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IT'S RIGHT, IT FITS, WE DEBATED, WE DECIDED, I AGREE, IT'S OURS, AND IT WORKS: THE GATHERING CONFLUENCE OF HUMAN RIGHTS LEGITIMACY

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ABSTRACT. How should we understand human rights and why might we respect them? The current literature – both philosophical and historical – presents a barrage of conflicting accounts, including moral, functional, deliberative, legal, consensual, communitarian and pragmatic approaches. I argue that each approach captures a unique, common-sense – and, in principle, compatible – insight into why human rights warrant respect. Acknowledging this compatibility illuminates the myriad different avenues for legitimacy human rights enjoy, and provides a historical window into explaining how human rights rose to become the international community's ethical *lingua franca*. The depth and spread of convergence on human rights proved possible precisely because myriad people the world over found a wealth of disparate reasons for rallying under its banner. But even as human rights enjoy seven distinct sources of legitimacy, I argue that they are thereby opened for normative challenge on seven distinct fronts.

How should we understand human rights and why might we respect them? The current literature – both philosophical and historical – presents a barrage of conflicting accounts, including moral, functional, deliberative, legal, consensual, communitarian and pragmatic approaches. I argue that each approach captures a unique, common-sense – and, in principle, compatible – insight into why human rights warrant respect. Acknowledging this compatibility illuminates the myriad different avenues for legitimacy human rights enjoy and provides a historical window into explaining how human rights rose to become the international community's ethical *lingua franca*. The depth and spread of convergence on human rights proved possible precisely because myriad people the world over found a wealth of disparate reasons for rallying under its banner. But even as human

rights enjoy seven distinct sources of legitimacy, I argue that they are thereby opened for normative challenge on seven distinct fronts.

My argument proceeds as follows. In the first section, I sketch the lineaments of seven different philosophical approaches to human rights. In so doing, I explain, in common-sense terms, the distinct normative ground driving each approach. I show how that ground can support normative precepts in general – and human rights in particular. In the following section, I describe the competitive nature of these approaches. Advocates routinely position their theories as the single true ground capable of justifying human rights and/or explaining their historical emergence. Next, I argue that a complete story of human rights emergence must include reference to the many normative tributaries that contributed to the current confluence. Moreover, I show that we can acknowledge each approach's justificatory insight as compatible with, and augmenting, the others. I suggest that the eventual success of the *Universal Declaration of Human Rights* stemmed precisely from the many sources of legitimacy its drafters managed to capture. Of course, the existing normative convergence is far from universal; it is not the case that all roads lead to Geneva. With this in mind, I consider how human rights can fail to attach to the seven grounds. In acknowledging that human rights need not necessarily gain support from any of the proffered grounds, I distinguish this 'gathering confluence' picture from existing theories of 'overlapping consensus'.

I. SEVEN GROUNDS TO SUPPORT HUMAN RIGHTS

Intuitively, many people would think that we possess an obvious answer as to why we should support human rights; namely, because human rights express genuinely existing, universal moral entitlements. They tell us the right thing to do. But this answer makes up only one among a wealth of distinct grounds for supporting human rights. In this section, I outline seven approaches to human rights, each centring on a particular justificatory ground. I show that each of the seven grounds in question constitutes a common-sense reason a given person might marshal to justify his or her respect for a certain set of norms. I then show how the particular ground can justify compliance with human rights in particular.

Before proceeding with this demonstration, some definitions and qualifications.

First, the definitions: When I speak of 'human rights', I refer to the specific network of entitlements whose content roughly tracks that found in the *Universal Declaration of Human Rights*, and in the current-day legal instruments derived therefrom.[1] As we will see, many different normative theories aim to legitimize a scheme of entitlements that plainly resemble the *Declaration's* content, and many theorists explicitly present their work as a theory *of* human rights, often with the aim of galvanizing support for the existing regime.

This section refers to seven broad *approaches* to human rights – each of which encompasses myriad, specific theories. I define each approach through the distinct *ground* its theories employ to justify human rights. For example, the moral approach covers all theories that aim to ground human rights by appeal to their intrinsic rightness ('it's right'), the functional approach covers theories that ground human rights by their appropriateness to perform a specific task ('it fits'), and so on.

In making these broad categorizations, I do not mean to understate the differences between individual theories within a given approach. To the contrary, each approach houses a multitude of specific theoretical standpoints, each supported by different and even conflicting philosophical arguments, and each open to quite different objections.

Now, the qualifications: This section only purports to show how an agent could – *not must* – follow a common-sense line of reasoning, on the basis of any of the seven approaches, to decide to morally respect human rights. It is consistent with this claim that other agents might follow a similarly common-sense line of reasoning to *reject* human rights on the basis of that ground. In fact, several types of dissent are possible. The agent might decide that the relevant ground does not attach to human rights at all; I will stave off discussion of this important possibility until a later section. But even if the agent does attach the ground to human rights, the resulting normative support for human rights might be qualified in terms of its *strength* or *comprehensiveness*. In terms of strength, the support might

[1] United Nations General-Assembly, *Universal Declaration of Human Rights (UDHR)*, G.A. Res. 217A (III) U.N. Doc. A/810 (1948), 10 Dec. 1948.

be less than wholehearted, in the sense that the ground does not offer full-throttle moral support for human rights. In terms of comprehensiveness, the ground might endorse some (or many) human rights, but perhaps not all of the *Declaration's* list. I will draw attention to several examples of these qualified levels of support as we proceed.

A. It's Right: Moral Human Rights

The most direct way of justifying any norm is to hold that it constitutes the right thing to do as a matter of objective moral fact. This deceptively simple stance covers a wide variety of deeper theoretical perspectives. People might believe a norm is objectively right because they are persuaded by some foundational first-philosophical argument, such as Kant's argument for his Categorical Imperative. Or, the belief in objective rightness might stem from religious faith. Or – again – it might rest on empirical claims about human psychology and sociology that conspire to justify an objective morality (à la David Hume or Adam Smith). Alternatively, the belief in moral objectivity may rest upon no deeper rational foundations, but constitute a base-level conviction driven by heartfelt intuitions. In all these ways, people can believe in the existence of universally applicable, objective moral norms.

A person who believes in objective moral laws can think that human rights capture a subset of those laws. After all, human rights align with many basic moral injunctions, such as not to kill or harm innocents, and to help others in need. A good example of an objective moral theory favourable to contemporary human rights is the doctrine of natural rights, familiar from the work of early modern political theorists like John Locke.[2] Recent years have seen a flourishing of work exploring the possible objective moral underpinnings of human rights.[3] Of course, just as with ordinary ethical norms, proponents can believe in the moral objectivity of human rights without having any substantive views on their deeper foundations. Marie-Bénédicte Dembour describes the 'protest school' of human rights, whose members agree that human rights are moral principles the ultimate source of which presumably rests on a tran-

[2] John Locke, *Two Treatises of Government* (New York: Hafner, 1690/1947).

[3] E.g., James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008); Amartya Sen, 'Elements of a Theory of Human Rights', *Philosophy and Public Affairs* 32(4) (2004): 315–356.

scendental plane – but who focus on struggling for the rights' concrete realization in the face of manifest oppression, rather than ruminating on their metaphysical foundations.[4]

In terms of the two qualifications noted above, when the moral ground attaches to human rights it tends to provide powerful support, as these basic entitlements often speak to the most urgent and fundamental parts of moral systems. However, the support from this ground can be less than comprehensive, applying to many (but not all) human rights. For example, traditional Lockean rights might provide support for many civil, political and economic human rights[5] – but not for (say) rights against discrimination on the basis of atheism or sexual orientation.

B. It Fits: Functional Human Rights

A functional justification for a norm looks at the role that the norm plays, or the problem it is designed to solve, and then develops appropriate content for a norm custom-fit to fill that function. By 'appropriate' the functional theorist might mean in accordance with (or at least not in conflict with) objective morality. Alternatively, the theorist might appeal to some of the other justificatory grounds featured below, especially the deliberative approach. The functional approach's signature contribution lies in crafting *mid-level principles*. Rather than wielding large-scale theories of justice, or invoking objective universal moral commandments, the functional perspective narrows its focus to solving a particular problem in a feasible and legitimate way.

The functional approach can justify human rights. To take just one major global task, nations might decide that they need a shared standard delimiting states' decent treatment of their citizens – a standard which, if breached, can serve as a trigger for international attention and critique.[6] Human rights can fill this role by setting

[4] Marie-Bénédicte Dembour, 'What Are Human Rights? Four Schools of Thought', *Human Rights Quarterly* 32(1) (2010): 1–20, 3.

[5] Jeremy Waldron straddles a defense of Locke with a defense of human rights. See, e.g., Jeremy Waldron, *Liberal Rights* (New York: Cambridge University Press, 1993); Jeremy Waldron, *God, Locke, and Equality* (Cambridge: Cambridge University Press, 2002).

[6] E.g. Charles Beitz, *The Idea of Human Rights* (New York: Oxford University Press, 2009); Joseph Raz, 'Human Rights without Foundations', in S. Besson and J. Tasioulas (eds.), *The Philosophy of International Law* (Oxford: Oxford University Press, 2010), pp. 321–338; Hugh Breakey, 'What Human Rights Aren't For: Human Rights Function as Moral, Political and Legal Standards – but Not as Intervention-Conditions', *Research in Ethical Issues in Organizations* 13 (2015): 41–59.

down minimum conditions that allow space for political communities' self-determination, while protecting individuals' most basic necessities. They perform this role by bringing to bear the pressures that can be exerted on a state by the international community. Even so, functional support for human rights can be less than comprehensive, as different functions will require broader and narrower lists of human rights. For example, the standards for international critique will be less demanding than those for military intervention, allowing the former to generate a more generous list of human rights.[7]

C. We Debated: Deliberative Human Rights

An alternative way of justifying a norm appeals to the *process* by which it was constructed and endorsed. Different processes can legitimize norms in different ways, but one especially attractive process focuses on the quality of the discourse which developed the norm.[8] If a community constructed the norm through an inclusive dialogue, with all members represented, able to put forward their views and to have those views seriously considered, then the result warrants a certain respect. Further criteria might bolster that respect. If the discussants were not allowed to appeal to naked self-interest, or could not rely on parochial faith-based arguments, we might think that the result arose from a process of collective 'public reason'.

Many thinkers, endorsing what following Rawls has become known as the 'political' conception of human rights, have argued that human rights warrant respect on deliberative grounds.[9] Certainly, one could recount numerous ways in which the construction of contemporary human rights norms fell short of the ideal portrayed in the previous paragraph (not least the under-representation of African and Middle Eastern peoples). These limitations inevitably impact on the support human rights can derive from this ground.

[7] Rather than developing different 'lists' of human rights, the need to fulfil distinct functions might be instead served by developing new, custom-built norms. See text to nn. 68–69 below.

[8] Seminal works in this tradition include: John Rawls, 'The Idea of Public Reason Revisited', *Political Liberalism* (New York: Columbia University Press, 2005), pp. 440–490; Jurgen Habermas, *Moral Consciousness and Communicative Action*, trans. C. Lenhardt and S. Nicholson (Cambridge: Polity, 1990).

[9] While Rawls' later work influenced this approach, his *Law of Peoples* does not count as a functional theory of human rights as I have defined that term, as his minimal list of proposed rights diverges sharply from the *Declaration's* entitlements. See John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), esp. 65.

Equally though, one struggles to think of any alternative ethical norm that can approach the deliberative qualities captured in the international dialogue that birthed human rights. More than any other moral norm operating in the same space, human rights emerged from the operation of global public reason.[10] The drafting process of the *Universal Declaration* constituted a sophisticated and lengthy discourse, with sustained efforts at inclusivity, and peppered with solid moral argument and principled criticisms.[11] Bad faith and ideological interventions did occur, but few succeeded in impacting upon the *Declaration's* text.

On this footing, then, respect for global public reason can support human rights.

D. We Decided: Legal Human Rights

Another legitimizing process is the one that, in each political community, creates law. This approach captures several powerful moral concerns, as both the process leading to legal status, and the raw fact of that status, can drive normative support.[12] Most importantly, law-making through a fair and inclusive democratic process of social decision-making, allows justice to be collectively pursued by a community.[13] For example, a morally respectable legislative process might occur through a majority-rule voting system operating across two separate parliamentary houses, where elections to both houses are based on the principle that each vote counts for one and only one. Acceding to the results of such a process respects one's fellow citizens as one's moral equals in collective decision-making.[14] In fact, even undemocratic law can merit respect. As has been widely acknowledged at least since Hobbes, myriad morally significant

[10] 'Global public reason' is Cohen's term. Joshua Cohen, 'Minimalism About Human Rights: The Most We Can Hope For?', *The Journal of Political Philosophy* 12(2) (2004): 190–213, 192.

[11] See, e.g., Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia: University of Pennsylvania, 1999); Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001); Hugh Breakey, 'COP20's Ethical Fallout: The Perils of Principles without Dialogue', *Ethics, Policy & Environment* 18(2) (2015): 156–169, 162–164.

[12] These concerns can be termed 'content-independent' reasons to respect the law, as they refer to the law's status *qua* law, rather than the independent justifiability of its content. See, e.g., Harrison Frye and George Klosko, 'Democratic Authority and Respect for the Law', *Law and Philosophy* 36 (2017): 1–23.

[13] See Jeremy Waldron, *The Dignity of Legislation* (New York: Cambridge University Press, 1999).

[14] Frye and Klosko, 'Democratic Authority', unpack this as a type of 'recognition respect' of the equal status of citizens.

advantages accrue to citizens enjoying a rules-based order, where the legal system accords with fundamental rule-of-law principles.[15] These advantages are collectively created by a law-abiding citizenry. This collective construction gives rise to a fairness-based reason for shouldering one's load in the enterprise. As Noam Gur argues: 'As I expect others to obey the law and I gain essential benefits from the fact that they do, it is only fair that I do the same, instead of acting as a free rider.'[16] These concerns ground a respect for established law – but they also can provide moral reasons for establishing law in the first place. Consideration of the moral benefits of the rule of law, and of respecting others by treating them as moral equals in collective decision-making, can motivate pursuit of a rules-based order from an existing state of lawlessness.

Human rights can be defended as legal obligations formed through a legitimate law-making process.[17] True, human rights were initially just 'soft law'. While the 1948 General Assembly vote for the *Declaration* did not legally bind Member States, human rights later attained legal status when their articles were set down in black-letter treaties, signed and ratified by member states.[18] At time of writing, every UN member state is a party to one or more of the major human rights treaties, and many states have ratified all the core treaties. However, both the above-noted qualifications can apply to this ground. In terms of strength, international human rights law will not attain full majoritarian and rule-of-law attractions unless it also receives implementing legislation, constitutional recognition, and/or treaty-based subjection to regional courts. Otherwise, human rights may exist as something of a dead letter: unenforced, without remedies and without popular democratic recognition. Even in cases

[15] For an overview of these various moral benefits, see Charles Sampford et al., *Retrospectivity and the Rule of Law* (Oxford: Oxford University Press, 2006).

[16] Noam Gur, 'Actions, Attitudes, and the Obligation to Obey the Law', *The Journal of Political Philosophy* 21(3) (2013): 326–346, 333. .

[17] On the burgeoning status of international law, see: Samantha Besson and John Tasioulas, 'Introduction', in S. Besson and J. Tasioulas (eds.), *The Philosophy of International Law* (Oxford: Oxford University Press, 2010), pp. 1–27.

[18] The international treaty development process incorporates several modes of collective decision-making. In particular, consensus-seeking negotiation and consultation with participating member states permeate each stage. See Paul Szasz, 'General Law-Making Processes', in O. Schachter and C. C. Joyner (eds.), *United Nations Legal Order* (Cambridge: Grotius Publications, 1995), pp. 35–108, 76–86. Once the text is finalized, the treaty requires a threshold number of signatories to enter into force. At this point, collective processes give way to individual consent: the treaty becomes binding law on all (and only) those states that sign and ratify it.

where human rights enjoy full legal status and enforcement, the support might be less than comprehensive, with different constitutions, statutory bills of rights and regional treaties protecting some (but perhaps not all) human rights.

E. I Agreed: Consensual Human Rights

Perhaps the oldest reason for being obligated to do something is simply that one has agreed to do it. I do not refer here to 'hypothetical contract' theories (which fall under the moral approach), nor to collective democratic agreements (which fall under the legal approach). Instead, I mean *actual* consent – voluntarily, publicly and formally given. If you explicitly promise to do something, then – all other things equal – people can legitimately expect you to do that thing.

Consent can ground human rights. Acquiring international legal duties typically involves sovereign states explicitly agreeing to those duties by voluntarily signing an international treaty. The process of acquiring legal duties (the legal approach) thus incorporates the process of acquiring consent-based obligations (the consensual approach). However, states can be bound by consent without ratifying a treaty. The *Outcome Document of the Helsinki Final Conference* in 1975, including the fateful human rights provisions within it, was not legally binding. Yet the Warsaw Pact Members' endorsement of the agreement – trumpeted internationally and domestically – hampered the states' capacity to suppress dissidents, who could demand that they were only asking the states to live up to their own voluntarily-made commitments.[19]

The normative strength that human rights can draw from consent depends largely on how much legitimacy accrues to formal commitments made on a nation's behalf. For citizens or institutional role-holders who identify with the nation, and with formal commitments expressed on its behalf through the executive, this approach provides significant force. Even in this case however, the consent is still mediated through an authority's speech, rather than attaching to the normative implications of one's personal promise-making.

[19] Daniel Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism* (Oxford: Princeton University Press, 2001).

F. It's Ours: Communitarian Human Rights

A separate way of grounding norms focuses on communities' creations of values through their lived traditions and practices. Different societies develop special relations to certain norms through their practices, stories, myths, heroes and histories. Alasdair MacIntyre's work provides a well-known example of such communitarianism, where specific cultures construct virtues through the 'internal goods' of their practices, and through the shared narratives they author.[20] For the communitarian, what norms people cherish depends on their self-identity – who they see themselves as being. Rather than looking to essential features of the human condition, this approach looks to the ways norms come to be valued at a more contingent, local level – turning from objective right to ethical life, as Hegel would have put it.

Like other norms, human rights can be entrenched from the bottom up, brought to life in local practices, stories and traditions, and forming an irremovable core of a person's self-conception. Contemporary international relations theorists routinely describe the impact of human rights in just this way, speaking of shifts in societies' 'identities'.[21] Human rights help define the identities of liberal states and their populations. In structuring how the actor (a person, community or state) pictures itself and its interests, such identification determines the actions that the actor finds appropriate. Sometimes this human rights allegiance can be formed by the society's common heritage and its sense of historical ownership of human rights – Western European society through various periods provides an example.[22] In other cases, a conscious decision may be made to further human rights allegiance through appeals to established traditions – such as in 1990 when the king of Morocco declared that human rights stood as part of the Islamic tradition, and on that basis began institutional reform efforts.[23] Since communitarian ethics tap directly into people's individual and cultural identities, narratives and

[20] Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (London: Duckworth, 1981), esp. 170–189.

[21] E.g., Thomas Risse and Kathyrn Sikkink, 'The Socialization of International Human Rights Norms into Domestic Practices', in T. Risse, S. C. Ropp, and K. Sikkink (eds.), *The Power of Human Rights: International Norms and Domestic Change* (New York: Cambridge University Press, 1999), pp. 1–38.

[22] Thomas, *Helsinki Effect*, 40–42.

[23] Thomas Risse, '"Let's Argue!" Communicative Action in World Politics', *International Organization* 54(1) (2000): 1–39, 31.

myths, they provide a potentially powerful source of normative support. However, even when the communitarian ethos favours human rights, it will usually only foreground some, and not all, of the *Declaration's* rights.

G. It Works: Pragmatic Human Rights

The final way of grounding a norm is simply to observe that it works – and like any tool that works, it can prove a useful instrument for achieving one's goals.[24] This approach speaks of norms as 'instruments', 'tools', 'vehicles' or even 'weapons'. The pragmatic approach asks, 'What can supporting this norm do for me?' In so doing, it aims to capture the actual choice-situation facing actors as they weigh alternative courses of action in pursuit of their goals. These goals can be prudential: a person might support a norm because she calculates it will help protect a freedom she personally desires. But the purpose need not be self-interested. A utilitarian might decide that in a particular context, a widespread acceptance of human rights might help stave off internecine religious conflict – and therefore support such rights.[25] In either case, the pragmatic approach grounds the norm by seizing its power as an instrumental tool to accomplish important tasks.[26]

Richard Rorty grounds human rights pragmatically. Comparing human rights to aspirin, Rorty defends human rights in terms of their proven capacity to perform:

> Wherever bourgeois freedoms and the culture of rights have gotten a grip, people have liked the results pretty well. No country has tried them and willingly given them up again, any more than any patient whose headaches have been relieved by aspirin has ever decided to cease using it.[27]

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[24] Recall that the *functional* approach aimed to create morally appropriate and feasible norms to solve problems. The more an actor prioritizes 'feasibility', and replaces considerations of appropriateness with considerations of personal or group goals, the more that actor's approach shades from functional into pragmatic – see, e.g., Michael Ignatieff, *Human Rights as Politics and Idolatry*, ed. A. Gutmann (Princeton: Princeton University Press, 55–57). .

[25] The example of the utilitarian supporting a norm he would never consciously design from scratch illustrates a further difference between functional and pragmatic approaches. The pragmatic approach is path-dependent, focusing on what happens to work in reality, rather than (with the functional approach) what looks a good design in theory.

[26] The pragmatic approach involves an actor *genuinely* supporting the norm *in good faith*, as the actor gauges that such action will help them secure some further goal. Purely superficial and bad-faith opportunism in invoking a norm (though undoubtedly a real and influential phenomenon) does not constitute a normative approach as I have defined the term.

[27] Richard Rorty, 'Response to Randall Peerenboom', *Philosophy East and West* 50(1) (2000): 90–91.

On a similarly pragmatic footing, Michael Ignatieff extolls human rights as an effective instrument or 'tool kit', arguing that human rights constitute our best bet for protecting ourselves from the perils of state domination.[28]

In such ways as these, human rights warrant support because of their attested ability to get results. When the results being pragmatically pursued are themselves morally significant (such as alleviating repression of a particular ethnic minority), this approach can provide a potent ethical reason for supporting human rights. However, pragmatic reasoning can swing both ways. For example, the moral goal might be pragmatically furthered only by supporting a discrete set of human rights, rather than all of them.

II. THERE CAN BE ONLY ONE

In the foregoing section, I recounted severally the core insights offered by different approaches to human rights, isolating, in turn, the ground invoked by moral, functional, deliberative, legal, consensual, communitarian and pragmatic approaches. I hoped to show how – as each approach's respective theorists argue in much greater detail – these grounds can support human rights.

However, I left out a major part of the argumentation proposed by each theory's adherents – namely, their spirited attacks on all the others. This internecine combat is not quite a war of all-against-all. Some thinkers weld two of the different grounds together into a combined theory. For instance, in order to appropriately respond to fulfilling a specific task (à la functional human rights) the theory might recommend using global public reason to develop human rights instruments (borrowing from the deliberative approach).[29]

But even the authors of combined theories usually spurn the remaining approaches. Theories are routinely accompanied by claims that the alternatives are mistaken, divisive, irrelevant, unreal or unhelpful, and that in opting for the writer's chosen theory, we should reject the other contenders.[30]

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[28] Ignatieff, *Politics and Idolatry*, 55, 57, 83.

[29] Both Cohen's and Beitz's theories can be read this way. Cohen, 'Minimalism'; Beitz, *Idea of Human Rights*.

[30] As we will see, this occurs even for approaches, such as the pragmatic approach, that possess internal reasons for inclusiveness.

In this way, *moral* human rights theorists (adopting the first approach outlined above) can speak as if, once they philosophically vindicate the objective moral status of human rights and declaim their contents, deliberative decision-making, community endorsement, prior consent and legal status can be passed over in silence.[31] *Deliberative* and *functional* human rights theorists retaliate by challenging the alleged metaphysical pretensions, divisiveness and irrelevance of moral human rights.[32] *Communitarian* and *pragmatic* theorists echo this concern with ontology and 'idolatry' – but they extend the critique to cover the normative claims invoked by the deliberative and functional approaches, threatening to hoist such theories on their own petard.[33] For their part, *legal* human rights theorists can rest their case on the apparent security of legal and consensual human rights, and thus seek to avoid the controversies invited by other candidates for normative legitimacy.

Each approach also questions the other approaches' capacity to explain the *social phenomenon* of human rights – by which I mean human rights' widespread practices, policies, processes, institutions, instruments, discourses, courts, social capital, and so on. Historians routinely take one or other approach to human rights as fundamental, and then proceed to trace the provenance of that approach's ground (focusing on moral substance, legal status, communitarian ownership, international function, etc.). This inevitably results in discordant historical pathways describing the development of human rights, and wildly different originating dates. These results have not gone unnoticed. Samuel Moyn recently remarked on the striking disparities in starting dates offered by contemporary historians of human rights – only to propose his own completely new date: 1977.[34]

In this way, the moral rights theorist looks to the history of natural rights – or even to universal objective moralities in general – and traces the lineage back through the Early Enlightenment to

[31] While moral human rights theorists rarely pay sufficient attention to deliberative, consensual and communitarian factors, several of the most sophisticated theorists do heed legal, pragmatic and (especially) functional factors. See, e.g., Griffin, *On Human Rights*, 37–39, 191–211; James Nickel, *Making Sense of Human Rights* (Malden: Blackwell, 2007), 36–58.

[32] E.g., Raz, 'Human Rights without Foundations'.

[33] E.g., Richard Rorty, 'Postmodernist Borgeois Liberalism', *The Journal of Philosophy* 80(10) 583–589, 586.

[34] Samuel Moyn, *The Last Utopia: Human Rights in History* (London: Belknap Press, 2010), 5.

natural law, the Stoics, and beyond.[35] The story this approach relates is one of discovery, defence and often of triumph, as human rights vanquished more partial and parochial interests.[36] The functional and the deliberative historians instead tell tales of intentional construction. Looking to the history of attempts to impose international standards on sovereign states, the functional theorist nods to the 1648 Treaty of Westphalia before fast-forwarding to the rise of United Nations human rights institutions in the 1970s.[37] The deliberative approach paints a similar picture of development, but looks to the birthing struggles of a still-nascent global public reason, and so hones in on the inclusive dialogue occurring during the drafting of the *Universal Declaration* in the wake of World War II.[38] The communitarian theorist veers in a different direction, uncovering cultural changes in Europe in the eighteenth century driven by storytelling and sensibility,[39] before shifting attention to the desire of modern nation-states to identify as civilized citizens of the global community.[40] The pragmatic theorist can recount a similar story about early developments,[41] but may elect to hold off on acknowledging the true birth of human rights until they gained sufficient popularity, status and institutional leverage to really start impacting international affairs in the late 1970s.[42] Theorists of the legal and consensual approaches differ again, focusing instead on the gradual evolution of protections in law.[43] These begin on the domestic plane, often traced to Magna Carta of 1215, and take a series of leaps forward with early national bills of rights.[44] On the international plane, attention focuses

[35] E.g., Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Los Angeles: University of California Press, 2008).

[36] Note the triumphal tone that accompanies the moral-cum-deliberative approaches of, e.g., Morsink, *Universal Declaration*, and Glendon, *World Made New*.

[37] E.g., Beitz, *Idea of Human Rights*, 14–15.

[38] Morsink and Glendon straddle the moral and deliberative approaches: see Morsink, *Universal Declaration* and Glendon, *World Made New*.

[39] E.g., Lynn Hunt, *Inventing Human Rights* (New York: W. W. Norton, 2007).

[40] Thomas Risse, Stephen C. Ropp, and Kathyrn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (New York: Cambridge University Press,1999).

[41] E.g., Richard Rorty, 'Human Rights, Rationality, and Sentimentality', in S. Shute and S. Hurley (eds.), *On Human Rights: The Oxford Amnesty Lectures 1993* (New York: Basic Books, 1993), pp. 111–134.

[42] Moyn, *The Last Utopia*.

[43] That said, some legal historians can be admirably inclusive: 'There are many different threads to the human rights idea as it exists today', observes Ed Bates, 'and it is invidious to locate any one specific thread as the beginning'. Ed Bates, 'History', in D. Moeckli, S. Shah, and S. Sivakumaran (eds.), *International Human Rights Law* (Oxford: Oxford University Press, 2014), pp. 15–33, 16.

[44] See *ibid*.

on humanist shifts in international law, beginning with the Geneva Conventions and the anti-slavery movement, before culminating with the creation (in 1966) and entry into force (in 1976) of the first binding international human rights treaties.[45]

Thus, as well as providing a different starting date for human rights, each approach perceives its gestation differently: moral approaches trumpet discovery and defence; functional and deliberative approaches see conscious construction; consensual and legal approaches seize upon moments of signature and ratification; communitarians trace the slow avalanche of social change and dawning cultural awareness; and pragmatic theorists invoke the heady mix of strategic choice and sheer happenstance occurring at the extraordinary instant where human rights became a bandwagon – and almost everybody jumped on.

In sum, each approach's ground can be perceived not only as the *true normative basis* for human rights, but as *the key historical driver* of the birth, development and contemporary significance of existing human rights practices, processes and social capital.

III. LIVE AND LET LIVE

Opposing this antagonistic attitude to alternative approaches, I argue in this section that each of the normative grounds, in principle, accords with the others, and that a proper history of human rights must take heed of each of them. We begin with the latter – the explanation and history of human rights.

A. Explanation and History

So far, we have seen that each of the main approaches to human rights rests upon a common-sense insight – a sensible ground that applies to ordinary norms generally, and which can apply to human rights specifically. The different histories establish the role that each justificatory ground played in the development of human rights: the

[45] Some legal narratives simply take their bearings from the UN Charter of 1945 and proceed therefrom: e.g., Olivier De Schutter, 'The Emergence of International Human Rights', *International Human Rights Law* (Cambridge: Cambridge University Press, 2012), pp. 11–122.

moral theorists show the role of natural rights; the communitarians show the role of cultural identities; and so on.

Two sensible corollaries to draw from the wide breadth of human rights grounds and histories are that: (a) a given person could be sensibly motivated to provide support for human rights based on any one of the seven grounds; and that (b) history shows each of the seven grounds have, in fact, played some role in contributing to the existing human rights regime. Together, these two claims imply that our best explanation of human rights should embrace all these grounds. Placed in a larger context, each ground does not constitute an alternative historical device for explaining human rights, but rather constitutes an additional tributary spilling into the tide of contemporary support for human rights. Each ground informs us about one part of the full human rights story – a story that cannot be told without reference to the moral philosophic input of Locke, Rousseau and Paine, to the communitarian changes to eighteenth-century European cultural sentiments, to the legal significance of the American and French Declarations and the contemporary treaty regime, to responding to the functional problem posed by untrammelled national sovereignty as dramatized by the Holocaust, to the deliberative virtues displayed by the *Universal Declaration's* inclusive drafting processes, to the consensual strength provided by the General Assembly's 1948 vote and to the pragmatic successes of human rights in rallying dissidents, connecting activists, and empowering hitherto-unthinkable coalitions across the globe. Without any one of these factors, human rights would not exist today in their current form, nor command the widespread assent that they enjoy.

In sum, our best history of human rights is not one that privileges the particular reasons any single person respects human rights. It is a history that acknowledges the many different grounds that *all sorts of different people* can possess to respect human rights.

B. Normative Depth and Breadth

What, then, of the normative status of human rights? We can begin our enquiry by recognizing that these seven grounds do not, in principle, contradict one another. None of the grounds proves so

strong that, once accepted, it must colonize the moral landscape, and obviate the others' significance.

Philosophically, this point that each ground can (not must) accord with the other grounds should be uncontroversial. An objective theory of morality can still make room for the importance of obeying legitimately established law; an appropriate functional solution to a given problem can still care about whether the solution clashes with a local community's traditions; a theory prizing the importance of personal consent can still factor in the pragmatic costs of aiming for full consensus; and so on. For this reason, we can easily imagine someone who – with complete consistency – upholds each and every one of these seven grounds for human rights.

In fact, we do not have to imagine such a person. All the main drafters of the *Universal Declaration* – Eleanor Roosevelt, Rene Cassin, Charles Malik, John Humphrey and P.C. Chang – clearly understood the significance of each of these grounds and deliberately tried to construct a human rights regime capable of appealing to all of them. As Johannes Morsink documented at length, most of the drafters clearly believed in the moral reality (what Morsink termed the 'inherence view') of human rights.[46] Equally though, history shows the drafters were committed to upholding the drafting process' deliberative integrity, and imposed constraints on the types of non-parochial and good faith reasons that each delegation could offer in support of their positions.[47] Demonstrating their concern for functional problem-solving, the drafters eschewed invoking large-scale theories of justice, and aimed for generating defensible mid-level principles to respond to the state evils violently exposed by the Nazi regime.[48] The drafters demonstrated their appreciation of formal, public consent through their efforts to create a proclamation that each member state could accept (or at least tolerate) at the 1948 General Assembly vote.[49] Their acceptance of the importance of law can be seen in their initial attempts to construct a legally binding instrument, and then (when this possibility collapsed) in their intention that the *Declaration* should further the development of international treaties and inform domestic constitutions – as it ulti-

[46] Morsink, *Universal Declaration*, 290–295.

[47] E.g. Glendon, *World Made New*, 47, 68, 89, 146–147.

[48] Morsink, *Universal Declaration*, 37–91.

[49] *ibid.*; Glendon, *World Made New*, 170.

mately did.[50] Their communitarian awareness of cultural identification shone through in the ambition to construct an inspirational document that could be endorsed by local traditions and diverse faiths, in their shared belief in the *Declaration's* fundamental purpose as an educational tool to win hearts and minds, and in their wish for each member state to have a sense of ownership over the document.[51] Finally, all the drafters were undoubted pragmatists, willing to negotiate and compromise to create an instrument that – above all else – might succeed in making the world a slightly better place.[52] As such, the drafters provide a striking example of human rights advocates who appreciated and incorporated all of the seven grounds.

Naturally, in saying all of the *grounds* are compatible, I do not mean all human rights *theories* accord with one another. Since many existing theories are premised on the other approaches' falsity or irrelevance, any rapprochement might require substantial revision. For example, for an objective moral theory to allow room for generative deliberation, the theory must possess sufficient flexibility to ensure that there is something left for debate to settle.[53] Likewise, a communitarian approach that incorporated the functional concern for establishing global standards of proper state conduct would need to show how local ethical traditions could both respect and be respected by universal standards. And so on.

The existence of multiple, compatible grounds for human rights also expands the scope of their proper uses. To provide a real-world example of this phenomenon, while many of the *Declaration's* drafters believed in the moral reality of human rights, they differed on whether it would be legitimate to lay criminal charges against rights-violators based on morality alone, prior to the construction of properly-established law. They disagreed, in other words, on the status of the retrospective criminal judgments then being handed out

[50] Morsink, *Universal Declaration*, 11–19.

[51] *ibid.*; Glendon, *World Made New*, 143.

[52] Morsink, *Universal Declaration*, 319. Even so, the pragmatic question of what tool will appear useful and salient in a given context cannot be easily orchestrated. The *Declaration's* moral, functional, deliberative, consensual and communitarian virtues served only to keep its powder fresh for three decades – until a spark lit by epochal international shifts and tiny personal contingencies saw human rights influence explode across the globe. See Thomas, *Helsinki Effect*; Risse, Ropp, and Sikkink, eds., *Power of Human Rights* and especially, Moyn, *The Last Utopia*.

[53] E.g., Sen, 'Human Rights'.

at the Nuremberg trials.[54] Liability for criminal punishment, many of the delegates declared, could only be triggered by breaching an existing law. For these delegates, the additional normative grounds incorporated into human rights helped expand the legitimate tasks for which human rights could be employed. While the moral reality of human rights gave them reason to entrench those entitlements in law, they were not willing to criminally punish rights-violators until, and unless, they violated a settled legal rule. In the terms I have been using, criminal punishment requires legal human rights – not just moral human rights.

So far, I have argued that the different grounds can, in principle, accord with each other, and that each additional ground may help extend the depth and scope of human rights. But many of the grounds possess internal forces driving them to link up with the others. To give some examples of this sort of cross-pollination: That moral human rights must include a concern for inclusive public debate and democratic legislation should hardly come as a surprise. Even the paradigm natural rights philosopher – John Locke – rested his hopes for a rights-respecting regime not on a bill of rights and a supreme court, but on majoritarian decision-making and the separation of powers.[55] The moral human rights approach thus flows into the territory of deliberative and legal human rights.[56] Similarly, the implementation of moral human rights may need to pay heed to feasibility and effectiveness, and other functional and pragmatic concerns.[57] Conversely, the deliberative and functional approaches benefit from the ethical philosophizing emblematic of the moral approach. As Pablo Gilabert argues, these approaches themselves must be justified through weighty moral-philosophic claims – and the very practice of global public reason (if it is to do more than report on pre-existing agreements or construct a *modus vivendi*) must engage with substantive moral ideas like 'dignity'.[58] For its part, the functional approach extends naturally into the legal approach, as the latter offers the rules-based clarity of obligations and expectations

[54] Morsink, *Universal Declaration*, 52–58.

[55] Locke, *Two Treatises*, §§132–158; Waldron, *Dignity of Legislation*, 63–91.

[56] See similarly, Sen, 'Human Rights'.

[57] Such as in Griffin's theory, which fruitfully straddles the moral and functional approaches: Griffin, *On Human Rights*, 37–39.

[58] Pablo Gilabert, 'Humanist and Political Perspectives on Human Rights', *Political Theory* 39 (2011): 439–467.

that are so often necessary for effective and sustainable solutions to complex international problems.

While I cannot, here, trace all the tangled synergies between the seven approaches, I do want to stress the most inclusive approach of them all: the pragmatic approach. In a sense, every other approach's advocates must consider the pragmatic perspective before making practical policy recommendations, as only the pragmatic approach models the actual choice situation confronting dissidents, activists, politicians and delegates at the coalface. To take one possible case, it would be reckless to insist on revising some small aspect of international human rights practice in line with one's preferred position, if such reform efforts risked throwing open the door to a more general scepticism of human rights that would allow tyrannical foreign regimes to challenge minority populations' basic rights. To the extent that each approach to human rights values actual people and communities, that approach's adherents have reason to reflect on how their actions will impact upon those people and communities. In the practical public sphere, therefore, each approach's adherents must ultimately ask the questions characterizing the pragmatic approach.

Conversely, pragmatic advocates of human rights have reason to avail themselves of every support they can muster. Ironically, the pragmatic theories of Ignatieff's anti-foundationalism and Rorty's postmodernism are exclusionist, castigating especially the perceived limitations of the moral human rights approach. But, as David Hollinger observes in his searching commentary on Ignatieff, from a *genuinely* pragmatic perspective, there is no point alienating all the believers in moral human rights.[59] The pragmatic human rights proponent should be the first to acknowledge that human rights practice needs all the support it can get. And if the religious are to be granted their Sermon on the Mount, then (as Hollinger says) 'we secularists should be allowed our Locke and Rousseau…'[60] In the final analysis, human rights make such a handy toolkit *precisely because* so many people accord them independent normative respect.[61]

[59] David A. Hollinger, 'Debates with the PTA and Others', in A. Gutmann (ed.), *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001), pp. 117–126, 124–126.

[60] *ibid*.

[61] Des Gasper, 'Human Rights, Human Needs, Human Development, Human Security: Relationships between Four International 'Human' Discourses', *Forum for Development Studies* 34(1) (2007): 9–43, 15.

In my terms: the *moral approach's* effects are what make human rights such a potent *functional* and *pragmatic* instrument.

In sum, many of the approaches possess internal reasons to explore the opportunities that alternative grounds can offer. This suggests our best normative theory of human rights – like our best explanatory history of human rights – would do well to incorporate the significance of each of the seven grounds.

My point here is broader than one of high theory. It concerns common-sense legitimacy. In ordinary moral thinking, legitimacy stems from multiple foundations. Political scientists categorize its various grounds in different ways. They may speak of 'source-based', 'procedural' and 'substantive' legitimacy – or of 'input', 'output' and 'throughput' legitimacy.[62] In so doing, they highlight that norms and institutions can acquire legitimacy in many ways. This is why the quotations representing the different approaches delineated above – 'It's right' – 'I agreed' – 'It's ours – 'It works – 'We decided' – and so on, are readily understandable explanations of why a particular person might accord respect to a particular norm.

In this way, the capacity of human rights to draw in seven distinct legitimizing grounds provides them with the promise of widespread convergence, extending far beyond the confines of any single approach. So too, their multiple supports provide human rights with a powerful bulwark against easy change or refutation. Even if a person felt that human rights demonstrably failed on one ground, another approach might nevertheless provide that person with compelling reasons for support. For example, even if a person harbours Benthamite ('nonsense on stilts') scepticism about human rights' *moral* reality, if that person admits the significance of (say) the 'consent' or 'legal' approaches, then he or she will still *pro tanto* acknowledge the legitimacy of states' human rights obligations.

In other words: human rights enjoy normative redundancy.

IV. SEVEN GROUNDS – OR SEVEN VULNERABILITIES?

To say that human rights enjoy normative redundancy is not to say that they are impregnable. Even as they boast seven distinct sources

[62] Daniel Bodansky, 'The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?', *American Journal of International Law* 93(3) (1999): 596–624; Vivien A. Schmidt, 'Democracy and Legitimacy in the European Union Revisited: Input, Output and "Throughput"', *Political Studies* 61 (2012): 2–22.

of legitimacy, they open themselves to attack on seven fronts. As this section describes, each normative tributary could be cut off or diverted.[63]

A. It's not Right: Against Moral Human Rights

The prescriptions of different moral theories – *even theories about rights* – may oppose, rather than support, human rights. Onora O'Neill provides an example of a theorist who accepts some natural rights, but whose prescriptions differ so vividly from the *Declaration's* entitlements that she stands as a critic (rather than a supporter) of human rights.[64] Other theorists might avoid any appeal to rights at all, preferring to deal exclusively in duties, virtues or overall utility. A more wholesale assault comes from those who deny all objective moral facts; if successful, such arguments would categorically rule out appeal to any form of moral human rights.

B. We didn't Decide and I didn't Agree: Against Legal and Consensual Human Rights

Earlier, I qualified – in terms of both strength and comprehensiveness – the support human rights may enjoy from the legal approach. However, even this twice-qualified conclusion may be cast into doubt by future events. If states began to step back from the jurisdiction of regional courts, reject the oversight of the UN Human Rights Council, and even withdraw from the human rights treaties themselves, then human rights could no longer draw on the law- and consent-based sources of legitimacy.

C. We didn't Debate: Against Deliberative Human Rights

I earlier asserted that no other global norm could boast the same inclusive and deliberative origins as human rights. But, even if true, this assertion remains only a comparative claim. A critic might maintain that the serious limitations of the *Declaration's* deliberative

[63] Since any one of the tributaries can provide a *prima facie* good reason for supporting human rights, *all* the tributaries must be blocked off or overwhelmed for a given agent to lose all reason to morally respect human rights.

[64] E.g., Onora O'Neill, 'The Dark Side of Human Rights', *International Affairs* 82(2) (2005): 427–439.

processes mean that locally made law, derived from more inclusive and well-reasoned dialogues, should enjoy normative priority.[65]

D. It's not Ours: Against Communitarian Human Rights

It is perhaps on this ground where human rights have always been most vulnerable. Only a subset of the world's cultures identifies with human rights, and feels ownership of them. In those places where human rights enjoy deep cultural roots, the communitarian grounding joins with the other approaches to secure widespread endorsement of human rights. However, in cases where a tension lurks between deeply held cultural convictions and specific human rights – or perhaps even with the very idea of human rights – the communitarian commitment will press in the opposite direction. Even cultures that were once human-rights-friendly might change their stance. For example, as cultures reclaim and prioritize different traditions, increased nativism might sever any nascent attachments between local traditions and cosmopolitan human rights.

E. It doesn't Fit and It doesn't Work: Against Functional and Pragmatic Human Rights

We observed earlier that some actors might shelve their initial qualms about human rights on the basis of a pragmatic assessment about the norms' existing power and popularity. But such rational instrumentalism cuts both ways. Not only might a sceptic complain that human rights do not work at all,[66] even a human rights enthusiast must acknowledge that different tools can work better in application to different problems. Perhaps a quite different – and even custom-built – norm would more effectively resolve an issue. Making such an appraisal requires the functional and pragmatic approaches widen their gaze to appraise the *alternative* international norms on offer. In fact, there are several cases where custom-built functional norms have been constructed by international bodies to avoid the perceived limitations of human-rights-based solutions. For

[65] For a related line of argument, in the context of environmental law, see Bodansky, 'International Governance', 615.

[66] See, e.g. Eric Posner, 'The Case against Human Rights', *The Guardian*, 4 December 2014. For an illuminating dialogue: Eric Posner and Kenneth Roth, 'Have Human Rights Treaties Failed?', *The New York Times*, December 28 2014.

instance, in the development sphere, human rights' legalism and its struggle to prioritize between desperate needs and less urgent entitlements have given rise to new constructions, including the 'human needs' and 'human security' agendas.[67] Similarly, in the human protection sphere, human rights' entitlements worked well as standards for international criticism and activism, but their generous entitlements rendered them unapt for decisions about military intervention.[68] For that purpose, norm entrepreneurs like Kofi Annan and Gareth Evans garnered international agreement on a purpose-built functional norm – the *Responsibility to Protect*.[69] In short, human rights are not a silver bullet, and functional solutions are not one-size-fits-all.

More far-reaching pragmatic worries with human rights are possible. If human rights are no longer linked in the general perception with prosperous, well governed states, their pragmatic strength falters. At time of writing, concerns with globalization, immigration, refugees and terrorism have seized many liberal democracies across the globe. If human rights are seen as an impediment to effective solutions to these problems, then pragmatically minded agents focused on narrow national interests will have reason to reject – rather than support – human rights.

V. OVERLAPPING CONSENSUS OR GATHERING CONFLUENCE?

The previous section acknowledged that each of the seven grounds can (on a reasonable interpretation, and/or consistent with feasible changes in international law and affairs) fail to attach to human rights. With its explicit acknowledgment that each and every one of the seven grounds may offer *no* support for human rights, the normative picture offered here is best described as one of 'gathering confluence' rather than 'overlapping consensus'. Drawing a sharp distinction between these two concepts is complicated by the fact that theories of overlapping consensus differ one from another, and

[67] Gasper, 'Human Rights, Human Needs'.

[68] Breakey, 'What Human Rights Aren't For'.

[69] International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: IDRC, 2001); UN General-Assembly, *Res. 60/1: World Summit Outcome Document*, A/RES/60/1, 16 September 2005, ¶¶138–140.

can be subject to multiple interpretations.[70] However, for the purposes of contrast, it is possible to draw out several thematic commonalities across the main theories of overlapping consensus.[71]

To demonstrate, let us begin by stipulating agents' 'ethical perspectives' as referring to their religious, philosophical and metaphysical convictions, their intuitions and prevalent modes of moral reasoning and their local identities and traditions.[72] Theories of overlapping consensus justifying human rights aim to show why – despite manifest differences in ethical perspectives – diverse cultures should nevertheless conform to (or at least may be rightly evaluated on the basis of) a common set of substantive political standards: namely, those of human rights. If successful, these theories would achieve the impressive result of at once respecting and drawing strength from the world's dizzying diversity of ethical perspectives, *while at the same time* justifying a common standard of basic entitlements owed to all.

Overlapping consensus theories typically present a two-pronged argument vindicating this happy outcome. The first line of argument demonstrates that most cultures' ethical perspectives are capable, perhaps with some creative reinterpretation, of according with the substance of human rights. For example, major religious traditions almost always turn out to contain parables, precepts and principles that can be interpreted to support human rights.[73] In the second line of argument, the theory adduces some further normative factor – what I will call the 'converging factor' – that drives all cultures to acknowledge the normative importance of human rights. This con-

[70] Any discussion of overlapping consensus on human rights cannot help but consider Rawls' trailblazing work. However, in the context of international human rights legitimacy, it warrants emphasis that Rawls' initial work was employed in an explicitly domestic context. Even in his later work, Rawls' posited consensus covered only a specific group of nations – and derived only a minimalist list of human rights. See John Rawls, 'The Idea of an Overlapping Consensus', *Oxford Journal of Legal Studies* 7(1) (1987): 1–25; Rawls, *Law of Peoples*, 65–81.

[71] One further difference between this view and theories of overlapping consensus lies in the extent of the human rights each aims to legitimize. Here, I explore the legitimacy of the *Declaration's* full suite of human rights. Many theories of overlapping consensus only aim to legitimize a narrower list. See n. 70 above.

[72] So defined, ethical perspectives include what Rawls calls 'comprehensive doctrines', but also (and more broadly) values in the sense defined by Milton Rokeach, as enduring, singular prescriptive beliefs about an act or goal's personal or social desirability. See Milton Rokeach, *Beliefs, Attitudes and Values: A Theory of Organization and Change* (London: Jossey-Bass Publishers, 1976), 123–124, 59–60.

[73] E.g., on Theravada Buddhism: Charles Taylor, 'Conditions of an Unforced Consensus on Human Rights', in J. Bauer and D. Bell (eds.), *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999), pp. 124–144, 133–135; on Confucianism and Islam: Cohen, 'Minimalism', 202–209.

verging factor then impels the culture to positively pursue the pro-human-rights interpretation of its local ethical perspectives, leading to the desired overlapping consensus.

The converging factor can be any one of the seven grounds noted above, with attention normally focusing on the deliberative and functional grounds. For example, the converging factor may be deliberative and dialogic considerations that all members have reason to pursue.[74] Or the converging factor may be specific functional tasks that all members have reason to want fulfilled.[75] Or it may be a combination of both functional and deliberative devices.[76] Crucially, the converging factor carries something like universal prescriptive pretensions. It creates an 'ought' that drives every agent (or relevant cultural group) to revisit their ethical perspectives so as to achieve the alignment with human rights.

The fundamental difficulty with such arguments lies in the prescriptiveness injected into the converging factor. If the various cultures' ethical perspectives are so different that they are unable to agree on (even minimal) protections of individual human freedoms, then there is every reason to question whether those same differences will drive those cultures to reject the universalist pretensions of specific functional goals or deliberative practices.

In contrast, the viewpoint advanced here takes seriously the fact that agents' ethical perspectives impact not only on what they take to be substantively morally right ('It's right') and locally valued ('It's ours'). Those diverse ethical perspectives *also* impact on how the agent appraises and responds to arguments and exigencies surrounding functional, deliberative, legal, pragmatic and consensual concerns. Just as the different ethical perspectives give rise to a diversity of positions on substantive human entitlements, so too they can give rise to a diversity of positions on deliberative, functional and other grounds. As the last section argued, some of these resulting positions may even pivot *against* human rights. As such, the picture of human rights legitimacy offered here makes no universal claims

[74] E.g., Taylor, 'Unforced Consensus'.

[75] This ground is prioritized in Rawls, *Law of Peoples*, 79–80.

[76] E.g., Cohen, 'Minimalism'. Rawls' early work on overlapping consensus combined concerns for the problem of stability (a *functional* ground), the significance of public reason (a *deliberative* ground) and 'fundamental intuitive ideas' about citizens as free and equal (a *moral* ground). See Rawls, 'Idea of an Overlapping Consensus'; Burton Dreben, 'On Rawls and Political Liberalism', in S. Freeman (ed.), *Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003), pp. 316–346.

for any one of the seven grounds – nor even for all seven grounds combined. It provides no guarantee of, nor normative argument demanding, consensus.

Yet even if it fails to achieve (or even to attempt) universal prescriptiveness, this picture yet provides multiple waves of contingent prescriptiveness, each of which can in turn capture, combine and build upon the others. For this reason, the figure of *gathering confluence* aims to invoke a strong river fed – through both perennial forces and contingent topography – by myriad tributaries and rivulets. If this is right, there may be nothing demonstrably inevitable about human rights – but it remains true that very different actors, starting from very different locations, may still find compelling moral reasons to be swept together into one larger movement.

VI. CONCLUSION

I have argued that human rights can enjoy support from seven distinct normative grounds. These multifaceted underpinnings help explain the dominance of human rights discourse, its capacity to apply to different problems, and its resistance to easy refutation or alteration. However, I also sketched how limitations and controversies can arise in each of the seven approaches, eroding the multilayered normative strength that human rights might otherwise enjoy.

If I may, in conclusion, paraphrase two of Rawls' key insights: human diversity is real and moral philosophy is hard.[77] Human beings gravitate towards different perspectives, and rational argument rarely proves so compelling as to persuade everyone to converge on a single view. For both these reasons, the current plethora of human rights approaches may prove a stubborn feature of our world to come. But instead of despairing at the prospects of philosophical convergence, these two factors might tempt us to acknowledge the legitimacy of different perspectives. Even if we resist personally endorsing an alternative approach to human rights, acknowledging people's diversity – and philosophy's adversity –

[77] In technical terms, these are the 'fact of reasonable pluralism' and the 'burdens of judgment'. John Rawls, *Political Liberalism*, Expanded ed. (New York: Columbia University Press, 1993/2005), 39, 54–58.

might help us tolerate other approaches, and in so doing form common cause with their proponents.

In the final analysis, it might turn out that we are blessed with a myriad of reasons to value human rights – perhaps reflecting the human diversity that the rights themselves aim to protect.

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