive statements about the content of human rights and more ambitious agendas for their promotion agendas that might extend both to a richer array of civil and political rights, and to social and economic rights. The 1948 Universal Declaration of Human Rights presents one such more ambitious agenda. "But I do wish to dispute the idea that human rights minimalism is the most we can hope for. Minimalism may be more than we should ever reasonably expect. But hope is not the same as expectation. And human rights minimalism draws the boundaries of hope too narrowly. This is a large thesis, and I do not propose to argue for it fully. These are the sources and citations used to research Human Rights. This bibliography was generated on Cite This For Me on Wednesday, January 6, 2016.

Journal. BIELEFELDT, H. "Western" Versus "Islamic" Human Rights Conceptions?: A Critique of Cultural Essentialism in the Discussion on Human Rights. 2000 - Political Theory. In-text: (BIELEFELDT, 2000). Your Bibliography: BIELEFELDT, H., 2000. "Western" Versus "Islamic" Human Rights Conceptions?: A Critique of Cultural Essentialism in the Discussion on Human Rights. Political Theory, 28(1), pp.90-121. Journal. Cohen, J. "In the Service of Power: The Global Political Economy of Citizenship and Human Rights. Citizenship Studies, 10(3), pp.289-308. Book. "Minimalism," they write, "gets us past the things, so we can make room for life's important things" which aren't things at all. Millburn and Nicodemus are not ascetics. They advocate possessing only what one needs. Mahatma Gandhi began his human rights career by establishing a self-sufficient "Tolstoy Farm" near Johannesburg, South Africa, and later organized Swaraj (self-rule) communities in India. He hand-spun his own dhoti cloth and ate simple vegetarian food. His practice of satyagraha "peaceful civil disobedience, borrowed from the Quakers" led to the liberation of India from British rule. "You will be much more together with friends, living in a real community where all share what they have just because you have very little..."