Indivisibility and Interdependence of Human Rights

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On the Indivisibility and Interdependence of Human Rights

“All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and religious particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

*Vienna Declaration and Programme of Action, Article 5. (1993)*

The twin philosophical pillars of the contemporary doctrine of human rights – their universality and their indivisibility — have come under renewed attack in recent years. One group of critics, led by Asian governments such as Singapore, Malaysia, and China, have claimed that the idea that individual’s have rights against their governments represents a “Western value” which is inconsistent with traditional “Asian values” emphasizing the individual’s duties to the family and to the state. Another set of cultural critics from the Muslim world, has argued that human rights standards and values, for instance, regarding freedom of religious choice, are inconsistent with Islamic law. Yet a third group of dissenters includes the government of the United States of America, that has refused to ratify several of the major human rights covenants, particularly those dealing with economic, social, and cultural rights, claiming that the rights represented in these instruments are merely “aspirational” and therefore are not “real” human rights.

In light of these kinds of challenges, non-governmental organization (NGO) representatives of the global human rights movement were generally pleased that the above quoted statement found its way in the final text of the *Vienna Declaration*. In the run-up to the Vienna Conference there had been concern that the challenges to the universality and indivisibility of human rights mounted by some governmental delegations would succeed, thus creating a precedent under which
governments could pick and choose among human rights those which they would honor while interpreting other rights as optional, dispensable, non-obligatory, culturally inappropriate or even as “unreal.”

When these issues have been addressed in the academic literature on human rights, it is usually with respect to the notions of the universality of human rights versus claims of cultural relativism. Considerably less has been written about the correlative notions of indivisibility, interdependence, and interrelatedness. The goal of this paper is to provide a philosophical interpretation of these notions as a means of gaining a clearer view as to why it is justifiable to advance claims such as those found in the Vienna Declaration and other documents that assert that human rights are indivisible, interdependent and interrelated. It is first necessary to gain some analytical clarity, especially about the distinction between the universality of human rights and their indivisibility.

**Universality and Indivisibility**

The United Nations’ UDHR 50th anniversary poster proclaimed the motto “All human rights for all!” in several of the world’s major languages. Unpacking this statement logically, it says several things:

I. All human persons possess all human rights.  
   A. All human persons possess human rights, and,  
   B. Each human person possesses all human rights. (Nondiscrimination)

II. All human rights are applicable to all societies.  
    A. Human rights are not ethnocentric.  
    B. No government may select which human rights it chooses to honor and which it chooses to ignore. (nonselectivity)

The principle (I) is violated when some persons are denied the possession of a human right that is held other persons, usually on the grounds of some particular characteristic such as race, religion, language, ethnicity, nationality, sexual orienta-
tion, or other personal characteristics. One idea of universality is really the idea of nondiscrimination, that is, that no one may be excluded from possessing human rights on the basis of any of these prohibited grounds of discrimination. A typical sort of challenge to the universality of human rights comes about when someone tries to argue that a certain person or group of persons does not have the same human right as other persons, for instance, that women do not have the same right to own property as do men, or that blacks do not have the same right to vote as do whites, or that gays do not have the same right to the equal protection of the law as do straights.

Indivisibility, on the other hand, concerns not who has a human right, but rather what human rights people have. There are several hundred distinct rights mentioned in human rights declarations, treaties, and covenants that might justifiably be claimed to be human rights, which is why we always speak of “human rights” in the plural. Let us refer to this set of human rights simply as “the canon”. The contemporary canon of human rights refers to the entire set of internationally recognized human rights declarations and conventions, beginning with the Universal Declaration of Human Rights (1948) and including all of the subsequently drafted and enacted international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women, the Declaration on the Right to Development, the UN Convention on the Rights of the Child and several dozens of other international documents which identify and codify human rights norms. Given that each of these documents contain several dozen articles, many of which describe several, complex rights, all together there are well over one hundred particular rights that can be identified as “human rights” based on the canon.

Challenges to indivisibility typically come about in the context of national human rights policies in which the authorities or state officials allege certain rights contained within the canon do not apply to their societies. So, for instance, it has
been claimed that in Asian societies, individuals do not have a right to openly criticize their government, or in America, that people do not have a human right to basic health care. The claim here is not that only some members of the society have this right, but that the right itself is inappropriate or inapplicable to a particular national society. Arguments of this kind are logically compatible with upholding the universality of some human rights: All members of such societies have some of the human rights mentioned in the canon, just not all of the rights mentioned there. Some of the rights found in the canon, it is held, just don’t apply to the society in question, or aren’t really human rights at all. Challenges to indivisibility of this kind are also sometimes termed selectivity; some governments would like to pick and choose among the rights recognized in the canon which ones to honor and which not. This is logically different from denying the universality of a particular right, for in such cases it is allowed that some members of the society have the right in question, but it is also claimed that some members of the society do not on the basis of one or more of their personal characteristics. This is a selectivity of the bearers of human rights, while the former is a selectivity of the contents of rights. Of course, since they are separate, it is possible for some governments to claim both kinds of selectivity exceptions: they can claim that some human rights apply to their societies, but they only apply to some members of it, not to all, and, in addition, they can claim that certain other rights do not apply to their societies at all; that they are dispensable, optional, or unreal.

What are human rights?

It is, I believe, possible to provide a general philosophical answer such challenges of the doctrine of the indivisibility of human rights, but in order to do so one needs to understand what human rights are, how they function in ethical and political discourse, and how and why particular rights found in the canon are related to one another. To begin with we need a serviceable definition of what a
right is. Later on I will return to this topic and discuss the question of how human rights function.

Rights are normally classified in several ways: there are moral rights as well as legal rights, core and derivative rights, negative and positive rights, as well types of rights such as civil, judicial, political, economic, cultural, and social rights. But all of the rights classified in these various ways do have something in common, and this is the fact that they are all rights. But what is a right? To call something a right is clearly to give it a special moral status, but what does having this status entail? I offer the following basic definition of a right:

**Right (def)** = An agent A has a right R to a particular good G if and only if the possession of R by A provides the basis for a justified moral or legal claim that other members of society have duties D to protect A’s enjoyment of G.5

The particular goods G referred to here can range over many different sorts of things: e.g., interests, liberties, and powers, or access to the necessary means of satisfying one’s interests or exercising one’s liberties or powers. The sorts of claims derived from rights R can be either moral claims or legal claims or both, but in either case, they are claims that call forth duties from other members of society directed towards the right-holder. The corresponding duties of society can be ascribed to various different agents, e.g., governments, individuals, or in some cases, non-governmental organizations such as private agencies or corporations, and may include duties to prevent deprivations of G as well as duties to provide access to G to the right holders. What is important about rights is that they give their holders a basis for claiming that other agents within society have certain duties which they are bound to fulfill with respect to their, (i.e., the right-holder’s) enjoyment of certain goods. Rights, in short, are the ground of duties of others that benefit the right-holder.
This definition provides an adequate, but incomplete, analysis of the concept of a right. Rights exist in various stages of development or articulation. A fully articulated right has several additional elements: specific designated *addressees*, that is, individuals or agencies that are specifically responsible for securing or enforcing A’s rights; specific *scopes*, that is, adjudicated ranges of application and exceptions to particular classes of cases; specific *sources of justification* which are usually several, for instance, legal, moral, religious, cultural and so forth, and specific institutional *mechanisms of implementation*, for instance, courts, electoral commissions, schools, and so forth. We need not go into the details of such a fully articulated account of rights here though.

Before we proceed with the argument, it will be useful to have several other definitions. Harking back to our earlier analysis we can define universality as follows:

\[ \text{Universality (def)} = \text{A particular right } R \text{ is universal if and only if the normative standard embodied in } R \text{ is equally applicable to all persons living in all modern societies.} \]

Political views on human rights are said to be *selective* when their proponents claim that certain human rights are *not universal*, that is, either (a) that some rights do not belong to all persons or (b) that some rights do not apply to all societies. In either case, the implication is that some human rights contained in the canon can be divided from the system of rights and can safely be ignored or not effectively implemented without damaging the overall level of enjoyment of human rights by members of that society. Thus, the claim that human rights are *indivisible* can be understood as the following principle:

\[ \text{Indivisibility (def)} = \text{A system of rights SR is said to be indivisible if and only if each of the particular rights R comprising SR belongs equally to all persons, and none of the particular rights R comprising SR can be ignored or not effectively implemented without damaging the overall level of protection of rights enjoyed by right-holders.} \]
Note that the concept of indivisibility applies to the entire system or rights, not to particular rights contained within the canon. Indivisibility is a very strong claim. If it is true then none of the rights we have are optional, dispensable, or in error, and all are required, in some sense, for the system of human rights to function properly as a means of protecting the enjoyment of the goods guaranteed by human rights to their holders. We are now in a position to see how such a strong claim can be justified.

**Shue's Interdependence Argument**

Probably the best known argument for the indivisibility of human rights is that developed by Henry Shue. Shue bases his argument on his concept of basic rights. For Shue there are three categories of basic rights: security rights, liberty rights, and subsistence rights. These kinds of rights correspond roughly to the kinds of human rights recognized in the canon as civil and political rights and economic rights, though not all of the rights found in the canon will qualify as basic in Shue’s sense. For Shue, “…rights are basic in the sense used here only if the enjoyment of them is essential to the enjoyment of all other rights. This is what is distinctive about a basic right. When a right is genuinely basic, any attempt to enjoy any other right by sacrificing the basic right would be quite literally self-defeating, cutting the ground from beneath itself.” It is clear from this statement that Shue is arguing that basic human rights are interdependent in a certain way, and therefore, can be considered to be indivisible. But in what way or ways are human rights interdependent?

We can distinguish two basic kinds of interdependence:

**Logical Interdependence:**
R1 may entail R2 as being a specific instance or application of a more general right.

**Functional Interdependence:**
(strong) effective enjoyment of R1 requires the implementation of R2.
(weak) implementation of R2 supports R1 by making violations of R1 less likely.
An example of the first type of interdependence would be where a particular form of expression, say, those in which speakers disparage the morals of the President of the United States, is held to be protected by a more general right to freedom of speech or expression. Another, less obvious example would be the view that trade union rights, for instance, the right to form unions and bargain collectively, is held to be derivative of the more general right of freedom of association. There are, in my view, many specific examples that one can find within the canon of rights that are derived in this sense from more general or abstract rights by means of specification.

However, this is not the kind of interdependence that Shue has in mind. By saying that basic rights are “necessary to the enjoyment of all other rights” Shue clearly intends that there is a functional dependence among rights. To enjoy a good as one’s right means that there are effective social guarantees that the goods protected by the right will be actually available to the holders of that right and that the holders do in fact have access to those goods. It is possible to have a right to something, in the sense of having the basis of a justified claim, without enjoying that good in fact. There are various ways in which this can come about, but the most common is that the right is simply violated. It is also possible to enjoy a good, but not enjoy it as one’s right. In this case, one may, for instance, hold a job, as a matter of fact, but have no social recourse, for instance, to unemployment insurance or help finding another job, if that job is taken away. For Shue, the effective enjoyment of rights requires that three kinds of correlative duties be discharged in order for the right to be effectively enjoyed:

- Duties to avoid depriving;
- Duties to protect from deprivation; and
- Duties to aid the deprived.

Only when all of these kinds of duties are reliably fulfilled can one say that a right is being enjoyed. With this understanding we are now in a position to state Shue’s argument for the interdependence of rights:
Basic human rights to security, subsistence, and liberty are rights whose enjoyment is necessary to the enjoyment of all other human rights, both basic and non-basic.

There is at least one human right that ought to be effectively implemented. Therefore, the basic human rights to security, liberty and subsistence, which are necessary to the enjoyment of all other human rights, must also be implemented.\(^\text{10}\)

It is easier to grasp the force of this argument if one works from examples. Consider a society in which people are told that they have a right to freedom of expression, including the right to criticize their government, but they are also told that they do not have a right to personal security, in particular, they do not have a right not to be arbitrarily arrested. The former is one of Shue’s basic liberty rights, and the latter is one of his basic security rights. What happens when a group of people in this society holds a political rally during which several speakers criticize the present government? Well, the security police come in and arrest them and haul them off to prison without charging them with any particular offense. When the prisoners protest that their right of freedom of speech has been violated, the response from the government is that no it has not because they still have that right; they just don’t have a right not to be arbitrarily arrested!

This is a compelling argument. Evidently one cannot enjoy the right to freedom of expression unless one also enjoys the right to personal security from arbitrary arrest. The two categories of rights are functionally interdependent in the strong sense in which the effective enjoyment of one right requires the implementation or enjoyment of the other. Shue provides several other examples of this kind for other of his basic rights. For instance, subsistence rights, that is, “minimal economic security” consisting of access to, “unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, and minimal preventive health care,” are essential to the enjoyment of security and liberty rights, because, “No one
can fully, if at all, enjoy any right that is supposedly protected by society if he or she lacks the essentials for a reasonably healthy and active life.” He gives a parallel, but somewhat less obvious argument for basic liberty rights to political participation and freedom of movement. The gist of this argument is that if one cannot effectively participate in choosing one’s own government and its policies, there is no protection against a tyranny arising that would usurp political power and violate all of one’s other rights, and that freedom of movement is necessary in order for individuals to escape from such oppression.

Shue believes that all human rights are (strongly) functionally dependent on his three basic human rights to security, liberty, and subsistence, and he also believes that the three basic categories of rights are strongly functionally dependent upon one another. If this thesis is correct, then, his interdependence argument goes through, that is, if there are any human rights at all that ought to be universally enjoyed, (take your pick whichever ones you like best), then there must also be universal human rights to security, liberty, and subsistence, since enjoying any human right requires, in the strong functional sense, that one also enjoy these basic rights.

**Nickel’s Critique of Shue.**

Shue strong interdependence argument, however, does not stand up to critical scrutiny, in particular, it does not support the thesis that human rights form an indivisible system such that no human rights can be sacrificed or not implemented without weakening the overall protection afforded by the entire system of human rights. In other words, Shuian strong functional interdependence doesn’t get us to indivisibility. Shue himself admits as much in saying, “non-basic rights may be sacrificed, if necessary, in order to secure the basic right.” Consider as a candidate non-basic right, the right recognized in Article 16 of the Universal Declaration of Human Rights that says, “Men and women of full age, without any
limitation due to race, nationality or religion, have the right to marry and to found a family.” According to Shue, if this is a non-basic right, then it is possible to sacrifice this right in order to secure a basic right. So, for instance, if population pressure is such that people will not be able to satisfy their right to subsistence if they are allowed to have more than one child, then it may be legitimate for the government to “sacrifice” the right to marry and found a family in order to secure the more basic subsistence right. For some, this may be a persuasive argument, one that yields exactly the conclusion favored by one’s moral intuitions. However that may be, it cannot serve as an argument for the indivisibility of human rights, since that principle would oppose such selectivity.14

But there is a second reason to question Shue’s argument. Despite the compelling examples he gives it is difficult to show that the enjoyment of each of his three basic rights is, strictly speaking, necessary to the enjoyment of all other human rights recognized in the canon. James Nickel pioneered this line of criticism, he writes, for instance: “Shue goes beyond the true and important claim that effective protections of security are strongly supportive of many other rights to make the stronger claim — which I think is an exaggeration — that general protections of security are necessary to the implementation of every other right.”15 He goes on to state a version of the (weak) functional interdependence argument:

I doubt whether there are implicative relationships among rights as broad as those Shue claims to identify. It is clear, however, that many particular interrelations can be appealed to in justifying rights. A variety of supportive relationships are likely to exist within complex systems of rights, and thus many rights may be wholly or partially justified because of the support they provide for other rights that are already accepted as justified.16

Nickel does not question whether or not there might be some relationships among rights in the canon that qualify as strong interdependence in Shue’s sense, however, he does doubt that all human rights within the canon can be understood in this way, and suggests that there is a variety of “supportive relationships” among
human rights. We have already identified logical interdependence and strong functional interdependence as among these kinds of relationships. The question now is what other kinds of “supportive relationships” exist among human rights? While I think Nickel succeeds in showing that Shue’s strong interdependency argument cannot be sustained as a defense of indivisibility, his broad reliance on the weak version of the functional argument needs to be further developed. Many sorts of social conditions which are not human rights might be seen to be justified as human rights because they support, in a general sense, the enjoyment of some recognized human right or other. For instance, having a low inflation rate or a booming stock market or a large amount of arable land are conditions that, in general, favor or support the enjoyment of many human rights, however, we do not have rights to these things. The question that must now be answered is “In what particular sense do the various human rights within the canon functionally support one another such that none may be safely divided off or not effectively fulfilled without weakening the overall level of protection that rights afford?”

**Human Rights as Normative Responses to Experiences of Oppression**

Having earlier provided a general definition of what universal human rights are, we can now attempt to say how human rights function in moral discourse. My thesis is that human rights are a special class of universal moral rights that are essentially designed to defend human persons against various known forms of oppression, domination, and exploitation. Historically speaking, human rights are normative responses to experiences of oppression. To be oppressed is to be subject to the unjust or cruel exercise of authority or power, particularly, when those who exercise that power or authority are so dominant that the people who are oppressed cannot effectively protect their own basic interests through the exercise of liberties or powers at their command. Oppressed people are vulnerable in particular ways
because they are subject to domination by forces beyond their control. Taken as a whole, the canon of human rights provides a set of specific protections against various known forms of oppression and domination.

Since these protections are cast as rights, they function by calling forth duties on the part of other agents within society to protect and defend the important interests, liberties or powers of the right-holders. Social cooperation is required in such cases precisely because people are being oppressed are particularly vulnerable and they normally lack the ability or power to fully or effectively protect and defend their own interests. Together, the system of human rights norms function to protect human *dignity*, that is, on my interpretation, the condition of *not being oppressed* and therefore being *free* from the effects of external forms of power and authority which effectively prevent or inhibit the full realization of one’s basic interests as a human person. Human rights exist precisely in order to protect vulnerable individuals and groups from systems of domination and oppression that threaten their human dignity. This is their true function and is the key to understanding the specific sort of functional interdependence among them. Human rights are indivisible because the specific norms that comprise the canon of internationally recognized human rights each address a particular known tactic or technique of oppression, one that is either oppressive in itself or which facilitates the maintenance of systems of oppression. To deny indivisibility and so to allow governments to select which rights they will accept and those that they will not, allows oppression to continue by other means, and thus weakens the overall level of protection to human dignity that have rights provides.

Viewed in this way, each successive “generation” of human rights has arisen historically as a set of normative responses to policies, practices, and institutional systems that were experienced as oppressive by some group of persons. One of the oldest of all human rights, the right of *habeus corpus* arose in thirteenth century England because a group of English noblemen felt oppressed by the practices of the
King in dealing with their fellow noblemen — basically the King was “disappearing” them. Most of the rights of the Enlightenment, such as freedom of religion, arose because of the phenomenon of religious persecution and wars resulting from it were felt to be oppressive by many religious groups. The right against slavery, which, one must recall was only finally legitimated in the late eighteenth century, arose as a moral rebellion against this oppressive institution. And so on for all of the later rights in the “second” and “third” generations which are essentially responses to the forms of economic and political oppression and exploitation associated with the rise of industrial capitalism and colonialism. Trade union rights, for instance, are human rights because they provide some safeguards against the total domination of workers by their employers and empower workers to protect their own interests against these often much more powerful forces through collective bargaining. The most important “third” generation right, the right to national self-determination, is quite clearly a response to colonialism and imperialism and is designed to ensure that such systems of political and economic domination and exploitation of one people by another do not recur. Even some of the newest human rights, like the right to development, or the right to live in an unpolluted environment, are attempts to establish ethical and legal norms which will protect people against new threats to their well-being created by entrenched systems of power and domination upon which their fates depend but whose actions they cannot control.  

This general way of looking at human rights, though a historical and frankly pragmatic lens, is frightening to many scholars and human rights activists since it suggests that human rights are nothing more than malleable social constructions. Traditional philosophical theories of human rights have tried to avoid this suggestion by grounding human rights on divine revelation or transcendent rational principles or on some notion of universal human nature. It is easy to see why there is a desire to do this, for if the “dangerous hypothesis” that human rights are historically constructed social artifacts is correct, it seems impossible to defend the
twin doctrines of the universality and indivisibility of human rights. On what basis could it be argued that human rights belong to all persons if, in fact, they were invented by particular societies at particular junctures in their historical development as responses to particular historical forms of oppression? How can one defend the idea that the contemporary canon of human rights forms an indivisible and interrelated system if different rights belonging to this canon arose historically at different periods and in response to difference social practices and conditions in particular societies, with newer rights added on top of older ones rather like geological strata? And finally, how is it possible to regard our present understanding of human rights as somehow complete and uniquely authoritative, if in fact, it has evolved slowly and often painfully over several centuries, and is still changing?

Traditional philosophical theories of human rights have attempted to allay these sorts of doubts and answer these questions by supposing that human rights have a transcendent basis apart from historically and culturally situated human minds. The Enlightenment view likened the moral law on Earth to the laws governing the motions of the planets — something that was immutable, eternal, universal, and not subject to human will, but nonetheless laws, whose form we could discern through the careful exercise of reason. On this view, while our understanding of human rights may mutable and historically and culturally variable, the rights themselves are not. Kant supposed that the complete system of human rights exists in an imagined world of pure moral laws – synthetic a priori truths – whose features could be deduced by pure reason.

While it could turn out to be true, with further study, that something like the Enlightenment Project of grounding universal rights on human reason or nature will pan out, many twentieth century thinkers have abandoned the attempt to do this as arrogant and fanciful. To these thinkers it seems rather more sensible to regard human rights as products of the human moral imagination; as human techniques that have evolved historically to help control some of the most morally repugnant
aspects of human political behavior found in modern mass societies. Human rights, on this view, are no more written in Nature’s law than are other human inventions. We don’t discover them like Galileo discovered Jupiter’s moons; rather we invent them in order to serve particular purposes that we have come to regard as important, rather like Salk’s invention of the polio vaccine. 20

This kind of Post-Modern view of human rights is the kind of view I will defend here. But my view, I want to urge, is not at all a relativist view of human rights. Since I believe it is possible to defend the doctrines of the universality and the indivisibility of human rights from this perspective. Indeed I want to argue that adopting this Post-Modern perspective on human rights actually helps us to understand these features of the doctrine and explains things that are otherwise difficult to understand. I do not, however, wish to suggest that this kind of justification excludes other kinds of philosophical, religious, or cultural justifications for the belief in human rights. The particular human rights norms we have come to accept and recognize as legitimate are the consilient conclusions from several different and largely independent lines of reasoning and reflection. I only wish to urge that one of these lines of reasoning proceeds from moral inductions from historical experiences of oppression.

**The Interdependence of Human Rights Revisited**

But this level of discussion is still perhaps too theoretical. In order to discover why we have this particular set of human rights in the contemporary canon we need to look more closely at how the actual human rights in the contemporary canon came to exist. In an attempt to answer this question, Johannes Morsink, has written an important paper, and more recently, an impressive book, in which he demonstrates that many of the articles of the Universal Declaration of Human Rights, which is, after all, the foundation of the contemporary human rights canon, have their origins in particular reflections concerning the crimes committed by the
Nazi’s during the Holocaust. Morsink based this conclusion on notes and minutes of the Commission on Human Rights Drafting Committee, which developed the UHDR at the behest of the newly created United Nations Economic and Social Council. Among the most important documents that this committee used was a War Crimes Report that detailed Nazi practices. It was the description of these practices, and the shared moral revulsion against them, that provided the inspiration, and indeed, he says, the “epistemic justification,” for the particular set of human rights that the drafting committee ended up including in the text of the UDHR. As Morsink writes, “…the drafters of the Declaration did not deduce the articles of the Declaration from any abstract moral principles,”

On the contrary, the delegates went for the justification of each article back to the experience of the war. Each human right has its own justification, one that is discovered when that right is violated in some gross way. This link with experience explains why so many delegates from so many different social, political, cultural, and religious systems could nevertheless agree on a list of rights. They had witnessed the same horrors and therefore were able and willing to proclaim the same rights.

In order to see the deep truth of this analysis, consider one of Morsink’s examples, the right identified in Article 15 of the UDHR that says,

“(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

Why in the world do we have such a human right? What is so important about having a nationality anyway? Most all of us take this fact for granted and do not worry much about losing our nationalities. Does having a nationality even qualify as an important or vital interest of human beings? Is it something whose value can be deduced from abstract features of human agency or reason? It seems not. The true explanation lies elsewhere.
On November 8 1939, generally known as Kristallnacht, or the night of broken glass, the Nazis launched their campaign to exterminate the Jews of Europe. The Nuremberg Laws of 1935 had already taken many of the civil rights of Jewish citizens of Germany away from them, but in November 1939 Jews were also stripped of their German citizenship. By this one stroke, Hitler had made all Jews pariahs, made them prey to the whims of any petty bureaucrat or thug, and deprived the Jews of Germany standing in German courts to protest their treatment by legal means. When Adolf Eichmann took over the Bureau of Jewish Affairs in October of 1940, one of his first tasks was “the withdrawal of nationality and citizenship and the confiscation of property.”23 Since by then many German Jews had fled to seek refuge in other countries, and many others were citizens of countries which the Nazi’s now occupied, the trick of the revocation of citizenship also allowed the Reich to arrange for Jews living in occupied or allied territories to be deported back to Germany as “stateless persons.” Thus, in deporting French Jews from occupied France, it was “arranged” that they should become “stateless persons” once they crossed the border into Germany. This was important for two reasons: “it made it impossible for any country to inquire as to their fate, and it enabled that state in which they were resident to confiscate their property.”24 However, even with this policy, the Nazi’s did not harm or deport Jews who held valid passports25 from foreign countries not occupied or allied with Nazi Germany, for fear of retaliation against German nationals residing in these nations. Thus, proof of citizenship – the having of a nationality – could mean the difference between life and death for people who were victims of Nazi oppression. As Morsink summarizes it, “To be without a nationality or without any citizenship is to stand naked in the world of international affairs without protection against the aggression of states – an unequal battle in which the individual is bound to lose. As the Nazi practices show, the right to a nationality is not the luxury it may seem at first glance.” Further evidence for Morsink’s hypothesis can be gleaned from the following examples.
**Principle of Nondiscrimination**

**Crimes:** In Nazi Germany Jews were systematically deprived of their legal rights and then murdered simply because of their religious, ethnic, or (according to Hitler) racial identity.

**Normative Response:** UDHR Art. 2 - *Everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

**The Right to Life**

**Crimes:** mass executions, Einsatzgruppen, euthanasia of “useless eaters,” increased use of the death penalty, arbitrary executions to set examples, gas chambers…

**Normative Response:** UDHR Art. 3 - *Everyone is entitled to life, liberty, and security of person.*

**The Right Against Slavery**

**Crimes:** forced labor, sexual slavery, ill-treatment of prisoners of war, inhumane conditions in concentration camps…

**Normative Response:** UDHR Art. 4 - *No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all of their forms.*

**The Right to a Legal Personality**

**Crimes:** Nazi courts declared Jews to be legally incompetent and stripped them of their legal rights making them defenseless against the state.

**Normative Response:** UDHR Art. 6 - *Everyone has the right to recognition everywhere as a person before the law.*
The Right to Asylum

**Crimes:** Jewish and other refugees fleeing the Nazi Holocaust were often denied entry into countries of refuge and returned to German-occupied countries where they were often killed.

**Normative Response:** UDHR Art. 14 - (1) *Everyone has the right to seek and enjoy in other countries asylum from persecution.*

The Right to Marry and Found a Family

**Crimes:** Hitler’s 1935 Nuremberg Laws made it a crime for Jews to marry or have sex with Aryans. Those regarded as mentally defective were forcibly sterilized.

**Normative Response:** UDHR Article 16 – *Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution.*

A number of important points can be drawn from these examples, which are only several of many illustrations Morsink provides of how the rights proclaimed in the UDHR arose. The first general point is that we recognize our human rights through reflection on real historical experiences of oppression. Human rights norms arise from a process that can be called “moral induction.” The general pattern of moral induction is as follows:

- A morally abhorrent practice P is observed.
- A moral norm N is constructed, which, it is believed, were it promulgated and enforced, would prevent or protect people against P.
- A democratic consensus is gathered around N that legitimizes N as a valid moral claim.
- N comes to be recognized as a morally justified human right.
- N (or something close to N) is incorporated into the canon of internationally recognized human rights laws.
- N is applied to other cases in which P is observed.
Like other forms of induction, moral induction proceeds from observed facts to more general laws or principles that apply to new cases. However, the “facts” upon which moral inductions are based represent “wrongs” or “crimes” which we observe with our “moral sense.” The human moral sense is a complex thing, compounded of biological, social, and psychological elements. It too evolves as our moral experience as a species changes. Moral observation is not, therefore, “theory-independent” to start with, but then again, neither is scientific observation. The basic step from 1 to 2 in the process involves what Camus called “moral rebellion,” that is, the act of “drawing a boundary” or “setting a limit” on human behavior that is intolerable. From there, the process move to framing an appropriate moral norm that would thwart that form of oppression or oppressive tactic, often involving no more that issuing a prohibition against it, although here one often runs into problems of definition. Then the moral entrepreneurs who create this normative response try to “sell it” to others in an effort to validate their intuition and gain political support for enacting their moral norm as law. In the latter stages of the process in which the moral norm is transformed into a legal requirement, the original moral norm is debated, dissected, often diluted, compromise language is drafted and eventually agreed upon, and something like the original norm enters the canon. Once “canonized” the particular norm can be applied to new cases where the same or similar forms or techniques of oppression are observed.

A second and related point is that this historical reflection allows us to understand that particular oppressive practices and acts, or what might be called “techniques of repression,” function as parts of systems of oppression. For instance, had there been a human right against depriving people of their nationalities, the Nazi’s would have found another way to accomplish their purpose, say, by simply declaring that Jews were not to be regarded as “equal” citizens. But this technique would have run afoul of another later-proclaimed human right, namely the right identified in UDHR Article 7 that says, “All are equal before the law and are
entitled without any discrimination to equal protection of the law.” But if this right already existed, they might have tried to simply declare all unwanted categories of persons to be “slaves.” But this would have run afoul of the right in Article 4, and so forth. Oppressors can be very creative in finding new ways to exercising their will upon those whom they wish to oppress.

And the third important point is that just as techniques of repression can form a system in which different particular techniques support and reinforce one other to form a system of oppression, so too different human rights are responses to particular techniques of repression and function as parts of system of ethical and legal norms which is designed to thwart systems of oppression. Human rights, in other words, must be functionally interdependent since if they were not, tyrants and oppressors will simply employ a different technique of repression to maintain their systems of oppression. This is why human rights have to always be plural: they will only work if one can “close all the doors” through which oppression can come.

In summary, there appear to be two kinds of reasons why something gets put into the list of “human rights:” First, it is itself a response to a particular technique of repression in which people are denied a basic liberty, interest, or power. And Second, because it has often been found to support and facilitate other techniques of repression which function within systems of oppression which have been used abusively in known historical cases in order to maintain the control of one group of persons over another. Understanding the particular historical origins and functions of our existing human rights norms goes a long way toward helping us understand why the human rights contained in the contemporary canon are interdependent and indivisible. Human rights form of system of norms which functions to protect human dignity by thwarting systems of oppression. Though they have individual and particular justifications in themselves, they form a unity because the techniques of repression that they are designed to combat also form a unity as parts systems of oppression. This is why human rights activists oppose efforts by governments to
declare that certain rights are non-binding, or optional, or even “unreal” or to
declare that certain categories of human right “don’t apply” to their societies: They
understand that allowing this kind of exceptionalism and selectivity to go unchal-
lenged is tantamount to allowing oppression to proceed by other means. This
account also explains, at least in part, why the system of human rights is “open-
ended” and is expanding: As oppressors invent new techniques of repression, so the
human rights movement needs to invent new norms which will effectively thwart
these new techniques of repression.28

The human rights system represents, then, a kind of ethico-legal paradigm
whose core is an implicit theory of human oppression. Our belief in human rights is
justified experientially by its links to known, historically given, forms of oppres-
sion, and it is justified pragmatically by its serving as a tool for combating newer
instances or variants of these known forms of oppression. While the particular
values that human rights norms are designed to protect are discovered through
historical reflection on particular instances of oppression the rights themselves are
always framed in a general way so as to cover both known past instances as well as
possible future instance of the same type of oppression or variations on those kinds
of techniques of repression. This is what enables them to function as protective
shields – they draw out and distill the particular lessons of history into a system of
norms that will, if properly implemented, prevent known types of human oppres-
sion.

Strategies for Defending Indivisibility

Before concluding this lecture I want to take a few more minutes to respond
to some objections that might be raised against the view presented here and to
clarify my position in order to avoid some possible misunderstandings of it. On my
view, human rights norms can be considered to be normative hypotheses. Like
empirical hypotheses in science, normative hypotheses involve an induction from
known or observed cases to unobserved cases of particular kinds of phenomena. Scientific hypotheses concerning the properties of a certain kind of thing may be first discovered by reflection on a particular set of observations about the behavior of a particular thing, however, it applies, insofar as it is empirically validated, to everything of that kind, both those that have been observed and those that have not yet been observed. Of course, empirical validation normally requires that the hypothesis be tested against newly observed cases. The same is true of the normative hypotheses that comprise the system of human rights: They have been and are being tested against new historical experience. In some cases, this new experience leads us to believe that the particular norms we have devised are adequate descriptions of the phenomena of oppression we are experiencing. In other cases, new experience may lead us to revise our received norms, and in still other cases we may be led to create or construct new norms to deal with new kinds of oppression. So the human rights system is an evolving or dynamic system of safeguards that does (and should) respond to our growing understanding of particular techniques of repression and of different systems of oppression.

However, this analogy with scientific hypotheses breaks down in an important way: While the goals of scientific theorizing are to describe, predict, and explain the behavior of things, the main goal of human rights theorizing is to prevent human oppression. While it is certainly the case that part of what is involved in preventing oppression is understanding its known forms, his history, and its causes, this is not sufficient. We also need to know what is effective in preventing oppression and in dismantling existing systems of oppression. In this respect, the human rights theory is more like an experimental medical treatment: It is designed to prevent or cure disease or disability, not only to understand it. Thus both medical research and human rights research have particular normative goals under which they are conducted. In fact, from a certain point of view, human rights work is really a kind of applied public health work, since most human rights
violations are indeed dangerous to one’s health! The main differences have to do with the causes and etiology of these threats to human survival, well-being, and flourishing. While most of the diseases and disabilities that afflict humankind are spread unintentionally and by natural processes, human rights violations are committed intentionally by particular conscious human agents and are spread culturally by these same agents. Tyrants and oppressors must also learn the tricks of their trade, so to speak, and the same history books that can teach us how to thwart oppression, can also teach them how to do it. Just as techniques of repression can be more or less effective means for members of one group to assert its power or control over others, so also different ethical and legal norms, or different kinds of social institutions and practices, can be more or less effective means of thwarting or removing oppression. So just like medical treatments for diseases, human rights norms are justified, in the end, by whether or not they “work” to achieve the goal for which they were created, namely the goal of ridding the world of oppression.

There are, however, likely to be several kinds of objections raised against this account. I want to briefly response to several of them. The first objection says that the argument concerning the particular historical origins of the rights in the UDHR proves that human rights are ethnocentric after all. The first answer to this objection is to point out that it is a form of the genetic fallacy to argue that a hypothesis may be disproven because of its particular origin. Hitler argued that Einstein’s theory of relativity must be wrong because Einstein was a Jew. This is obviously a poor argument. So are the arguments that since bicycles were invented in France, they won’t work in China, or that since gunpowder was invented in China, it doesn’t explode in France. These are obvious non-starters. However, some people are more impressed by arguments of this kind that suggest that “social artifacts” don’t always translate into cultural contexts different from those they originated in. This argument is somewhat more plausible, and I will revisit it shortly. My only point at the moment is that the mere possibility that this is the case does not show that it is the case.
A second point I would make in response to the charge of ethnocentrism is that while the Nazi Holocaust was indeed a unique system of oppression, many of its main features can be and have been found in other cases. Oppression, recall, is not subjective, but rather depends on objective abuses of power, and the experience of oppression is, unfortunately, not restricted to European Jews and other victims of the Holocaust. In fact, it is difficult to find any group of people on Earth who have not had some experience of oppression. As Stuart Hampshire has sagely remarked, “There is nothing ‘subjective’ or culture-bound in the great evils of human experience, re-affirmed in every age and in every written history and in every tragedy and fiction; murder and the destruction of life, imprisonment, enslavement, starvation, poverty, physical pain and torture, homelessness, and friendlessness. That these are evils to be avoided is the constant presupposition of moral arguments at all times and in all places….”

That many of the human rights norms we now have emerged from reflection on historical experiences of oppression found in Western societies is attributable to the fact that these same societies have been quite inventive of new forms and techniques of oppression which they have frequently deployed against minorities in their midst as well as against conquered or colonized peoples in other lands. The Western human rights tradition is as rich as it is in large part because the West has been as bad as it is.

A second line of objection to my position holds that the argument I make does not prove that every particular practice forbidden by human rights norms always functions as oppressive or as part of a system of oppression in every cultural context in which it is found. It may be, this argument holds, that the norms we have “over-generalize” and characterize as oppressive certain cultural practices that are really quite benign. For instance, while the prohibition on marriages between Jews and Aryans was part of a system of oppression during the Holocaust, facially similar practices found in many societies, such as cultural taboos against inter-racial or inter-religious marriages, are not oppressive but are merely a way of maintaining
distinctive cultural identities.

This sort of objection is more reasonable, and could in certain cases succeed. However, in testing the applicability of a particular human right to a new society one must ask, “Does the form of oppression that the norm was designed to protect people against exist in that society?” If it does, then there is a *prima facie* case that the norm applies. If not, then the norm is not presently applicable, but may become so in the future. In the latter case, human rights are a form of social insurance, which may cost something, but are worth it. In the example we are working with there is an important difference between a cultural taboo and a law. The human rights norm prohibits laws making it a criminal offense to marry a person of a difference race or religion. As long as it remains legal to marry the person of one’s choice, the cultural taboo does not constitute a part of a system of oppression, because individuals have it within their power to go against it. Things change significantly however, when the power and authority of the State back up such taboos. At this point, they do become oppressive and are generally experienced as such by couples who run afoul of such laws. Having the human rights standard apply to the society in question serves as a means of preventing this from happening, and therein lies its moral justification.

But this objection continues, but it is simply not the case that every society at every time manifests the each of the various forms of oppression and domination that the system of human rights norms is designed to thwart for all of their members. For instance, how do trade union rights and related economic rights apply to societies whose members survive on subsistence agriculture or hunting and gathering? Clearly these rights only “apply” to industrialized societies, and it makes no sense to ascribe them to societies that have not industrialized. While this line of reasoning appears plausible, it is easy to counter. The claims that human rights are universal and indivisible express the idea that *should* such conditions manifest themselves every member of that society is *entitled* enjoy all of the
protections that human rights afford. That is, it would not be okay for a multina-
tional corporation to set up a factory in a subsistence economy, exploit the people as
cheap labor, and claim in its defense: “because this is a subsistence economy these
rights don’t apply here.” If the form of oppression exists, or could exist, there is a
prima facie case that the norm applies.

But, the objector continues, what if there is really no realistic possibility that
anyone would want to set up a factory in this society, that is, there is really no
credible threat that people in that society could become exploited laborers. In this
case, I would have to admit that there would be no reason to hold that the particular
human rights norms in question “apply” to such a society. It would in this case
represent a form of social insurance for which there was no need; like taking out
flood insurance in the desert. While this is interesting in principle, I would ask the
objector to name an example of any actual human society for which this is even
plausible let alone true.

The third and final objection I shall consider holds that on my theory there is
no reason to suppose that our present system of human rights is complete or
finished, nor that it is not going to be subject to revision from time to time. I agree
with this objection and think that it is importantly true. The contemporary human
rights paradigm is constructed upon an implicit theory of human oppression, but we
have little reason to think that this is a complete and finished theory. Since the
UDHR several new kinds of human rights violations and abuses have been
identified and added to the canon, and this process should continue; as new morally
abhorrent practices are observed, new norms should be created in response to them.
In fact, since 1948 when the UDHR was passed, several new human rights move-
ments have arisen that have substantially altered our understanding of human
rights. The women’s rights movement, for instance, has made us rethink the
division between “public” and “private” abuses and taught us to regard rape as a
human rights violation. The movement for the rights of indigenous peoples has
expanded our concept of cultural rights to include “land rights” and the right to
preserve a distinctive cultural identity. The gay/lesbian/bisexual human rights
movement has taught us that discrimination based upon sexual preference is wrong.
One can give other examples of how our conception of human rights continues to
evolve as new voices are heard and new forms of oppression or experiences of
oppression are brought to light and new norms evolve or older ones transform
themselves to embrace our new understanding. This is the characteristic of progres-
sive theories generally, and fortunately, the human rights paradigm continues to
progress in this way.

One of the ways in which the human rights paradigm progresses is by finding
resources within itself to fend off illegitimate criticisms. The political views that I
characterized at the outset as selective are one type of illegitimate criticism of
human rights standards. When proponents of such claims state that certain human
rights are not universal, that is, that they do not apply to their societies, they are, on
my view, making an illegitimate claim if their only reason for thinking this is
because the norm in question arose in a different cultural context. However, I do
not insist that such objections are necessarily illegitimate or incorrect. What I am
arguing for is a kind of defeasible universality. On this type of account, the univer-
sality of any particular human right R, and therefore the corollary thesis of its
indivisibility of that right from the canon can, in principle, be challenged and
defeated. The burden of proof, however, rests with those who would mount such
challenges. Selectivity claims can be justified only if it can be shown that a particu-
lar human rights norm does not directly address a known form of oppression and it
does not provide support for other norms in thwarting known systems of oppres-
sion, or if it can be shown that there is no realistic danger that such forms of
oppression could come to exist in that particular society. Failing convincing
evidence that these assertions are true, government policies that claim justification
for selecting among human rights are only another technique for perpetuating
unjust and oppressive institutions and practices, and should therefore be firmly resisted.


3 I employ the term “human persons” as the interpretation for the pronoun “Everyone” which appears in most articles defining human rights. The term covers what are generally regarded as “undoubted persons” but excludes controversial cases such as human embryos, young fetuses, and the permanently comatose. It also excludes such categories of possible non-human persons as cetaceans, higher apes, and hypothetical hyper-intelligent robots or extra-terrestrial species. While some embryos may be human, but are not persons, and whales etc., while they might be persons, are not humans. Neither of these types of beings are, in my view, holders of “human rights.” However, saying this does not preclude that they may be the holders of some other kind of rights or be the objects of human obligations.

4 Note that I say denied the *possession* of a right rather than the *enjoyment* of a right. People are often denied the enjoyment of particular human rights because of discrimination, but these are human rights violations, since the persons in question possess the rights in question, even though they are not being observed or respected. To challenge universality is to deny that some groups of persons even have human rights at all. This use of the term is, admittedly, somewhat different from other standard uses in which, for instance, the claim that human rights are universal is contrasted with the view that they are culturally particular. This sense of universality, I want to suggest is really the concept of *indivisibility,* that all rights apply in all modern societies despite cultural, historical, and social differences among them.

6 By inserting the qualifier “modern” I intentionally leave aside for purposes of this discussion the question as to whether the human rights which we now recognize as belonging to the canon apply retrospectively to historical societies, such as ancient Greece or Rome, China or India, Africa or Pre-Colonial America. As I use the term “modern” all contemporary societies, no matter what their particular social, cultural, political, or economic characteristics, will qualify as “modern” simply on account of their temporal location in the historical present.


8 Ibid. p. 19.


11 Ibid. p. 24 ff.

12 Shue argument for liberty rights being basic is complex and I cannot do adequate justice to it here. Interested readers should consult the original, especially pp. 65-88.

13 Ibid. p. 19.

14 It might be said in Shue’s defense here that the term “sacrifice” might be intended to convey only the possibility of limiting or circumscribing the scope of the right to marry and found a family, not failing to recognize it as a legitimate human right at all. Certainly, any reasonable theory of rights must allow for the possibilities of conflicts among recognized rights in which the scope of one right is limited by the need to preserve another right. This process of adjusting the scope and relative weight of rights, however, presupposes that one recognizes them as rights in the first place. Selectivity claims, on the other hand, deny that certain human rights are rights at all, or claim that they do not apply at all within a particular society. If one reads “sacrifice” in this sense, then my point against Shue stands.


16 Ibid.

17 Oppression is an objective concept, not a subjective one. It has to do with the objective relations of power within particular societies, between individuals and groups, including the ruling class. Subjectively, one can feel oppressed without really being oppressed if in fact one has the power to protect one’s own basic interests from standard threats, even if one does not recognize or exercise it. On the other hand, people can be oppressed without feeling or knowing they are oppressed, which is the more common condition, since what Black Consciousness leader Steven Biko called “the colonization of the mind” is a common feature of many systems of oppression. However, it is generally true that people realize when they are being oppressed or can be brought quickly to that realization when the objective conditions of their lives warrant it. This is why the experience of oppression
is a generally reliable guide to the existence of oppression.

18 This brief account is, of course, only an historical sketch of the development of the idea of human rights. For a much fuller and more detailed account, one that I believe bears out the main line of my argument, see Paul Gordon Lauren. *The Evolution of International Human Rights: Visions Seen.* Philadelphia: University of Pennsylvania Press, 1998.

19 Richard Rorty is probably the best-known contemporary philosopher to take this position. It is reflected in many of his writings, particularly in, his *Contingency, Irony and Solidarity.* Cambridge: Cambridge University Press, 1989.

20 To say the human rights are social constructions does not at all imply that they are “unreal” or somehow “fictional,” any more that saying that Manhattan is a social construction implies its unreality. Human rights, however, are not material artifacts, like skyscrapers. Rather, they are social institutional facts. For a general account of the construction of such social institutional facts see, John R. Searle. *The Construction of Social Reality.* New York: Free Press, 1995.


22 Morsink (1993), Ibid., p. 399.

