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Universal Human Rights: A Critique

CHRIS BROWN

INTRODUCTION

Virtually everything encompassed by the notion of 'human rights' is the subject of controversy. The controversies of relevance here are not those associated with enforcing compliance to human rights law, or with the execution of foreign policy options allegedly dedicated to the protection of human rights – these are important topics but they are not the concern of this paper. Instead its theme emerges from the fact that the idea that individuals have, or should have, 'rights' is itself contentious, and the idea that rights could be attached to individuals by virtue solely of their common humanity is particularly subject to penetrating criticism. That such criticisms exist is a commonplace, but what is less well established in the international relations discourse on human rights is the fact that virtually all the current arguments have a very long pedigree – indeed, are associated with positions that have been argued over for centuries within the canon of Western political theory. It is particularly important to stress that this is so, because so much of the current discourse on rights assumes that the conceptual problems thrown up by the notion are peculiarly the product of particular late twentieth-century problems – the so-called problem of cultural relativism which, allegedly, has been generated by the globalisation of the international system.

This is a partial misapprehension: while it is indeed the case that the particular *forms* the contemporary dilemmas on human rights take are in part shaped by the problem of 'difference' and modern contextualist notions of ethics, there is a deeper sense in which the key elements of these dilemmas have been present since the beginnings of the discourse. It is a mistake, and moreover a mistake with serious political implications in terms of intercultural relations, to pass over this history in favour of a concentration on the present. Without a sense of the past of these dilemmas it would be easy to conclude, mistakenly, that the only serious difficulties associated with human rights thinking are generated by the unacceptable practices of alien Others.

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The concern to dispel this notion dictates the shape of this paper, which falls into two main parts. In the first part, the conceptual difficulties with the discourse of human rights will be examined; the conclusion will be that rights only make sense in the context of a particular kind of society – an 'ethical community', to use the language of contemporary communitarian thought – and what this entails will be, briefly, elaborated. The second, shorter, part traces through the implications of this position for the international protection of human rights and the characteristic agenda of late twentieth-century thinking on the subject.

Before moving to this agenda, there is one important preliminary that must be addressed. This paper is subtitled a 'critique', and this is a polite, academic, way of saying that in what follows the idea that there are universal human rights will be attacked, and attacked quite forcefully. Decent opinion – no irony intended – finds this distressing. Human rights activists are liable to respond in a pained way to this kind of discourse; they are in the firing line, literally sometimes, and, understandably enough, they resent carping from academics who write of these matters from the safety of their studies in western universities. This is a serious criticism but one that misses the point, and, ultimately, can lead to a counter-productive refusal to acknowledge important difficulties faced by human rights activists. Along, probably, with the majority of readers, the present writer would be glad to live in a world in which liberal, western freedoms and rights were enjoyed by everyone, but one of the obstacles to the achievement of such a world is created by the unwillingness of some human rights activists to admit that the cause they espouse *is* liberal and western. By adhering to the fiction of a universal grounding for rights independent of the particular kind of societies in which they are characteristically found, such advocates place themselves in a false position, and, perhaps paradoxically, weaken the credibility of their stand. In short, any violator of human dignity and decency who believes that this paper provides a sanction for his or her activities is profoundly mistaken – and any rights activist who feels undermined has, equally, misunderstood the argument. These points will be readdressed in the conclusion to this paper.

THINKING ABOUT RIGHTS

The Liberal Position

Since the late eighteenth century it has become a commonplace in liberal societies to assert that individuals possess rights to liberty, the secure possession of property, the exercise of freedom of speech and so on, that

these rights are inalienable and unconditional, and that the primary function of government is to protect these rights – indeed that political obligation rests on the extent to which governments at least try to do this.[1] This position is the burden of such seminal documents as the American Declaration of Independence of 1776 and the French Declaration of the Rights of Man and of the Citizen of 1789, and became the cornerstone of the political thinking of nineteenth- and twentieth-century liberalism and progressivism. The language of rights has facilitated the establishment of some of the freest, safest and most civilised societies known to history;[2] on the basis of this record, in the second half of the twentieth century the liberal position has been extracted from its original association with particular kinds of societies and turned into a template against which all regimes are to be judged. This universalism was, perhaps, always implicit; it is now explicit. The contemporary human rights regime is in general, and, for the most part, in detail, simply a contemporary, internationalised and universalised, version of the liberal position on rights.

The thesis argued here is that the liberal position on rights is now and always has been incoherent and confused and that the undoubted success of 'liberal' societies over the last two hundred years is not, at root, traceable to their individualistic rights-oriented features. Before suggesting to what it is attributable, it is necessary to spend some time on the philosophical and conceptual problems surrounding the discourse of rights, because, as suggested above, these problems are particularly pertinent when it comes to the international dimension of rights, and it is important to stress that they are not generated by some new set of circumstances, such as the problem of Other Cultures.

The philosophical background to rights thinking has been examined at length in a number of very good recent studies.[3] One of the consistent themes of this work is the potential tension between legal and moral conceptions of rights, or, perhaps better, between legal positivist and naturalist accounts of rights. This tension emerges out of both the history of rights and the history of their conceptual validation and, as such, and given the importance of this tension in the context of the modern debate, it is worthwhile dwelling at some length on what is at stake here.

The American legal philosopher Wesley Hofeld produced the standard classification of rights in a work of 1919 in which he distinguished between rights as claims, as liberties, as powers, and as immunities (although in his view the only true rights are claim-rights, because only here are correlative duties clearly identifiable.)[4] The key point here is that each of these categories makes sense only in the context of some kind of legal *system*. Thus a contract which establishes specific

claim-rights and duties presupposes a context in which it is agreed that contracts ought to be observed. Likewise, liberties, powers and immunities are ultimately notions which make sense only against the background of a system of law. However, this tells us nothing about the kind of law that is involved, and in fact, historically, two quite different kinds of law have been invoked in rights discourse.

Positive Law and Natural Law

On the one hand there is *positive* law – the kind of law enforced, we hope, by institutions such as the police and the judiciary.[5] On this count I, a citizen of the United Kingdom, can, in principle, enforce my claim-rights through the civil, and in some circumstances, the criminal courts; I am at liberty to dress as I please within the limits laid down by public order legislation; I am empowered to vote if over 18 and not a peer of the realm or insane, and I am immune to criminal prosecution if under the age of ten. I possess these rights because such is the law of the land, whether the statute law enacted by Parliament, or the common law heritage of the freeborn English (and Welsh but not Scottish) man (and woman). The history of these rights can be traced back to the alleged customs of our (notional) Saxon forebears and a long list of statutory instruments that conventionally begins with the Magna Carta of 1215. Whether or not these rights are adequate, or in fact easy to enforce is, of course, debatable; the key point is that they are the rights of a specific group of people. There is no sense in which they are, or could be, *universal* or *human* rights.

To establish human rights, a different kind of law is necessary; some version of *natural* law. The most developed version of natural law was established in the Middle Ages by Catholic Schoolmen, philosophers and jurists. One of their most distinguished modern successors has described the idea of natural law as being based on the existence of:

> (i) A set of basic practical principles which indicate the basic forms of human flourishing as goods to be pursued and realised, and which are in one way or another used by everyone who considers what to do [and] (ii) a set of basic methodological requirements of practical reasonableness ... which distinguish sound from unsound practical thinking, and which, when brought to bear provide the criteria [which enable us] to formulate (iii) a set of general moral standards.[6]

Rights – whether claims, liberties, powers or immunities – are based on these general moral standards, as are the duties which accompany these rights. Crucially, these standards are *general*, which is to say that they are

not limited in application to the inhabitants of any particular jurisdiction or legal system, or to any race, creed or civilisation. There may be additional rights and duties associated with Christian acceptance of Revelation but some general moral standards are common and binding on all people (and peoples).

The specific content of the natural law of the Schoolmen was challenged by social contract theorists such as Hobbes and Locke in the seventeenth. century, and many later versions of the idea are further away from the substance of the original than that of Finnis – as is the case, for example, with Alan Donagan's notion of common morality.[7] Nonetheless, it seems that some idea of natural law must underlie all genuinely universal approaches to human rights. If human beings have rights by virtue of their common humanity, it can only be because there are some 'general moral standards' that are universal in application; these standards must, in principle, be discernible to everyone, and therefore, less obviously but still necessarily, must refer back to some kind of common notion of human flourishing. These are the characteristics of natural law thinking and thus natural law is the basic foundation for rights discourse other than positive law.[8]

Natural law and positive law each have advantages and disadvantages as foundations for rights. Rights associated with positive law are associated with particular jurisdictions and thus are not, as such, *human* rights – but, on the other hand, their ontological status is secure. If I am asked why I consider myself to have particular rights as a citizen of the United Kingdom, I can, most of the time, point to specific pieces of legislation, or common law judgements to support my case. A citizen of the United States can – probably with a greater chance of success – point to the Bill of Rights and Supreme Court decisions, Germans to the *Grundgesetz* of the Federal Republic, and so on. The problem here, of course, is that the 'and so on' stands for a relatively short list of countries where the rule of law applies and thus where the rights to be found in constitutional documents have actual force. Those who live in countries where this is not the case can find little solace in a view of rights which makes them the product of positive law, and this is particularly unfortunate since it is clearly the case that it is in precisely those countries where the rule of law is absent that individuals are most likely to suffer the sort of oppressions that rights are designed to rectify.

The great merit of naturalist approaches is that they provide a basis for a claim to possess rights which is not so unhelpfully restrictive. If one has rights by virtue solely of one's humanity, the fact that one happens to be the citizen of a tyrannical regime, while still deeply regrettable, no longer leaves one without intellectual resources, because the heart of a

natural law perspective is precisely the assertion of universal right against local custom. Potentially, natural law provides the basis for a powerful critique of existing social institutions in a way that positive law does not and cannot. Rights established by positive law may be critical in the sense that they may allow one to argue that a particular social institution is not working in the way that it ought to, but they are less useful when, as is too often the case, a social institution is working exactly as intended, but the intention is itself oppressive. Positive legal rights provide no basis for an argument that the whole way of life of the society in which they exist may be oppressive, because, by definition, they are based on that way of life. To exercise a critique at this level it is necessary to bring to bear the natural law position that general moral standards exist independent of the practices of any particular society.

But what are these 'general moral standards'? What is their ontological status? There are, broadly, two possibilities here, each of which is unsatisfactory.[9] On the one hand, these standards might be derived from actual practice, on the argument that all functioning societies need to have some kinds of rules which, for example, define property rights, or regulate sexual conduct, and that from this some kind of lowest common denominator can be discerned. There are two problems with this position: first, such a lowest common denominator is likely to be vacuous because customs clearly vary dramatically and any formula designed to cover all the possibilities is likely to end up devoid of real content.[10] Second, and more important, if general moral standards are defined in this way they lose their critical cutting edge – it ceases to be possible to use such standards to criticise existing practices if the former are defined in terms of the latter. The whole point of the exercise is to produce an account of rights which is discriminatory in a way that this kind of minimalist code cannot be; at best, the occasional, obviously deviant, regime – Hitler's Germany, Pol Pot's Cambodia, Amin's Uganda – might be 'caught' by these criteria but, almost by definition, no long-standing system of injustice could be recognised as such by an argument that takes longevity as a sign of virtue. A common morality which is actually common to all societies is an uncritical notion.[11]

The alternative is that general standards might be derived without reference to any particular societies by the use of 'practical reason – reasoning from the basic forms of human flourishing via the application of the standard requirements of sound reasoning. In principle, this restores a critical edge to the notion because there is no definitional reason why actual practices will always correspond to the demands of practical reason. But then a new problem emerges, namely that of explaining why, in fact, local practices do vary, that is, why practical

reason seems to produce different results in different places and at different times. To take an example much in the thoughts of contemporary Catholics who argue in this way, if practical reason tells us that abortion is contrary to natural law, why is it that so many societies now and in the past have sanctioned this practice? Finnis and his colleagues would clearly refuse to accept that contemporary American legal reasoning – and the widespread popular support for the product of this reasoning – meets the standards of practical reasonableness, but it is difficult to see on why this denial should be convincing. Natural law theorists claim only to privilege the products of practical reason devoted to human flourishing but the claim that the operation of such reason leads always and everywhere to the same result seems to be contradicted by the fact of value pluralism.[12]

The argument that 'we' (or at least those of us who are Catholic natural lawyers) are more intelligent or more moral than those who reach a different conclusion clearly will not do. The most plausible way out of this difficulty is not to suggest such a personal validation of the product of one's own thought, but to argue that practical reason is defective and likely to produce the wrong result unless situated within an authoritative tradition – such as, in this case, Thomism. In this way individuals are no longer reliant on their own resources; they can bring to bear the practical reasonableness of generations of thinkers as though it were their own. However, this clearly changes the nature of the argument and weakens the claim that general moral standards can be generated in this way. If it is the tradition itself that is the justification for a particular practice, the potential for universalist claims goes by the board, or at least is severely damaged.[13]

Thus far this discussion has centred on the universalist and particularist dimension associated with rights discourse, but there is a further feature of this discourse that deserves, rather briefer, attention, namely the potential absolutism of the notion of rights. In Dworkin's famously formulation, rights are often seen as 'trumps' – cards which automatically win tricks – that is, as considerations overriding all other considerations.[14] It is easy to see how, on this account, rights could exist in opposition to the common good – indeed, the very point of having a right is precisely to be protected from someone else's notion of the common good. Rights absolutists may further reject the notion that there could be a common good in the first place. This position is the origin of the inbuilt and necessary rivalry between utilitarians and rights theorists, a rivalry that dates back to Jeremy Bentham's fulminations against the idea that there are natural rights. It has become a commonplace of modern debate to suggest that the problem with utilitarianism is that it

does not take seriously the fact that individuals are distinct from one another and have their own projects.[15] Conversely, one might argue that rights theorists take these distinctions *too* seriously. This is the position of a diverse range of modern thinkers from Brian Barry and Robert Goodin on the one hand to Amitai Etzioni and Jean Bethke Elshtain on the other.[16] The absolutism of rights-claims can be a menace to a civilised society, as the inability of the American public authorities to control the ownership of firearms in the United States illustrates quite vividly. Even in a less extreme case, it is not clear that the free speech absolutists who defend all forms of expression in First Amendment terms are not acting against the public interest.

What is interesting about this critique is that it is particularly relevant to positive law accounts of rights. One of the important features of natural law thinking is that it relates rights to other features of the human condition, the requirements of human flourishing, and therefore, is hospitable to a distinction between those rights which are absolute and those which may be overridden in the public interest or common good. Positive law approaches find it difficult to make such a distinction. Each item in the American Bill of Rights has the same legal status, whether pointing to a case where an absolute claim perhaps ought to be made, for example, barring cruel and unusual punishment, or where policy considerations might in some circumstances legitimate a restriction, perhaps regarding free speech, or where, as it happens, the right in question is positively harmful to the common good, most obviously the right to bear arms. It is not a necessary feature of positive law that it has to have this absolute quality – for example, the Canadian equivalent to the Bill of Rights has an override clause – but many supporters of rights would argue that absolutism is a desirable feature, and criticise Canada's law on exactly this point.[17]

Again, there is a genuine dilemma here. If rights are thought of as trumps, as absolutes to be defended in all circumstances, then it very likely that some of these circumstances will involve the violation of an obvious public interest. However, if rights are thought of as less than absolute, as simply one set of considerations to take into account when deciding on the rightness or otherwise of action, then the protective power of rights simply withers away. The debates around 'hate speech' in the United States revolve exactly around this dilemma. On the face of it, defending speech that offends public standards of good behaviour and incites anti-social attitudes would seem perverse, and yet if free speech is a meaningful notion it must apply to 'offensive' speech, since no-one tries to ban any other kind.[18]

The Liberal Position Reexamined

To summarise the story so far: 'rights' are tricky, slippery things, and rights-discourse is a minefield, where each conceptual step risks a detonation and self-destruction – moreover, this is so even without introducing complications allegedly generated by cultural relativism. And yet, very little of all this comes through in the liberal position on rights outlined at the start of this paper. There is a clear disassociation between, on the one hand the conceptual failings and, on the other, the rhetorical appeal of rights discourse. If it is indeed the case that societies built upon the liberal position on rights have been successful in providing a context within which people can live civilised lives, ought we to be concerned with the philosophical niceties?

It is now, perhaps belatedly, that the thesis of this paper can be stated more fully. It is that liberal societies of the last 150 to 200 years have indeed been the freest and most generally congenial societies known to history, but not because they have been constructed on the basis of rights; their success has been based on features within them that pointed towards a different, more community and less individualist, context for political action. It was because of the existence of this context, because these societies were, in certain respects, *ethical communities*, that rights were widely honoured and respected; a successful rights-based politics is parasitic on features of the polity that have nothing to do with rights – indeed, that may even be inimical to rights thinking. For this reason, the philosophical niceties referred to above are important; it is implausible to think that rights can be extracted from liberal polities, decontextualised and applied as a package world-wide. This is not simply because of international value-pluralism; it is decontextualisation that is critical whether international or domestic. However, the international dimension of rights is the subject of the second part of this paper, and the final section of this part is devoted to an elaborating of the meaning of an ethical community.

Community and Rights

The term 'ethical community' rightly suggests strong Hegelian overtones and the position in general is indeed characterised by a kind of coarse, de-mythologised Hegelianism – coarse and demythologised because it is usually presented without the reliance on *Geist* that Hegel himself would have regarded as crucial. If we read the *Philosophy of Right* as a free-standing text rather than as a work which is embedded in Hegel's system, it is not too difficult to extract the elements of a model of an ethical community, elements which have been employed explicitly or implicitly

by later communitarians.[19] This community has three institutional elements or moments: the family, civil society and the state, the role of these institutions being to 'constitute' individuality, that is to construct the kind of individual that liberal rights-based thought takes as given.[20] Briefly, the role of the ethical family is to provide an environment within which the individual can develop a sense of self-esteem, where regard is unconditional, based on love not on achievement.[21] Civil society provides a context where the individual differentiates him or herself from other individuals, making his or her way in the world, rubbing along with other people and acting in a context where law and government are seen as external forces – here we have the kind of atomised, self-interested individuals who are usually held to need rights to protect them from over-mighty rulers. Finally, we have the state, the location where these individuals come to see their competitors as fellow-citizens, and to realise that the laws that bind them are self-made. Here the 'rule of law' ceases to be an external phenomenon but comes to be seen as the product of one's own will.

This conception of a political community does provide a context within which rights can operate but it is not a context which is always compatible with the *liberal* position on rights. The rights of the individual are of greatest significance in 'civil society'; it is in this realm that the power of the state appears to the individual as an externalised force from the operation of which they require the protection of rights. The state itself cannot be limited by rights in this way: the substantial unity represented by the state 'possesses the highest right in relation to individuals, whose *highest duty* is to be members of the state'.[22] Rights may exist but 'rights absolutism' cannot be a problem here. The idea that the rights of the individual are subject to the will of the collectivity is precisely what the liberal position is designed to avoid, but the reason that this need not be seen as a serious problem is that the communitarian position is not designed to work with *any* individual under *all* circumstances – on the contrary what is being presented here is a package in which the kind of individuals who make up the community are not a more or less random collection of people who happen to inhabit a particular territory at a particular time, but rather a group of people who are simultaneously the creators of community and created by it. The 'rights' that they assign each other are not the manifestation of a general moral code or the product of universal practical reason, nor are they simply the product of a political bargain; rather, they are more like reminders that the community gives itself as to what it takes to be proper conduct. They are enforceable against the administration/government – the police and the corporation as Hegel would put it – but not against

the state as such, that is the state in its role as the expression of a higher unity.

Only a strictly limited sense of universal or human rights can be drawn out of this. The approach is universalist in the sense that it is hostile to any kind of racial discrimination – 'A human being counts as such because he[*sic*] is a human being'[23] – but it is only particular kinds of community that are ethical, and it is only within such communities that rights are or can be situated. Cross-communal or inter-temporal judgements on ethics miss the point. To criticise, say, Athenian slavery, because it does not correspond to our understanding of the nature of human equality makes no sense because this understanding was not available to the Athenians. Slavery is incompatible with the modern, rational, ethical state but it was not incompatible with the Athenian *polis*. Any particular practice has to be contextualised. However, this does not mean that all contexts are morally equal. There is a role for moral absolutes in this schema, but the role is in terms of historical development – the unfolding of *Geist*. The modern state represents a higher morality than the Greek *polis*.[24] And, of course, than contemporary regimes that are not rational or ethical. But, notwithstanding this point, *Sitten* (ethics) are more important than *moralitat* (morality) in the actual life of the community.

Has all this any real purchase? That is to say, is an 'ethical community' simply an intellectual construct or has it any real-world reference point? It is very clear that there are not now, nor have there ever been, ethical communities in any full sense of the term – indeed, it seems to me equally clear that for Hegel and many (most?) of his successors the model was intended to be critical.[25] His account of what an ethical, rational community would look like can be seen as providing an ideal against which existing societies can be measured and found wanting. But there is also a teleological element here; the thrust of the argument is that the modern world, modernity if you like, has within it tendencies that make this kind of society desirable and, perhaps approachable. The rational, ethical community is the answer to the question 'How can we live rational, ethical lives in societies characterised by mass membership, an extended and complex division of labour and, if we are fortunate, some kind of representative and responsible government?' This is as important a question today as it has ever been, and the answer Hegel gave to it remains highly relevant.[26]

What is more, it is arguable that in so far as liberal societies have been successful over the last two centuries it has been because they have been constructed as approximations to the communitarian model rather than because of their dependence of rights-based individualism. This is the

thesis of the communitarian movement in contemporary politics.[27] The United States functioned as a community when it had a strong family structure and an active civil society to go with its constitutional arrangements; in recent years the former institutions have gone into decline and, as a partial response, the constitutional framework has grown in significance. Americans have more and more rights, but less and less of a society within which to exercise them. In the past American individualism was embedded in a non-individualist structure; this is now fading, rights stand alone, and American society is in deep trouble. Similar sorts of stories could be told elsewhere. In Britain, for example, a deferential and traditional notion of community gave real meaning to the idea of rights, even though the rights themselves were poorly articulated within the legal system. As the old order fades away attempts are made to situate rights within a new, more formal, context; unless the structures that might support such rights are rebuilt – on different foundations – this strategy is unlikely to succeed. Similarly, contemporary Russians and East-Central Europeans are learning that simply importing systems of rights without the institutions of civil society to support them is no recipe for a good polity.

Obviously there is much more that should be said about all this, but for the purpose of this paper enough has been said to clarify the basic thesis. The next step is to relate these ideas to the international context, or rather to show that, in fact, this step has already been taken, because all the resources that are needed to examine the international dimension are already present in the analysis.

THE INTERNATIONAL DIMENSION

The International Human Rights Regime

International human rights legislation can be traced back to the nineteenth century, but the modern regime really begins in the aftermath of the Second World War.[28] The Universal Declaration of Human Rights adopted by the UN General Assembly in 1948 was a direct response to the atrocities of the war; it set an important precedent as the first attempt by the international community to set out what were, if taken seriously, quite strict limits on the range of variation of internal regimes that were to be tolerated.[29] It has been followed by a raft of legislation, regional and global, such that now, in the 1990s, it is no exaggeration to suggest that virtually all areas of the domestic structure of states are covered by some kind of international standard-setting. For the most part the standards in question are those of the liberal position set out at

the start of the first section of this paper. Although the Universal Declaration specifically recognised that the individual was entitled to 'the economic, social and cultural rights indispensable for his [*sic*] dignity and the free development of his personality' and this *apercu* has become extended in later statements of so-called second-generation (economic and social) and third-generation (rights of peoples) rights, it remains the case that the first-generation (political, liberty) rights of the individual remain at the heart of the regime.[30]

It is clear that although the human rights regime is ever more elaborate in the demands it makes upon states, its actual influence on the conduct of states in their treatment of their own nationals is, if not minimal, at least not very extensive. It may be that the international protection of human rights has become a 'settled norm' of international society in the sense that states virtually never acknowledge that they are deliberately breaking internationally established standards, but this tribute that vice pays to virtue can be little comfort to those would prefer actual compliance to verbal assent.[31] It is not too difficult to identify reasons for the failure of the regime, nor to see how these reasons link up to the difficulties with the notion of rights identified above.

There are obviously problems connected to compliance with and enforcement of international human rights which are related to the legal system within which these rights are embedded. International human rights legislation purports to create positive law in the same way that, say, the US Bill of Rights creates positive law, but it is clear that in practice this is not the case. The legal status of international law is a topic in jurisprudence that the wise avoid if they can, but it is reasonably uncontroversial that international legislation will not be effective unless the law-making parties make specific provisions for enforcement and compliance either by utilising existing institutions, such as the International Court of Justice at The Hague, or by creating new, treaty-specific bodies. With the exception of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, international human rights legislation has not involved the creation of effective enforcement machinery, for the obvious reason that not enough of the states involved wished to see human rights law enforced; indeed, even some states with a record of general respect for human rights have been unwilling to accept international supervision and have hedged around their ratifications of international agreements with extensive formal reservations – true of, for example, the United States and the United Kingdom.[32]

The result of these factors has been that enforcement of human rights by the international community is determined, in practice, by the

foreign-policy imperatives of the major powers; on the whole, these imperatives give a relatively low priority to issues of human rights. During the Cold War, violations of human rights by the enemy went unpunished because of its power, while violations by friends were excused or justified on essentially strategic-diplomatic grounds.[33] Even now that the Cold War is over, commercial and financial considerations frequently get in the way of a high-priority, even-handed, policy on human rights. That this is so may be deplorable, but it ought not to be surprising; the international legal system remains premised on the idea of sovereignty, international obligation remains dependent on particular sovereign wills, and within such a system it is implausible that states will actually allow their external policy to be consistently guided by an impartial concern for human rights – which is not to say that policy will always be determined by power and interest, rather that a systematic commitment to higher goals is always liable to be 'tainted with contingency'.[34]

One response to this might be to try to transcend these limits by moving beyond the Anarchical Society, beyond, that is, a legal system based on sovereignty. Apart from the obvious practical difficulties here (all it requires is 'the consent of Europe, and a few similar trifles', as Frederick the Great put it in another, not dissimilar context[35]), this project runs up against the difficulties with 'universalist' accounts of rights outlined in the first part of this paper. The present sovereignty-based international order allows for different and potentially competing accounts of the Good[36]; this contradicts the idea of universal human rights which, in the full package as developed since 1945, is based on one particular conception of the Good. If this contradiction is to be removed by the elimination of difference, then there had better be good reasons why rights-based individualism should be privileged in this way – and the burden of the first part of this paper is that there is no such good reason, or at least none that it would be unreasonable for those committed to another account of the Good to reject. It was argued there that the universal claims of natural law cannot be sustained, and that the argument from the consequences of rights-individualism – namely that societies where rights are established are more successful than those where they are not – misunderstands the nature of the success of 'liberal' societies.

It is important that the relationship between this chain of reasoning and the issue of international 'multiculturalism', relativism and contextualism be clearly understood. It clearly is the case that in the post-colonial late twentieth century world different countries have different notions of what are the appropriate rights – if any – for their

inhabitants. In parts of East Asia authoritarian regimes justify restrictions on individual liberty in the interests of economic development and, on their account, in accordance with local custom. Islamic regimes do not recognise certain rights regarded as crucial in western liberal societies – the right to change one's religion being an obvious case in point.[37] It is difficult to see how notions of human equality could be consistent with a caste system, or with social arrangements that privilege the family rather than the individual. In many respects these differences are greater than those to be found within Western societies over the last two centuries – but the diversity that does exist within the west is such as to undermine naturalist accounts of what it is to be human without adding in these extra difficulties.[38] Moreover, on many issues, the relevant divide in the modern world is not between the west and the rest; Catholic natural lawyers may well find they have more in common with their Islamic counterparts on many social (and especially sexual) issues than they have with secularists, western or eastern, while an issue such as the corporal punishment handed out to minor offenders in Singapore reveals a solid wedge of support in some western quarters for the authoritarian capitalist mores of East Asia. The absence of consensus in the modern world is not simply the product of differences between the major world cultures – the fault lines run within as well as between cultures.

Contextualism and Judgement

Does all this mean that we are committed to a relativist, contextualist, approach which refuses to make judgements, which is obliged to accept that whatever practices exist and are long-standing are immune to criticism? Not necessarily – as is demonstrated by the presence of deep splits and arguments within our own culture(s), it is possible to criticise existing practices without reference to universal norms. What is important from this perspective is that social criticism should rest on conceptions of the good which relate to the contexts in which life is lived rather than that they should rest on 'general moral standards' applicable to all humanity. As Michael Walzer has demonstrated so capably, this kind of criticism is not a hypothetical possibility but an actuality; his 'company of critics' has engaged in critical interpretations of the shared moral understandings of their own societies without reference to transcendant norms or universal standards.[39] The key issue is whether this kind of social criticism can also be exercised beyond the community, in realms where, apparently, moral understandings are not shared.

Walzer's own account of this problem is attractive, but not, in the end, satisfactory. He argues for the notion that some kind of 'thin' moral code can be identified which is not in itself sufficiently rich to live by, but

which has sufficient purchase to allow us to make some kinds of judgements.[40] Thus when the citizens of Prague take to the streets waving placards with 'Truth' and 'Justice' written on them, we may not know exactly what they mean by these terms but we are still capable of catching their drift.[41] This seems to be right, but, as suggested above when examining lowest-common-denominator accounts of natural law, it is often the case that the devil is in the detail and broad based categories may not get us very far. A thin moral code may enable us to identify a number of obvious evils, human wrongs on a large scale, but this is not necessarily where the most important debates are focused. Establishing that, say, genocide, is to be condemned is highly desirable, but most international human rights issues involve rather less clear cut cases.

Perhaps a better way into this issue could develop out of the example of Athenian slavery alluded to above. The point made there was that it was not possible to criticise the Athenians for the practice of slavery because their form of life did not include the sort of concepts that would make sense of this criticism; social criticism must employ the material to hand, and the ideas of individual worth, autonomy and personhood that make slavery intolerable today were not part of the moral vocabulary – whether thick or thin – of classical Greece. So far the argument is potentially relativist, but where the Hegelian position moves beyond relativism is in its willingness to say that the mores of Athenian society have been superseded by the movement of *Geist*. Our moral vocabulary has become enlarged; we do have the means at hand to realise that slavery is wrong and it would be culpable of us not to act upon this. It becomes possible for us to assert with confidence both that the Athenians were not necessarily wrong in condoning slavery, and that our ways in this matter are better than theirs – history has moved on and moral development has taken place. Although values cannot be judged out of context, contexts themselves can be judged. Contrary to Wittgenstein, forms of life do *not* have to be accepted.[42]

The Athenian example is inter-temporal; Athens is separated from us by over two millennia. However, in Hegelian – and, perhaps, common-sense – terms it can be asserted that we are linked to classical Athens, they are part of our western past. A key question is, how do these arguments play when what is at stake is cross-national, cross-cultural contexts when no such relationship is plausible? Put differently, can we find a way of recasting the discussion which does not rely on the Hegelian notion of absolute morality, of the movement of *Geist*? This is necessary because if *Geist* is taken as fact rather than as metaphor, cross-cultural judgements are as easy to make as inter-temporal; the judgement

that some cultures/societies are 'historyless', outside the scope of moral developmental schemes, and have nothing to offer the world except examples of prejudice and superstition, becomes a matter of fact rather than a judgement of value.[43] Perhaps fortunately, albeit inconveniently, this kind of certainty is no longer available to our modern consciousness – it is not necessary to be postmodern to be sceptical about the force of this particular metanarrative. Instead, if we want to use neo-Hegelian notions in the way that they are used in this paper, we are obliged to find a language that works without the reassurance that underpinned Hegel's own work. Is such a language available?

Quite possibly not, but the writer who comes closest to providing such a moral language is Richard Rorty – a 'postmodern' who explicitly links his ideas to a demythologised Hegelianism.[44] Predictably, he is opposed to any foundationalist accounts of rights. Rights act to 'summarise our culturally influenced intuitions about the right thing to do in various situations'; such summarising generalisations increase 'the predictability, and thus the power and efficiency, of our institutions, thereby heightening the sense of shared moral identity which brings up together in a moral community.'[45] Since the Enlightenment, Americans and Europeans have created a 'human rights culture' in opposition to prejudices of one kind or another – racial, religious, most recently, misogynist and homophobic – and thereby extended the scope of this shared moral identity. This is an achievement which is both based on and reinforced by 'security' – 'conditions of life sufficiently risk-free as to make one's difference from others inessential to one's self respect, one's sense of worth'[46] – and 'sympathy', the ability to put oneself in another's shoes, to perceive the Other as a fellow human being. And, it is worth stressing, it is also an achievement which is continually open to question; our sense about 'the right thing to do in various situations' is always corrigible – prejudice is never conquered once and for all, and what counts as prejudice is never a closed issue. Nonetheless, Rorty's suggestion that in the west the scope of shared moral identity has expanded in this way seems to me to be broadly accurate – and a pretty good way of putting what Hegel would have called the movement of *Geist* into non-foundationalist, de-mythologised terms.

What does this tell us with respect to societies where these extensions of shared moral identity seem not to have taken place? What do we do, or could we do, about, for example, Bosnian Serbs who kill Bosnian Muslims because they cannot see them as fellow human beings, or, conversely Muslim extremists who think that the death penalty is an appropriate response to apostasy (or writing a book that, allegedly, defames the Prophet)? Rorty's point is that it is futile to suggest that

these people are *wrong* or *irrational*, that they have not understood that the nature of human beings is such that these are not appropriate responses. There is no such nature, there are no general moral standards that apply here. UN declarations, covenants and the like cut no ice, because human beings create themselves and if they have not created themselves in ways that are amenable to a human rights perspective nothing can get through to them. This does not mean we are unable to judge their conduct, but Rorty suggests that the best way to see such people is not as 'wrong' or 'irrational' but as 'deprived', deprived of the security and sympathy that has allowed us to create a culture in which rights make sense. They are in need of an environment in which they can reflect on these matters in relative safety; they are in need of a sentimental education – more accurately, it is quite likely too late to soften 'the self-satisfied hearts' of the killers and fanatics themselves; it is the next generation that is crucial to the 'progress of sentiments'.[47] In any event, he suggests, we need to argue for and promote the extension of the human rights culture as a *culture*, and not as a movement that could be grounded by some form of knock-down moral reasoning.

This perspective does not solve all the problems of relativism – indeed, critics will say that Rorty's redescriptions of our moral life simply conjure away all the important issues – but what it does highlight is a point made at length above, namely that rights are best seen as a by-product of a functioning ethical community and not as phenomena that can be taken out of this context and promoted as a universal solution to the political ills of an oppressive world. It may be that talk of a 'sentimental education' seems a woefully inadequate response to these human wrongs, but it is difficult to see what other moral vocabulary is available to us once we reach the limits of an ethical community.

CONCLUSION

The argument of the first part of this paper is that the standard liberal approach to universal human rights is based on a misunderstanding. Rights have no separate ontological status; they are a by-product of a particular kind of society, one in which the 'state' operates constitutionally under the rule of law, is separated from 'civil society' and the 'family', and in which private and public realms are, in principle, clearly demarcated. Societies in which human rights are respected are more civilised and secure than those in which they are not, but rights are a symptom of this civilisation and security, not a cause. To overemphasise rights in isolation from their social context is counterproductive, potentially undermining the very factors which create the context in

which rights are respected. It follows from this analysis, as the second part of the paper demonstrates, that the international regime which attempts on a global scale to promote decontextualised human rights is engaging in a near-impossible task. From the liberal perspective human rights are universals; from the perspective outlined above, they are associated with a particular kind of society, and to promote these rights is to promote this kind of society. Proponents of universal human rights are, in effect, proposing the de-legitimation of all kinds of political regimes except those that fall within the broad category of 'liberal democracy'. Although such a delegitimation might be regarded as desirable, it is by no means clear that a majority of societies world-wide are actually capable of becoming liberal societies, at least in the medium run, and it is equally unclear on what moral authority those who require them to take this step can rely. Those who take these objections to universal human rights seriously either look to the promotion of a minimal, 'thin', moral code (Michael Walzer) or to the, admittedly nebulous, benefits of a sentimental education (Richard Rorty).

Many advocates of universal human rights will be untroubled by the critique made in this paper. In so far as this is because they regard the ontological grounding of rights as an ivory tower issue of no relevance to real world problems – or, at worst, relevant only in that to raise such issues is to give aid and comfort to the enemies of human dignity – they are seriously mistaken. Even judged in its own terms, the international human rights regime has not been very effective, and this is at least partly because of the blithe unwillingness of some activists to recognise that there are philosophical and cultural problems associated with their position. There are, however, more serious and thoughtful critiques of the position outlined in the bulk of this paper, critiques that will be addressed in this concluding section.

The basic argument of these critics can be presented in a composite form as follows: 'Of course, human rights are in some sense fictional, but they are *valuable* fictions; of course, in fact, human rights are associated with a particular way of life and cannot be taken in isolation, but this way of life is *actually* the way of life that most people would like to follow. The sort of objections you raise are those characteristically employed by power-holders who try to justify their privileges and bad behaviour in the name of culture and tradition. Ordinary people will have nothing to do with such arguments, the falsity of which activists in Indonesia and China, Saudi Arabia and Iran have exposed by putting their lives on the line. The international human rights regime may not be very effective but at least it gives those who would oppose tyranny some moral support and a standard to which they can appeal. We should be

very careful about employing arguments which undermine this valuable work.'

This is not a position to be dismissed lightly; one element can be accepted with no difficulty, but a second is quite crucial and gets to the heart of the matter. First, it can readily be accepted that not all of those national leaders who resist the demands of the international human rights regime do so from a genuine desire to protect 'difference' and a way of life – many, perhaps most, are simply concerned to protect their own position. There is a wider problem here. Normative work in international relations need to be able to distinguish between those non-liberal regimes which are simply criminal conspiracies and those which genuinely incorporate what Walzer would call the 'shared understandings' of a society. John Rawls attempts this task in his recent essay on 'The Law of Peoples' in which he introduces the category of a 'well-ordered' but non-liberal society. Unfortunately the example he gives of a well ordered *hierarchical* society is designed on such peculiar lines that it is not much use in this context; however, there is clearly an issue here, and future work on this topic is called for.[48]

The more important point concerns the popular standing of the liberal position on universal human rights. One of the firmest of liberal beliefs is that liberal values are indeed universal – that we would all be liberals were it not for the distorting effects of ignorance on the one hand and privilege on the other. Deep down, in our heart of hearts, we believe ourselves to be the autonomous individuals liberalism takes us to be, and thus the *real* wishes of the peoples of Indonesia or China, Saudi Arabia or Iran are represented by those relatively few free spirits who are active in the cause of freedom. Such is the liberal belief and the self-confident strength of this belief is one of liberalism's greatest political assets. However, in his last book, *Conditions of Liberty,* the great (liberal) scholar Ernest Gellner provides a sobering commentary on liberalism's self-confidence.[49] Without weakening his own commitment to liberty and civil society, he acknowledges its historicist foundation. Civil society is a profoundly unusual social formation in which political, coercive, power is concentrated but balanced by a separate set of independent institutions focused on the economy. This kind of society is associated with economic growth and scientific-industrial society generally, but in the late twentieth century limits to growth are emerging, and, in any event, industrial success is being experienced by societies which do not value an independent civil society. Most societies have valued order above either economic growth or political liberty and so have most people – civil societies are rare entities which will do well to preserve themselves from their internal and external enemies. It is an

illusion to think that the truth that Gellner finds in liberal thought has, he argues, in itself any power, and the Enlightenment belief that a social order without coercion and falsehood is possible is equally illusory. As he puts it, any culture is a systematic prejudgement; the miracle of civil society is that, for once, and in exceptional circumstances, the prejudgement was made milder and flexible, and yet order was maintained.[50] Repeating this miracle is always going to be difficult.

Gellner presents from within a liberal perspective an account of the achievement of civil society – and thus of individual human rights – that is in some ways actually rather more pessimistic about the possibility for generalising the model than the neo-Hegelian account presented above. And so he is cited here not in support of the thesis argued in the bulk of the paper, but as an antidote to the at-times facile optimism of liberals less well-versed than him in the history of human societies – and that means virtually all other liberals. Let his be the final words:

> But what point is there in vaunting our values, and condemning the commitment of others to absolutist transcendentalism or demanding communalism? They are what they are, and we are what we are: if we were them we would have their values, and if they were us, they would have ours. I am not a relativist – the existence of a culture-transcending truth seems to me the most important single fact about the human condition, and indeed one of the bases of Civil Society, for it made possible that cognitive growth and the denial of absolutism on which it is based. But all the same, preaching across cultural boundaries seems to me in most circumstances a fairly pointless exercise.[51]

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NOTES

1. In a recent defence of this position, George Kateb argues that the essential argument originates with the Levellers and other seventeenth-century English religious radicals; *The Inner Ocean: Individualism and Democratic Culture* (Ithaca, NY: Cornell University Press 1992), p.9.
2. These are, of course, comparative terms – that injustices of many kinds have been

perpetrated by and in these societies goes without saying.

3. Peter Jones, *Rights* (London: Macmillan 1994) is the best single-volume survey, followed by the briefer, less substantial, but still useful, Michael Freeden, *Rights* (Minneapolis: University of Minnesota Press 1991). John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press 1980) is an important and authoritative restatement of natural law doctrine, while Hillel Steiner *An Essay on Rights* (Oxford: Blackwell 1994) is a fine reworking of a Neo-Lockean position to the effect that all rights are essentially titles to property. The Oxford Amnesty Lectures series is proving an important source of new thinking on rights, see, in particular, Stephen Shute and Susan Hurley (eds), *On Human Rights* (New York: Basic Books 1993). Jeremy Waldron (ed.), *Theories of Rights* (Oxford: Oxford UP 1984) is a good collection of older essays.
4. Jones, *Rights* (note 4), chapter 1 gives a clear account of these categories and argues convincingly that Hofeld's categories are not simply applicable to legal analysis.
5. In legal philosophy 'positive law' is used in a rather more precise way than will be the case here: as with 'natural law' (see below) the term here is used to distinguish a broad approach rather than a precise doctrine.
6. Finnis, *Natural Law and Natural Rights* (note 4), p.23.
7. Alan Donagan, *The Theory of Morality* (Chicago: University of Chicago Press 1977).
8. Michael Freeden (note 4) writes of the 'natural-rights paradigm' on similar lines. It should be noted that this position does not endorse the Catholic, Thomist version of natural law as the only viable version.
9. The following discussion owes much to an excellent recent study by Samuel Fleischaker, *The Ethics of Culture* (Ithaca, NY: Cornell UP 1994).
10. Thus, 'murder' is always and everywhere condemned, but what counts as murder (i.e. unlawful killing) varies so much from place to place that this is not very helpful.
11. This is a well understood dilemma which will re-emerge at a later stage of this argument; one possible way out might be found in the neo-Aristotelian account of the virtues offered by Martha Nussbaum – see, e.g. Nussbaum, 'Non-Relative Virtues: An Aristotelian Approach' in Nussbaum and Amartya Sen (eds), *The Quality of Life* (Oxford: Clarendon Press 1993). However, to follow this up would be to move too far away from the rights-oriented focus of this paper.
12. It is worth stressing again that this value-pluralism exists within as well as between societies, as the example of abortion illustrates.
13. The work of Alasdair MacIntyre revolves around these issues, and it is noteworthy that the emphasis of his work has recently shifted towards the nature of 'tradition'; see *After Virtue* (Notre Dame, IN: University of Notre Dame Press 1981), *Whose Justice?, Which Rationality?* (London: Duckworth 1988) and, especially, *Three Rival versions of Moral Enquiry: Encyclopaedia, Genealogy and Tradition* (Notre Dame, IN: University of Notre Dame Press 1990) in which he uses 'tradition' to characterise what he previously described as Aristoteleanism, and later as Thomism.
14. Ronald Dworkin, 'Rights as Trumps' in Waldron, *Theories of Rights* (note 4).
15. This is the burden of the critiques of utilitarianism by Bernard Williams and John Rawls: J.J.C. Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge UP 1973); John Rawls, *A Theory of Justice* (Oxford: Oxford UP 1971).
16. See Brian Barry, 'And Who is My Neighbour?' in *Democracy, Power and Justice* (Oxford: Oxford UP 1989), Robert E. Goodin, *Political Theory and Public Policy* (Chicago: University of Chicago Press 1982), Amitai Etzioni, *The Spirit of Community* (New York: Touchstone 1993), Jean Bethke Elshtain, *Democracy on Trial* (New York: Basic Books 1995).
17. For an interesting discussion of the Canadian Charter of Rights and Freedoms of 1982, see Joseph Carens, 'Complex Justice, Cultural Difference, and Political Community', p.53ff., in David Miller and Michael Walzer (eds), *Pluralism, Justice and Equality* (Oxford: Oxford UP 1995).
18. The argument here can be followed in two excellent studies, whose titles are self-explanatory: Stanley Fish, *There's No Such Thing As Free Speech And It's a Good Thing*

Too (New York: Oxford UP 1994) and Nat Hentoff, *Free Speech for Me – But Not For You: How The American Left and Right Relentlessly Censor each Other* (New York: Aaron Asher Books 1992).

19. G.W.F. Hegel, *Elements of the Philosophy of Right*, trans. H.B.Nisbet, ed. Allen B. Wood (Cambridge: Cambridge UP 1991). 'Communitarian' is a convenient portmanteau term to refer to writers from Green, Bradley and Bosanquet in nineteenth-century England to Sandel, Taylor and MacIntyre in the debates over Rawls in late twentieth-century America. The term was actually coined by Michael Sandel (*Liberalism and the Limits of Justice*, Cambridge: Cambridge UP 1982), but is now closely associated with a political movement whose most prominent supporter is Amitai Etzioni (see note 17). These latter communitarians play down or ignore the Hegelian origin of many of their ideas, probably because Hegel has had rather a bad press in the English-speaking world since 1914 and it takes too long to explain why this reputation is undeserved.
20. The idea that individuals are 'constituted' rather than 'pre-social' beings is the ontological side of the communitarian critique of liberal individualism; no great stress is placed on this argument here because there is no necessary connection between this ontology and the political argument presented.
21. Of these three moments – family, civil society and the state – the family used to be the least controversial; nowadays a positive account of the family is likely to be interpreted as support for patriarchy and right-wing 'family values'. This needs to be met head on; there is no reason why families need to be structured according to traditional gender roles, but there is good reason to believe that a stable home environment is a critical element in the making of functioning fellow-citizens. As Jean Bethke Elshtain points out 'stemming the tide of family collapse is the best protection we can offer a child against becoming either the victim or the perpetrator of violence – or, as it turns out, poverty'. Elshtain, *Democracy on Trial* (note 17), p.8, citing empirical evidence from Elshtain, William Galston, Enola Aird and Amitai Etzioni, 'A Communitarian Position on the Family', *National Civic Review*, Winter 1993.
22. Hegel (note 20), #258 p.275. Emphasis in original. It is this sort of sentence that frightens many, including modern communitarians, away from Hegel; read in context, it is less sinister than it seems to be.
23. Op. cit., #209, p.240.
24. This point creates real difficulty for modern communitarians who want to present a de-mythologised version of Hegel, i.e. a version that refuses to treat *Geist* as more than a rather quaint metaphor. On this, see below.
25. This is, of course, controversial. The reface to the *Philosophy of Right* with its famous couplet 'What is rational is actual; and what is actual is rational', and its reference to 'recognising reason as the rose in the cross of the present' clearly could be given a conservative reading, but this goes against the main argument of the text. Op. cit., p.20, 22.
26. It might be argued that 'globalisation' (whatever meaning one wishes to assign to this fashionable term) has undermined this position. Not so: globalisation throws up new challenges to the relationship between individuals and their communities, but it has not (yet?) created new contexts within which a meaningful life could be led.
27. Correct, that is, as a description of what has gone wrong and what needs to be done; communitarians are less successful in providing explanations. The movement has not yet developed an adequate account of the political economy of community – but this does not mean its diagnosis of our present ills can be disregarded.
28. For the texts of international legislation on human rights see Ian Brownlie *Basic Documents on Human Rights* (Oxford: Clarendon Press, third edition, 1992). The secondary literature on the subject is extensive: any short list of particularly useful works would have to include R.J.Vincent, *Human Rights and International Relations* (Cambridge: Cambridge UP 1986), Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell UP 1989), and Henry Shue, *Basic Rights: Subsistence,*

Affluence and United States Foreign Policy (Princeton, NJ: Princeton UP 1980.

29. Arguably the 'Standards of Civilisation' which were applied in the nineteenth and early twentieth century to non-European candidates for membership of the international system performed a similar role; see Gerritt Gong, *The Standard of Civilisation in International Society* (Oxford: Oxford UP 1984).
30. Third-generation rights are, in effect, the subject of much of the following analysis; second-generation rights present real problems of analysis because it is not always clear against whom one is claiming e.g. a right to economic development – who it is that has the duty that corresponds to this right – unless, that is, it can be demonstrated that the poverty of some states is directly caused by the actions of others, in which case such agency problems disappear. Scholars such as Shue (note 29) are clearly correct in stressing the importance of economic and social development; the question is whether it makes sense to talk about these issues in terms of rights.
31. On 'settled norms', see Mervyn Frost, *Towards a Normative Theory of International Relations* (Cambridge: Cambridge UP 1986), p.121.
32. This is often seen as a fault on the part of the states involved; it could equally suggest a seriousness about the issue of human rights – and treaty obligations – not shown by those who are prepared to give formal assent to everything while actually implementing nothing.
33. As is the way of things, these strategic grounds were sometimes given ideological support, as in Ambassador Kirkpatrick's distinction between 'authoritarian' and 'totalitarian' regimes; Jeanne Kirkpatrick, 'Dictatorships and Double Standards', *Commentary* Vol.68, November 1979.
34. c.f. Hegel *Elements of the Philosophy of Right* (note 20), #333.
35. On Saint-Pierre's Project for a Perpetual Peace, cited in F.H. Hinsley, *Power and the Pursuit of Peace* (Cambridge: Cambridge UP 1963), p.45.
36. See Terry Nardin, *Law, Morality and the Relations of States* (Princeton, NJ: Princeton UP 1983).
37. It was on this issue that Saudi Arabia abstained from the vote on the Universal Declaration of 1948.
38. Of course, as i.a. Will Kymlicka points out in his recent work, virtually all modern states are, in one sense of another, multicultural - he instances Iceland and the Koreas as exceptions - and thus the problem of other cultures has been with the West all the time, even if only recently recognised as such; see Kymlicka *Multicultural Citizenship* (Oxford: Oxford University Press, 1995).
39. Michael Walzer, *Interpretation and Social Criticism* (Cambridge, MA: Harvard UP 1993); *The Company of Critics* (New York: Basic Books, 1989).
40. The best account of this is in Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame, IN: University of Notre Dame Press 1994).
41. Ibid., p.1
42. 'What has to be accepted, the given is – so one could say – *forms of life*.' Ludwig Wittgenstein *Philosophical Investigations* (Oxford: Basil Blackwell 1958), p.226 (emphasis in the original).
43. Marx's notoriously embarrassing remarks about non-western cultures have to be seen in this light; see S. Avineri (ed.), *Karl Marx on Colonialism and Modernization* (New York: Anchor 1969) *passim*.
44. Rorty's neo-Hegelianism is a major theme of *Contingency, Irony and Solidarity* (Cambridge: Cambridge UP 1989) and the essays in *Objectivity, Relativism and Truth* (Cambridge: Cambridge UP 1991). His mentors William James and John Dewey also saw themselves as heavily indebted to Hegel's historical account of the development of consciousness; this was before Hegel was sent to the Anglo-American sin-bin as an alleged defender of German militarism. Rorty's most explicit statement on human rights, 'Human Rights, Rationality and Sentimentality' is in the Oxford Amnesty Lectures 1993, published in Shute and Hurley, *On Human Rights* (note 4).
45. 'Human Rights, Rationality and Sentimentality', op.cit., p.117.

46. Ibid., p.128.
47. Ibid., pp.130 and 129 respectively. Rorty takes 'a progress of sentiments' from the work of Annette Baier, and suggests there may be links here with some strands of feminist moral theory. See Baier, *A Progress of Sentiments: Reflections on Hume's Treatise* (Cambridge MA: Harvard UP 1991), *Moral Prejudices* (Cambridge MA: Harvard UP 1995) and 'Some Thoughts On How We Moral Philosophers Live Now', *The Monist* 67, 1984.
48. John Rawls, 'The Law of Peoples' in Shute and Hurley, *On Human Rights* (note 4). For a comment on the problems involved in his notion of a well-ordered hierarchy, see C.Brown,'Theories on International Justice', *British Journal of Political Science* 27 (1997).
49. Ernest Gellner *Conditions of Liberty: Civil Society and its Rivals* (London: Hamish Hamilton 1994).
50. Ibid., p.32.
51. Ibid., p.214.