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# Human Rights as Individualistically Justified: A Defence

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In this chapter, I assume that human rights animate and underlie human rights practice, rather than being defined or created by it. If this is correct, then what exactly are human rights so conceived? Some take them to be moral rights protecting particular substantive values distinctive of our humanity, such as agency or human needs or basic human interests. Others take them to be moral rights with a distinctive political function, such as rights whose violation legitimates external intervention within a sovereign state. In this essay, I develop an alternative suggestion: human rights are distinctive because they are individualistically justified. That is, a given human being's human rights are – unlike her other moral rights – grounded primarily by what they do for her independently of whether they serve others. I propose this as at least a necessary condition for something's being a human right in the relevant pre-conventional sense, and I defend the view against criticisms. I see my account as an improvement on and replacement for claims that some particular value (e.g. agency) is 'the' substantive human value that human rights protect.

(I)<sup>1</sup>

In recent work, Joseph Raz has adopted a political conception according to which a central, defining function of human rights is to set limits to state sovereignty, limits that require states to 'account for their compliance with human rights to international tribunals where the jurisdictional conditions are in place, and to responsibly acting people and organisations outside the state'.<sup>2</sup> Part of Raz's motivation for this political conception is dissatisfaction with the view that takes 'human rights' to be a secular way of referring to what would once have been called 'natural rights': those important moral rights that people hold simply in virtue of being human. Of course, this 'natural rights' conception might – like Raz's political conception – make human rights matters of international concern, but this will be a derivative rather than an essential feature of them qua human rights.

Raz writes that human rights are 'thought to combine exceptional importance and universality. Even though various writers have offered explanations of the first element, that of importance, none seems to me successful'.<sup>3</sup> A successful explanation here would make a special kind of importance the distinctive feature of human rights, thereby bypassing the need to distinguish them by their (purported) special political role. As noted in my introduction, the explanations of human rights' importance on offer tend to make them distinctive as protectors of particular important substantive values – personhood, needs, freedoms.<sup>4</sup> I share Raz's concern about these accounts. It seems doubtful that anything can be both narrow enough to qualify as a genuinely distinct substantive value ('the' value that human rights protect) yet still broad enough to encompass all the things we want to call human rights.<sup>5</sup>

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<sup>1</sup> This section draws on Cruft 2013, pp. 129-133.

<sup>2</sup> Raz 2010, 42. Compare the different 'political' conceptions of human rights in Beitz 2009; Cohen 2006; Pogge 2002; Rawls 1999.

<sup>3</sup> Raz 2010, 39.

<sup>4</sup> Griffin 2008; Miller 2007, Ch. 7; Wiggins 1987, Ch. 1; Sen 2004.

<sup>5</sup> For a pluralist approach which allows that various values can ground human rights when they are appropriately 'important', see Tasioulas 2002 and 2014.

But Raz fails to notice that his own account of *rights in general* is better taken as a theory of the narrower category, *human rights*, a theory that gives human rights a special kind of importance which renders unnecessary a further political account of human rights' distinctiveness. Raz's celebrated general account of rights is as follows:

"X has a right" if and only if X can have rights and, other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty.<sup>6</sup>

According to this account, all rights are individualistically justified, where this means that any given right is justified primarily by what it does for its holder, considered independently of whether it serves or disserves people other than its holder. To put this more precisely, a person P's right R is individualistically justified if and only if:

1. Some genuine feature F of P is of sufficient non-instrumental importance to constitute a powerful (i.e. hard to defeat) ground for P's holding a right that will protect, serve or in some other way ensure respect for F – and R is such a right.
2. This ground is undefeated and hence R is justified.<sup>7</sup>

On Raz's account, the relevant individualistic right-justifying feature F will always be some *interest* of the individual right-holder. Alternative individualistic approaches make each right justified by how it serves its holder's autonomy or needs, or by how it embodies its holder's self-ownership or status.<sup>8</sup>

Individualistic approaches are too narrow to work as general accounts of rights. They fail to explain the many cases in which a right's existence depends wholly or primarily on something other than the importance of some aspect of the right-holder. Trivial property rights (e.g. my property rights over my pen) are a good counter-example: such rights are clearly morally justified, but they are surely not justified primarily by what they do for their individual holders, whether this is conceived in terms of interests, autonomy or status. I have argued elsewhere that most of an individual's justified property rights are justified because the property system of which they are a part serves the common good.<sup>9</sup> Individualistic accounts exclude this plausible possibility. This is just one type of counterexample, but a survey of our morally justified rights suggests that many are justified on non-individualistic grounds, including the importance of the development of knowledge for its own sake (e.g. a scientist's right to pursue research whose results could threaten cherished religious beliefs), the common good (e.g. the system of rights created by traffic regulations), the value of beauty (e.g. your right that I not interrupt your musical performance).

Raz thinks he can accommodate these counter-examples. He considers a journalist's right to withhold the names of her sources. Raz suggests that this right cannot be justified solely by how it serves the interests of its holder (an individual journalist), but must instead be justified largely by how it serves the common good. To accommodate this example, Raz allows that a person can qualify as a right-holder

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<sup>6</sup> Raz 1986, 166.

<sup>7</sup> This draws on my Cruft 2006, 154-158. For further exposition, see Cruft 2013 forthcoming.

<sup>8</sup> The following theorists are all plausibly read as offering individualistic accounts of rights, although they differ over the particular feature of the individual (e.g. freedom, interests, needs) that grounds rights, and how exactly the grounding works: Hart 1955; Kamm 2007, Section II; Miller 2007, Ch. 7; Nagel 2002, Ch. 3; Pogge 2002; Sreenivasan 2010.

<sup>9</sup> Cruft 2006.

even when that person's interests only justify duties *because serving these interests in this way also serves other people's interests*. Thus Raz maintains that the journalist has a right not to reveal her sources because (as required by his theory) the journalist's interests justify a duty. Yet he maintains that the journalist's interests only justify this duty because serving them also serves the common good.<sup>10</sup> While Raz presents this as a way to interpret his theory it is actually an admission of defeat for, as Kamm notes, '[i]f the satisfaction of the interests of others is the reason why the journalist gets a right to have his interest protected, his interest is *not sufficient* to give rise to the duty of non-interference with his speech'.<sup>11</sup>

In my view, the individualistic account is most attractive when applied to those basic rights a person has simply in virtue of being human. For example, my right not to be dismembered is plausibly individualistically justified. It is natural to regard my bodily integrity as a feature of me that is of sufficient non-instrumental importance on its own – independently of whether this serves people other than me – to constitute a powerful ground for rights protecting it, including a right not to be dismembered. The other basic rights that protect our most important features are similarly plausibly individualistically justified. Why not, then, take individualistic justification as the hallmark of human rights? This would furnish us with a conception of human rights within the 'natural rights' tradition, but one that defines them by the distinctively individualistic structure of their justification, rather than by some distinctive value (personhood, needs, freedom) that they all purportedly serve. On this account, a right will qualify as a human right whenever it is justified primarily by what it 'does for' its holder considered independently of whether it serves or disserves others. This 'doing something for' the holder might involve serving the holder's interests, or protecting her needs, or securing her freedom, or reflecting her status etc. So long as the right's justification is individualistic, it will be a human right whatever the particular values at work in the justification.

The individualistic approach to human rights is very attractive: as well as avoiding the difficulty of finding some single substantive value that all human rights serve, it gives centre stage to the common concern that non-individualistic theories of human rights are inadequate. For example, according to welfarist consequentialism, if the long run collective interest would be best promoted by denying human rights to certain people, then there would be no justification for the existence of human rights for the relevant people. Concern about this counter-intuitive implication is, in part, what motivates John Rawls's famous claim that '[u]tilitarianism does not take seriously the distinction between persons'.<sup>12</sup> If human rights are individualistically justified then they offer the special protection grounded in respect for each separate person that Rawls identifies as necessary – while other rights need not, and might be justified on consequentialist or other non-individualistic grounds. Some might think that human rights' character as *rights* is sufficient to mark them as moral norms that respect 'the distinction between persons', but this is incorrect. Rights can be borne by aggregates and by corporate entities. They can also – as my example of property shows – play a moral role defined not by what they do for the right-holder, but by what they do for other values such as the common good. By contrast a right which is individualistically justified is a moral claim whose grounding point is to protect a particular individual person.

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<sup>10</sup> Raz 1986, 179. See also Raz 1994, 49-55.

<sup>11</sup> Kamm 2002, 485. For Raz's commitment to the *sufficiency* of the right-holder's interests for grounding a duty, see Raz's original definition of rights at Raz 1986, 166 and also *ibid.*, 183-4.

<sup>12</sup> Rawls 1971, 27.

In addition, I have argued elsewhere that if human rights are individualistically justified, then this can explain and accommodate some of the appeal of the fairly common thesis that human rights are not always rights in the strict Hohfeldian sense, that is, they do not always entail duties owed to the right-holder ('directed' duties). For example, James Nickel writes:

‘One approach that should be avoided puts a lot of weight on whether the norm in question really is, or could be, a right in a strict sense.[...] This approach begs the question of whether human rights are rights in a strict sense rather than a fairly loose one. The human rights movement and its purposes are not well served by being forced into a narrow conceptual framework.’<sup>13</sup>

According to Nickel's suggestion, some – but not all – human rights are best conceived not as rights but as goals or important values or some other non-right consideration. This thesis can seem compelling if one thinks that human rights primarily govern a state's relationship with its citizens, if one believes that there are 'positive' human rights to goods and services including education and housing, for example, and if one also thinks that it is overly demanding to regard impoverished states as owing duties to each and every one of their citizens to educate or house them.<sup>14</sup>

Whether or not one endorses this denial that all human rights are rights – and I am unsure myself<sup>15</sup> – if human rights are distinctively individualistically justified, then it would probably be no surprise if language users had begun to extend the concept 'human rights' to encompass other normative phenomena that were individualistically justified but not rights in the strict Hohfeldian sense. Hohfeldian claim-rights foreground the right-holder in the reasoning of the bearer of the correlative duty: the right-holder is foregrounded as the person to whom the correlative duty is owed.<sup>16</sup> Individualistic justification offers an alternative form of foregrounding. Any normative factor that is *individualistically justified* will involve the foregrounding of a particular person: the P whose F is the powerful justifying source of the relevant normative factor. Suppose that we call 'a human right' any normative factor that is individualistically justified, including factors that do not involve directed duties owed to people and hence are not Hohfeldian rights. Sometimes, on this approach, a human right will entail merely that certain goals ought to be pursued, and failure to pursue such goals will not qualify as a 'violation' of a Hohfeldian directed duty but simply as a failure to do all that one ought – or perhaps even simply as a failure to respond to all the reasons bearing on one. But even then, because of the individualistic justification for the goals, there will necessarily be a sense that a particular person has been let down by such failure: the person whose F is the justifying source of the 'ought' or reason. So the individualistic approach generates a form of 'directedness' or

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<sup>13</sup> Nickel 2010. Compare Wellman 2011, 71-3.

<sup>14</sup> Nickel writes: 'Treating very demanding rights as goals has several advantages. One is that proposed goals that exceed one's abilities are not as farcical as proposed duties that exceed one's abilities. Creating grand lists of human rights that many countries cannot at present realize seems fraudulent to many people, and perhaps this fraudulence is reduced if we understand that these "rights" are really goals that countries should pursue' (Nickel 2010).

<sup>15</sup> I am unsure both about whether human rights should be seen as primarily borne against one's state, and about whether any actual state governing any sizeable group of people could be so impoverished that demanding an education and housing from it would be 'fraudulently' over-demanding. For some facts arguably supporting the 'fraudulence' claim, see Sreenivasan's discussion of health spending in Mozambique (2012, 246).

<sup>16</sup> Hohfeld 1964. For an analysis of the precise nature of this foregrounding, see Wenar 2013 and Cruft 2013.

foregrounding that gives human-right-holders special status even without the Hohfeldian structure involving directed duties – and hence even when it does not involve genuine Hohfeldian rights.<sup>17</sup>

## (II)

Despite these attractions – the centrality it gives to the ‘separateness of persons’, and the breadth of considerations it allows to qualify as human rights including non-Hohfeldian ‘rights’ entailing mere goals or values – the individualistic approach has at least four apparent limitations. First, it appears to underplay the importance of the burdens human rights impose on those who have to fulfil them. Secondly, it seems to rule out the possibility of human rights to the provision of public goods. Third, it threatens the universality of human rights. And fourthly, it seems to include as human rights a range of ‘private’ goods (such as my right to my spouse’s fidelity) which should be excluded. In this section, I address the first two concerns, turning to the second two in §(III).

The first criticism maintains that human rights cannot be individualistically justified because (almost?) any right is grounded only if it does not impose excessive burdens on others. So no right can be wholly individualistically justified. This is correct but is accommodated by my precise characterisation of individualistic justification. On my account, a right is individualistically justified when some feature of the right-holder is a *powerful* undefeated ground for it. ‘Powerful’ here means rarely defeasible. There might perhaps be some rights whose grounds are indefeasible: perhaps my interest in not being tortured is of sufficient non-instrumental importance to constitute an indefeasible ground for your duty not to torture me, a ground sufficient to make this duty exist wholly independently of whether it serves anyone other than me. But most rights are not grounded in this way. For most rights, if their existence would be extremely costly, their grounds are defeated. My account of individualistic justification is intended to accommodate many such rights. For example, my being able to take part in public debate is, I suggest, sufficiently important to constitute a rarely defeasible ground for others’ duties to let me take part. Only major countervailing considerations can defeat the ground for these duties. But in extreme circumstances, perhaps it could be defeated. The account of individualistic justification leaves open the possibility that the burdens on duty-bearers, or indeed other considerations (perhaps the burdens on third parties) could defeat the grounding.<sup>18</sup>

Note however that on my account, a right is not individualistically justified *whenever* some feature of the right-holder contributes something (no matter how small) to its grounding – for example, if the right-holder’s interests figure along with many others on the ‘in favour of R’ side of a utilitarian calculus that comes out supporting right R.<sup>19</sup> To be individualistically justified, a right must be grounded by a feature of the right-holder that plays a *powerful* role in its grounding. But my notion of ‘powerfulness’ is designed to allow that even individualistically justified rights will

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<sup>17</sup> See Cruft 2012 for a full development of the argument summarised here.

<sup>18</sup> Note that the discussion in the main text concerns the grounds determining whether a right exists or not, rather than the grounds for infringing it when it does exist. The latter issue is the stringency of the right; the former – my concern – is the stringency of its grounds.

<sup>19</sup> For discussion of whether Raz could be read as endorsing even such utilitarian account as fulfilling his individualistic view of rights, see Cruft 2013.

normally be successfully grounded only when they do not impose enormous burdens on others. What counts as a relevant burden – e.g. whether the cost (or indeed feasibility) of fulfilling a candidate right *in conjunction with other similar rights* is a relevant burden that could defeat a given right's grounding – is something I leave for further work.<sup>20</sup> The key point is that individualistic grounds are not defined as infeasible, but only as powerful.

A second concern claims that the individualistic approach cannot accommodate human rights that enjoin the provision of public goods, such as human rights to adequate sanitation.<sup>21</sup> A simplistic version of this worry takes individualistic justification to exclude any rights grounded in humans' sociality. The individualistic approach does not make this mistake. It allows that many features of the individual which are of relevantly powerful right-justifying importance will involve or be constituted by our social nature. For example, having a say in one's community's decisions is – whether construed as an interest, a freedom or a need – of very great importance for (almost?) any individual person, importance sufficient to make it a powerful right-justifying feature of that individual person: a feature that individualistically grounds that person's right to political participation. Natural rights theories that appeal only to the interests of persons in a 'state of nature' struggle to accommodate rights of this type, but my individualistic structure allows that features that a person holds only because they live in society can nonetheless be of individualistic right-justifying importance.<sup>22</sup>

Still, one might worry that some human rights require the provision of public goods, and that no individual's interests or other features can be sufficient on their own to constitute a powerful ground for creating the extensive social and physical infrastructure necessary to deliver public goods. The thought is that only in conjunction with the needs of others do we get a powerful case for creating such an infrastructure. For example, we cannot – at least with contemporary scarcities – justify building a hospital simply to save *your grandfather*, or a water treatment plant simply to supply *your child*. Or, to use Sreenivasan's example, we cannot justify vaccinating a whole population simply to protect *you* from measles.<sup>23</sup> The importance of the individual right-holder cannot play a 'powerful' role (in my terms) in justifying the provision of the relevant public good.

I introduced these thoughts as a potential problem for the individualistic approach to human rights, but I doubt it is one. Do we really want to say that your grandfather's human right to medical care includes a right to the building of a hospital? Or that your child's human right to clean water includes a right to the creation of a treatment plant? Or that your human right to health care includes a right that the whole population be vaccinated? It is unintuitive to regard an individual's human rights as including rights to such large public goods. As Sreenivasan puts it, 'no individual can have a moral claim-right to any pure public good'.<sup>24</sup>

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<sup>20</sup> See Waldron 1989, Eddy 2006, Miller 2012, Tasioulas 2014.

<sup>21</sup> Thanks to James Nickel and Katrin Flikschuh for pressing this point.

<sup>22</sup> I suggest that similar reasoning can ground most of the human rights to equal treatment that Buchanan sees as problematic for approaches like Griffin's (Buchanan 2010).

<sup>23</sup> Sreenivasan 2012, 256.

<sup>24</sup> *Ibid.* See Sreenivasan's instructive explanation for why Raz's individualistic account of *rights in general* cannot deliver any individual rights to public goods (*ibid.*, 257-8).

A defence of the individualistic approach against the public goods problem could end there: as there are no human rights to public goods, there is no problem. Yet at the same time I think we do want to say that a government which diverts resources away from basic health care or sanitation in order to fund the secret police (or even, I would add, in order to fund some worthy non-human-rights cause such as an arts centre) raises human rights concerns. Public goods look like they can be a human rights issue. We might even want to say that the government in this example *violates* its citizens' human rights. How can we make sense of the combination of this position with Sreenivasan's plausible claim that a person can have no right, on their own, to the provision of a public good? Can a position which accommodates both thoughts leave space for my individualistic approach to human rights?

One way to accommodate these thoughts is the route outlined at the end of §(I) above: we could abandon the Hohfeldian model of human rights, and allow that your human right to health protection includes some individualistically justified governmental goals or reasons which are not duties owed to you. In particular, we could say that your interest in health is so important that it is a powerful ground for the government's taking your health to be something it has strong reason to promote. And many other people's interests in health – your grandfather's, your neighbour's and so on – also each individualistically ground the government's taking *their* health to be something it has strong reason to promote. As all these strong reasons are efficiently served by a vaccination programme creating herd immunity, failure to pursue this programme fails to respond each one of these individualistically grounded reasons for government action. It is thus a failure to respond appropriately to each individual's important reason-grounding features. Although this is not a *violation* of any duty *owed to* each right-holder, it is nonetheless in some sense a case of 'directed' disrespect: disrespect shown to each individual whose interests were sufficiently important on their own to ground reasons for the government.<sup>25</sup>

Yet a more Hohfeldian approach still seems attractive, for non-provision of the vaccination programme looks rather like a *violation*. We could retain this thought by finding a collective right-holder, such as 'all citizens', to whom the duty of vaccination is owed. But this introduces new problems<sup>26</sup> and departs from the spirit of my individualistic approach. Furthermore, when people protest at human rights violations in these areas, there is a sense that protesters think each individual citizen has been wronged individually. Perhaps the best approach for making sense of this within my individualistic framework maintains that in this sort of case a feature of a person (such as their interest in health protection) which individualistically grounds some human rights (such as a right to postnatal care) also *non-individualistically* grounds a government *duty* – rather than simply a set of goals or strong reasons – to produce some public good (e.g. to develop a vaccination programme). That is, the relevant right-grounding feature of a given individual generates this duty when taken alongside the same feature in everyone else (e.g. everyone else's interest in health protection). This non-individualistically justified duty to provide the particular public good cannot be taken to correlate with any individual's human right on a strict reading of my individualistic conception. But I suggest that so long as this duty is grounded primarily in the importance of a set of features which also succeed in individualistically grounding human rights (in my precise individualistic sense), then we can see the duty to produce the public good as derived from the very same source

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<sup>25</sup> Note that this paragraph could be re-run in terms other than interests.

<sup>26</sup> For example, how is the collective identified?

as human rights. Hence we can see its violation as in some sense a human rights violation, violating each of the people whose features ground it. The duty in question – to produce the public good – is not itself individualistically grounded, but it is grounded by features of many people, and each of these features is on its own an individualistic source of some other human rights.

Thus, for example, my interest in health protection grounds some rights in an unproblematically individualistic way, such as my right that the government not deliberately infect me with a disease (e.g. for research purposes, or as a form of population control). The idea is that in conjunction with a similar interest in others, my interest grounds a government duty to set up a vaccination programme to create herd immunity. Even though this duty is not individualistically justified, it is grounded in interests each of which *also* individualistically justify some human rights, and this licenses our regarding the non-individualistically justified duty as a ‘human right’ in an extended sense, a right whose violation wrongs those whose interests non-individualistically ground it.<sup>27</sup>

This suggestion requires further elaboration, but I will here record my optimism about the prospects for the individualistic approach. It correctly delivers the conclusion that there will very rarely, if ever, be any human rights that, considered as the rights of one person alone, require the creation of public goods. But I think it does not exclude the possibility that where the conjunction of many people’s human-right-grounding features would best be served by the creation of such goods, then there is a duty to create them which is owed to each of those whose right-grounding features, taken together, ground this duty – a duty that while not individualistically justified, is justified on grounds that do other work as individualistic sources of further duties.

### (III)

A third concern is that the individualistic approach is inconsistent with human rights’ universality.<sup>28</sup> Might some aspects of life, such as religious worship, be of powerful right-grounding importance for some individuals and not others? If so, some will hold rights to religious worship as human rights and others will not (these others might hold no such right, or might hold a right to worship that failed to qualify as a human right). This would be incompatible with human rights’ universality. Some theorists question human rights’ universality across time, but almost everyone wants to see human rights as borne universally by all humans living now.<sup>29</sup>

One confident response to this concern holds that the only features of each human that possess genuinely *powerful* right-justifying importance are features borne universally by each. I can see some promise in this suggestion: could any interest, say, really be of sufficient importance to constitute a powerful case for a right for me, without the same interest constituting such a case for a right for you? But to make

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<sup>27</sup> Note that Wenar’s account of what it is for a duty to be *owed to* someone would allow the non-individualistically justified duty in this case to be *owed to* each and every individual, for each individual wants, qua subject of vaccination, to be vaccinated (Wenar 2013). So the problem for the individualistic approach is not with the *direction* of the duty, but rather with whether it can be *individualistically justified*. I have argued that it can, but in the extended sense outlined.

<sup>28</sup> Thanks to James Nickel for pressing this. For an earlier approach to this problem, in which I try out the notion that human rights are non-universal, see Cruft 2005. I now see this as involving too radical a departure from the accepted concept of human rights.

<sup>29</sup> Tasioulas 2002, Raz 2010.

good on this, we need some universal conception of the important right-justifying features of people, and I am concerned that such a conception is hard to develop without either ethnocentric bias (e.g. it might erroneously assume that choosing one's career is important for everyone) or unhelpful generalness (e.g. it might maintain only that 'some freedom' and 'some wellbeing' are of powerful right-justifying importance for everyone).<sup>30</sup>

The alternative is to maintain that only members of that *subset* of powerful right-justifying features which really are borne universally generate human rights.<sup>31</sup> Notice that this approach allows that there might well be some individualistically justified rights which are just as important as human rights (i.e. based on equally powerful grounds), but which do not qualify for this title because they are not grounded in universally borne right-justifying features. Recognising this point should foster implementation of human rights that is highly sensitive to cultural diversity and to individual intra-cultural diversity. For if, as a human rights practitioner, I know that there might be idiosyncratic moral rights around that are individualistically grounded in the same way as human rights, but that are borne only by some people, in virtue of their possessing powerful right-justifying features that other humans lack, then this will generate an appropriate epistemic humility in my implementation of human rights. This will not be epistemic humility concerning the universality or content of human rights – for we have made human rights universal by definition on this approach, their content determined by those powerful right-justifying features that are genuinely borne universally – but rather humility concerning the relative importance of human rights vis-à-vis idiosyncratic rights borne only by some.<sup>32</sup>

If the suggestion just mentioned sounds odd, it is worth adding that many other approaches to human rights will have a similar implication: they will allow for the existence of some rights which are morally as important as human rights but which do not qualify for this title. Griffin makes clear that his approach has this implication. He argues that human rights on his account – rights protecting our normative agency – are just one branch of justice, and that some very serious rights such as 'the right to compensation following a miscarriage of justice' will not qualify as proper human rights, even though they are as important as rights which do qualify.<sup>33</sup> Pogge's position is similar: he insists that a murder committed by a person in a 'private' capacity will not itself be a human rights violation, whereas one committed by a government hit squad will be; but we should not therefore conclude that government-sanctioned killing is necessarily morally worse than 'private' killing.<sup>34</sup> It is interesting to investigate whether other 'political' approaches to human rights have a similar consequence. In particular, are there some rights whose violation is rightly a 'private' matter but that are morally as important as rights whose violation legitimates wars of humanitarian intervention? If so, then even a strongly 'political' account of

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<sup>30</sup> For development of these worries, see Cruft 2014.

<sup>31</sup> This seems to be Tasioulas's approach. He takes human rights to be grounded not in whatever basic interests a person holds, but in those which are borne universally. Tasioulas faces the same challenge as me about the universality of human rights because, by developing an account of human rights based on Raz's general conception of rights, he assumes that human rights – along with all other rights – are individualistically justified (2002, 2012, 2014; the individualistic character of his approach is highlighted especially in 2012, 29-31).

<sup>32</sup> This is, of course, not to maintain that just any old claimed idiosyncratic important right will really be individualistically justified. Many will not (e.g. particular property rights) or will lack any justification whatsoever (e.g. purported rights to superior positions in virtue of one's caste).

<sup>33</sup> Griffin 2008, 199.

<sup>34</sup> Pogge 2002, 57-63.

human rights like Rawls's would have the same consequence as my individualistic approach: it would allow that some moral rights could be as important as human rights – taking the same priority in the agent's reasoning – but fail to qualify as human rights on conceptual grounds.

This leads neatly to the fourth charge faced by the individualistic approach, a charge which, like the third, accuses the approach of describing too many rights as human rights. Even when we focus only on *universal* individualistically justified rights, we seem to find too many. One's right not to be murdered, one's right not to be lied to by one's friends, one's right to a say in important family decisions all look individualistically justified. Each of these things – my not being murdered, lied to, excluded from family decisions – seems sufficiently important to generate powerful individualistic grounds for rights. Do we want to say that these rights are human rights? Isn't the right not to be murdered a serious moral and criminal matter but – so long as it is not state-sponsored or state-sanctioned murder – not a human right? Aren't the rights not to be lied to or excluded from one's family private matters of right, rather than human rights?<sup>35</sup>

Here I think the theorist faces a difficult choice. Many writers – including Gewirth, Sen, Tasioulas and Wellman – are willing to allow that human rights encompass a range of very important rights including 'personal' ones such as the right to a say in key family decisions, or the right not to be lied to by one's friends.<sup>36</sup> If this seems too inclusive, then we could add that human rights are distinguished not only as individualistically justified and universal, but also as rights that are 'everybody's business' – not in the sense that they must entail duties for everyone, for the human right to free speech for example seems primarily to entail duties for governments and organisations, and not for 'ordinary individuals'.<sup>37</sup> Rather, the suggestion is that human rights are distinguished as the rights respect for which can be legitimately demanded on the right-holder's behalf by anyone anywhere.<sup>38</sup>

This might still seem too inclusive because many of the most important individual moral rights that are standardly protected by the criminal law (such as my rights not to be murdered or assaulted) are individualistically justified, universally borne, *and* demandable by anyone on the right-holder's behalf – but the conventions of international law, and many thinkers working on human rights, deny that such ordinary individual criminal law rights are human rights.<sup>39</sup> To narrow the concept further one could add that human rights are not only (i) individualistically justified and universal and (ii) demandable by anyone anywhere but also (iii) rights whose violation can trigger legitimate international intervention. This would be to add a strong Rawlsian version of the 'political' conception of human rights to my proposed individualistic justificatory one.<sup>40</sup>

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<sup>35</sup> This section draws on Cruft 2012, 134-6.

<sup>36</sup> The first example is drawn from Sen 1999, 229, the second from Gewirth 1982, 56; see also Wellman 2011, 36-39 and Tasioulas 2012, 40.

<sup>37</sup> For the view that human rights must entail duties for all others, see, e.g., Wellman 2011, 26.

<sup>38</sup> I am tempted by John Skorupski's suggestion that 'to demand' in this context means to make a request backed by a permissibly enforceable threat – where this force could be merely social and hence need not involve the type of international military intervention that would make the position outlined here collapse into the 'political' position that I am about to introduce in the next paragraph of the main text (Skorupski 2010, 310).

<sup>39</sup> See, e.g., Pogge 2002, Ch. 2.

<sup>40</sup> Weaker versions of the 'political' account – such as that (iv) support for, condoning, or maybe even simply allowing violation of human rights is sufficient to undermine a state's legitimacy, or to render

In my view, linguistic usage underdetermines one's choice between the three ways of conceiving human rights sketched above. Quite frequently one encounters 'human rights' used to refer to any universal important rights - and this importance, I think, is best accounted for in terms of individualistic justification. But one also encounters the thesis that human rights cannot be too 'private' in the way Gewirth, Sen, Tasioulas and Wellman allow; instead, a particular human rights violation must be everyone's business. And the recent growth of 'political' conceptions of human rights reflects a very significant strand in current human rights discourse.<sup>41</sup>

It is not clear to me that a resolution is needed in this area. Whether human rights should be construed as 'political', 'everyone's business', or simply the important moral rights held by humans depends, I think, on one's purposes, audiences and philosophical methodology. All I want to show is that individualistic justification is *one* of the defining features of human rights, a feature that does a better job of capturing what is distinctive of human rights as natural moral rights than approaches which select a particular human value – agency, needs and so on – and claim that human rights specifically protect that. I must confess that I am doubtful that a political function in terms of international intervention is a further defining feature. Taking this as essential to human rights makes their existence too contingent on the existence of a system of nations, on intervention being a genuine possibility etc.; and it risks overly narrowing the set of human rights. But I will not pursue this here. My aim has been rather to argue that individualistic justification is one of the defining features of human rights; this offers a plausible secular way of thinking about human rights as forms of 'natural right', a way that makes sense of the distinctive importance of human rights without tying them to any particular grounding value. It does not rule out supplementary defining features of types (ii) and (iii) – nor indeed a requirement of universality as noted earlier in this section.

#### (IV)

On my individualistic account, human rights embody or reflect the fact that each individual is, on her own, a powerful source of demanding moral claims: claims on her government, on other governments and – if we go beyond the 'political' approach mentioned above – on other individuals and groups. Other moral structures such as an undirected duty to promote the good, or the requirements of virtue, do not directly depend on a particular individual's importance in the way that human rights do. My examples of non-individualistically justified rights in §(I), such as property rights or the rights of scientific researchers, show that even moral structures which prioritise a particular individual in the agent's reasoning (that is, rights and directed duties) need not be grounded in the importance of that individual. My proposal has been that the concept *human rights* denotes structures so grounded. In my view, this approach is

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certain weak forms of intervention justified – do not so obviously help exclude all the moral rights recognised by criminal law from qualifying as human rights. For it is not implausible to say that the more a state supports, condones or allows common assaults, rape, murder, fraud and theft, the less legitimate it is, and the more justified weak international intervention (e.g. official reprimands) can be.

<sup>41</sup> See especially Charles Beitz's argument that the 'political' account best reflects the actual 'practice' of human rights (Beitz 2009).

more fruitful than the search for a particular substantive value that human rights protect.<sup>42</sup>

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<sup>42</sup> It might seem that my individualistic approach presupposes some form of moral foundationalism: the individual’s interests, needs or whatever else grounds that person’s human rights are on this view taken to be foundationally important. If my approach does make this assumption, it is in good company. But I am not sure it must work like this. It could be taken as ‘transcendental’: as the claim that if we are to engage in life as humans do, then we cannot help but take aspects of the individuals we encounter as grounding rights for them. Or there might be other ways of interpreting the notion of ‘grounding’ at the core of my view of individualistic justification – e.g. as in some sense constructed.

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