

Human Rights, Individualism and Cultural Diversity

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ABSTRACT

Two features of human rights discourse are often targeted for criticism: its universalism and its individualism. Both features, it is standardly claimed, illegitimately overlook the significance of cultural diversity. But in this paper I argue that individualism is incompatible with universalism and compatible with cultural diversity. Thus I defend the view that human rights are individualistically justified, and I argue that it follows from this that human rights are in an important sense non-universal. I go on to show how my non-universalist conclusion can provide the basis for a retort to those who appeal to facts about cultural diversity in order to criticise human rights discourse.

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1. INTRODUCTION

Two features of human rights discourse are often targeted for criticism: its universalism and its individualism. Both features, it is standardly claimed, illegitimately overlook the significance of cultural diversity.¹ But in this paper I argue that individualism is incompatible with universalism and compatible with cultural diversity. Thus I defend the view that human rights are individualistically justified, and I argue that it follows from this that human rights are in an important sense non-universal. I go on to show how my non-universalist conclusion can provide the basis for a retort to those who appeal to facts about cultural diversity in order to criticise human rights discourse.

My individualistic non-universalist position can be illuminated with an example: Parekh mentions '[t]he practice, common among some African communities, of scarring their children's cheeks or other parts of the body as part of the initiation ceremony' (Parekh 2000, pp. 264-65). Does this practice violate children's human rights? Or would banning the practice violate their human rights? The approach I develop focuses on where we need to look before we can answer these questions: we need to establish what each individual child's specific right-justifying features are. I hold that some children's right-justifying features will differ from those of other children, and their human rights will thereby differ. For instance, while some children will hold a right-justifying interest in not being compelled to suffer pain (an interest that justifies human rights that would be violated by scarification), for other children this interest will not be of right-justifying importance, and for further children its great importance will be overridden by still more important interests that justify differing human rights (e.g. some children might hold a right-justifying interest in being able to live their parents' way of life, an interest that justifies a human right that would be violated were scarification practices banned). So some children will hold human rights that are violated by scarification, while others will not, and further children will hold human rights that would be violated by banning the practice. A number of these varying human rights will be individually specific versions of more abstract human rights shared by many people (e.g. the human right to a minimal degree of autonomy). But on my approach the varying specific human rights are no less fundamentally morally important than the shared abstract human rights of which they are specific versions. Indeed, I argue that there are only a few universally shared human rights and these are extremely abstract.

The paper has the following structure: I start, in §2 below, by arguing for the thesis that human rights are individualistically justified. I clarify how this should be understood: both liberals and non-liberals can (and should) adopt the thesis that human rights are individualistically justified; and this thesis is compatible with the insights of communitarianism. In §3, I show that if human rights are individualistically justified, then given the diversity of individuals' interests, concerns, and other potential human-right-justifying features, it follows that not every person will hold the very same human rights as everyone else. Finally in §4, I show how this conclusion – that different people will hold different human rights – can help human rights discourse overcome the charge that it is insensitive to the moral outlooks of cultures with values different to those of the Western European and North American societies in which the concept of human rights emerged. The individualistic approach entails that a person from a 'non-Western' background will

hold human rights, but these can differ significantly from the human rights held by a 'Westerner'.

2. HUMAN RIGHTS AS INDIVIDUALISTICALLY JUSTIFIED

2.1 *The concept of human rights*

I use the phrase 'human rights' to refer to any morally justified rights that satisfy the following three conditions: (i) they are of great moral importance; (ii) governments ought to respect them; (iii) they exist whether or not they are legally or institutionally recognised. On my usage, we can contrast human rights with morally unjustified rights such as the feudal 'droit de seigneur', and with morally justified rights that only exist because they are legally instituted, such as my right to walk the West Highland Way. We can also contrast human rights with morally justified pre-legal rights that are of comparatively low moral importance, such as my right that you keep your promise to meet me for a drink this evening.²

2.2 *The concept of individualistic justification*

I understand a right as individualistically justified when that right's existence is morally justified ultimately by how it serves *its holder*, while a right is non-individualistically justified when that right's existence is morally justified ultimately by how it serves *some aggregate or group, which might but need not include the right-holder*. Many theorists hold positions that imply that all rights are individualistically justified in this sense: according to Raz in *The Morality of Freedom*, each right held by a particular person is justified ultimately by some interest of that person (Raz 1986, pp. 165-216; Waldron 1988, pp. 62-105); according to Hart and, more recently, Griffin, a given person's rights are justified ultimately on the basis of the moral importance of that particular person's freedom (Hart 1955 pp. 190-191; Griffin 2001a, pp. 3-5 and 2001b, pp. 318-320)³; according to Lomasky and Sanders, a person justifiably has a right if and only if this right protects that person's chosen projects (Lomasky 1987, pp. 16-83; Sanders 2002). These theories differ in what they see as the right-justifying feature of a person P. But each theory shares the individualistic view that some feature of P (P's interest, freedom or project) is sufficient on its own to ground the justification for a right for P.

Individualistic theories contrast with consequentialist and certain communitarian theories. According to consequentialist theories, a right for a particular person is morally justified if and only if such a right serves the collective interest (Sumner 1987, pp. 163-98; Brandt 1992, pp. 196-212). Similarly, on certain communitarian approaches a right for a particular person is morally justified if and only if such a right serves some community or group. These approaches are non-individualistic because they do not justify a right for a particular person P ultimately on the basis simply that such a right serves or protects that right-holding person P.⁴

2.3 *A two-tier theory of rights*

Each of the theories mentioned above either sees the justification of all rights as individualistic or as non-individualistic. But there are powerful reasons to reject either a fully individualistic or a fully non-individualistic theory of rights. Philosophers such as Rawls and Dworkin have noted that non-individualistic theories give inadequate accounts of the morally fundamental rights (such as rights protecting essential freedoms or bodily integrity). Non-individualistic theories imply that if the collective interest or the welfare of some group would be best promoted by denying fundamental rights to certain people, then there would be no justification for the

existence of such rights for the relevant people (Rawls 1971, pp. 26-27; Dworkin 1984). This implication is unattractive, and the individualistic approach offers an appealing way of avoiding it: the individualistic approach grounds a person's rights ultimately in what they do for that person, independently of how the rights serve or disserve that person's wider group.

It would be taking Rawls's and Dworkin's point too far, however, to hold that all rights must be individualistically justified. I shall not develop this claim fully here, but it seems to me that many rights - including most property rights and promissory rights - are not of the community-trumping importance that the individualistic approach entails. If my property rights over my pen were individualistically justified, then there would be some respect in which *what my pen does for me* must be of sufficient importance to ground a justification for rights for me, independently of whether these rights would serve others. But there is not, in my view, any sense in which *what my pen does for me* is as morally important as this.⁵ For this reason, while it is attractive to maintain a role for individualistic justification in justifying the fundamental human rights, we should also leave space for consequentialist or communitarian justifications of less important morally justified rights, including most property rights: such rights are justified by how they serve the wider community. Thus, I believe we should adopt the two-tier thesis that *human rights are individualistically justified while other morally justified rights are non-individualistically justified*.⁶

2.4 Liberalism, communitarianism and individualistic justification

In this paper, the claim that human rights are individualistically justified drives the argument. Before proceeding, I should make clear that this claim is not distinctively liberal nor (except in a narrow sense) anti-communitarian.⁷ The claim is not distinctively liberal because it is compatible with the view that people's human rights are not ultimately justified by their liberty. For example, the claim that human rights are individualistically justified is compatible with the view that most people's human rights are justified by their individual well-being, and that liberty is not central to well-being.

And the claim that human rights are individualistically justified is anti-communitarian only in the narrow sense that it excludes the possibility that a person's human rights could be justified ultimately by what they do for that person's group or wider community (see §2.2 above). My individualistic claim is compatible with a range of further plausible communitarian theses; this is because the claim is not an 'asocial individualism' (Mulhall and Swift 1996, pp. 13-18, my emphasis). For example, the claim is compatible with Michael Walzer's contentions:

All the goods with which distributive justice is concerned are social goods [...]

Men and women take on concrete identities because of the way they conceive and create, and then possess and employ social goods (Walzer 1983, pp. 7-8).

Walzer's theses – shared by other communitarian writers (Taylor 1979a; MacIntyre 1981; Sandel 1982) – are that what is valuable, what an individual values, and what makes an individual the person that he or she is, are causally and conceptually determined by that person's social environment. These theses are compatible with my claim that human rights are individualistically justified. Individualistic justifications, as I have explained them, obtain when certain features of an individual are of sufficient importance on their own ultimately to ground rights for that individual. These individually-held right-justifying features need not be causally or conceptually independent of the individual's society and community - instead, they will often be causally and conceptually shaped by that individual's social environment.

For example, one individualistic theory might hold that *Philip's virtuous character* requires respect through Philip's holding rights. Suppose that Philip has a virtuous character because he is humble and self-effacing, and that Philip's humility and self-effacingness are a causal product of the family and wider community within which he grew up. Suppose also that it is only because of certain social facts (e.g. concerning the symbolic or religious importance that Philip's community attaches to the rejection of arrogance) that humility and self-effacingness qualify as a virtue.⁸ In this situation, Philip's virtue is both causally and conceptually dependent on social facts about Philip's community. But the fact that Philip's virtuous character is socially shaped does not undermine the fact that any rights for Philip whose justification is grounded ultimately in his character are, in my sense, individualistically justified.

Although my aim here is to show that communitarian theses are *compatible* with individualistic justification, we should go further and endorse the communitarian theses as correct. Many features of an individual that plausibly ground individualistic justifications of rights for that individual (e.g. the individual's interests, freedoms, projects) will be created by that individual's social environment.⁹ This is why I have eschewed the phrase 'natural rights'. In a society-free state of nature, Mary would lack many features that individualistically justify her human rights in the actual social world. For example, suppose Mary's human right to political participation is individualistically justified by her interest in political participation. In a state of nature, Mary will lack any interest in political participation: such an interest seems causally and conceptually dependent on types of community that are excluded from the state of nature. Thus in a state of nature, Mary will lack her individualistically justified right to political participation. According to my account, Mary's right to political participation is therefore a human right but not a natural right: it is a right of great moral importance, governments ought to respect it, and (because it is individualistically justified) it would exist even if it was not institutionally recognised. But it would not exist in a society-free state of nature. The communitarian's insight is that many human rights are dependent in this way on the existence of societies. This does not undermine the thesis that such human rights are individualistically justified. Instead, communitarians should be happy to accept that only by regarding human rights as individualistically justified are certain important (and, often, socially shaped) features of individuals adequately protected.¹⁰

3. THE NON-UNIVERSALITY OF HUMAN RIGHTS

3.1 *The weak thesis and the strong thesis*

If human rights are individualistically justified then it follows that different people will hold different human rights. The thesis that human rights are non-universal is gaining popularity. Parekh has recently written:

It is obvious that different societies are based on different ideas of human excellence and define human beings and their humanity differently. In some East Asian societies, the right to be cared for by one's children in one's old age is widely seen as a fundamental moral right. [...] [T]hese rights are seen by the societies concerned as central to their conceptions of a good or dignified human life. There is no valid reason to deny them the status or the name of human rights simply because they are not universal.

The societies involved may not mind if others follow their lead and claim these rights. However, unlike the West, they have no interest in spreading their view of human rights. All they claim is that for them these rights are human rights and are just as important as the rights to life, liberty and property that are stressed in the West. To accommodate their legitimate claim, we need to break the link between universality and human rights and to acknowledge that while some human rights are universal, others are not or need not be (Parekh 2004, p. 23).¹¹

My argument will provide principled reasons to follow Parekh's advice and 'break the link between universality and human rights'. And in examining these reasons, I shall also delineate the limits to Parekh's non-universality thesis.

We should distinguish a strong and a weak version of the non-universality thesis:

Strong thesis: For any human right held by any given person, there can be other people who do not hold that human right. In other words, there is no sub-set of the human rights that all people must share.

Weak thesis: The full set of human rights held by any given person need not be identical to the full set of human rights held by every other person.

The strong non-universality thesis entails the weak non-universality thesis, but the weak thesis does not entail the strong. For example, the weak thesis is compatible with the view that all people must hold human rights not to be killed or tortured, while some people and not others also hold human rights to vote, or human rights to be cared for by their children in old age. By contrast, the strong thesis would deny that any given human right – such as the right not to be killed – must be held by all people.

3.2 *Arguing for the weak thesis*

All human rights, I have argued, are individualistically justified. The weak non-universality thesis follows from this because *the features of a person that are of individualistic right-justifying importance will take varying forms in other people*. This follows fairly immediately from reflection on the nature of the possible individualistic right-justifying features.

Let us suppose that *interests* are the key features on which human rights are individualistically grounded (Raz 1986, pp. 165-216; Waldron 1988, pp. 62-105). We should define interests as follows: P has an interest in X if and only if X would in some way contribute to, enhance, or be a component of P's well-being. Now while my interests, so defined, are not simply whatever I think they are (for I can make mistakes about what is in my interests), nor simply what my society deems them to be (for my society can make mistakes about what is in my interests), neither are they simply the same as everyone else's interests. The interests that one person holds are not identical to the interests held by others. Of course, sensible theorists do not claim that every interest justifies a human right - only certain interests do this.¹² But it seems highly unlikely that *the interests that are of individualistic right-justifying importance* will be the same for every person; people's well-being comes in too many differing forms for this to be likely. Even if, *contra* the strong thesis, a few right-justifying interests are shared by everyone, nonetheless people's varying concerns, characters and decisions will lead to variations in many of people's right-justifying interests.

These variations might in differing cases be socially generated, personally chosen or generated in some other way. This is not to presuppose the crude relativist theses that people's interests are whatever they think they are, or whatever their society thinks they are - it is, rather, to presuppose the plausible thesis that people's choices and social environments sometimes shape their concerns, characters and decisions, which in turn sometimes shape their interests, including their right-justifying interests. These variations in people's right-justifying interests imply the weak thesis. In addition, even people who each share the same concerns, characters and decisions, and who share a right-justifying interest in some X, will in differing social environments sometimes require varying things (Y or Z) in order to satisfy their interest in X - and will thus hold varying specific versions (right-justifying

interests in Y and in Z) of their right-justifying interest in X. These further variations in people's right-justifying interests also imply the weak thesis.

For example, perhaps almost everyone shares an interest in adequate political participation, an interest that justifies human rights for its holders. And, first, perhaps in Ingrid's society adequate political participation requires voting, while in Jill's smaller society adequate political participation requires that one actually be able to speak in the assembly (because merely voting would give one an inadequate say in the running of this small society) - this would be an example of the final type of variation mentioned above. Or, secondly, perhaps Jill's character has so developed that she, unlike Ingrid, holds a vitally important right-justifying interest in speaking in the assembly (perhaps in Jill's nation - unlike in Ingrid's - the social environment prizes political discussion in the formal context of the assembly, and everyone's character therefore grows to value speaking in the assembly as vitally important) - this would be an example of the character-driven type of variation mentioned earlier above. Note that I am not here claiming that *whenever* Jill's character happens to have so developed that she holds an interest in speaking in the assembly, she will thereby gain a right to speak in the assembly. Instead many possible instances of this interest will not be of individualistic right-justifying importance. For instance, Jill's interest in speaking in the assembly will not normally be of right-justifying importance if Jill has been tricked or brainwashed into having this interest. Nor will Jill's interest be of right-justifying importance if, say, she only has this interest because she happens to be the daughter of an MP.

In the initial two situations outlined above, Jill holds a right-justifying interest in speaking in the assembly, while Ingrid holds only a right-justifying interest in voting. The rights thereby justified will be commensurately different – a right to speak in the assembly, and a right to vote. But in both cases the rights will be individualistically justified, and in both cases they will therefore be human rights. Because on the individualistic approach the particular features of Ingrid and Jill justify their human rights, and because Ingrid's right-justifying interest in political participation takes a different specific form to Jill's right-justifying interest in political participation, it follows that on the individualistic approach Ingrid and Jill hold different specific versions of the human right to political participation. This result is enough to establish the weak thesis. On this thesis, everyone might share a certain set of human rights (such as the human right to political participation); but there will also be some human rights that some people hold and others do not (such as Jill's human right to speak in the assembly).

My examples above are based on interest-based rights theory, but we should draw the general conclusion that *any* theory that recognises that human rights are individualistically justified will entail the weak thesis. To support this conclusion, I turn to the *freedom*-based approach exemplified by Hart and Griffin. There are three variants of this approach. On one view, Fred's human right to X is seen as justified by the moral importance of Fred's being *free in some specific way* (Griffin 2001a, pp. 7-8; Shue 1996, pp. 65-87). On a second view, Fred's human right to X is justified by the moral importance of Fred's possessing an *adequate range of freedoms* (Griffin 2001b, pp. 319-20). On a third view, Fred's human right to X is justified by the moral importance of Fred's *freedom as such*. Each view supports the weak thesis.

First, assume the first variant is correct. The weak thesis follows because what qualifies as a given specific freedom, such as religious freedom, will vary between differing people. This is not the obvious point that different societies offer differing levels of protection for religious freedom. It is the less obvious point that what it is to

have religious freedom will vary depending on the kind of person one is. Suppose that Ingrid's religious freedom is of individualistic right-justifying importance, and so is Jill's religious freedom. Growing up in differing cultures with different characters, what constitutes this right-justifying freedom will vary for Ingrid and for Jill (perhaps due to their developing differing religious concerns, or differing conceptions of the nature of religion). While both will hold human rights to religious freedom, the specific form of these human rights – as rights to attend certain assemblies, or rights to take part in certain ceremonies or wear certain clothes – will vary, commensurate with the way in which *what it is to have religious freedom* varies between Ingrid and Jill. From this the weak thesis follows.

Now, instead, suppose the second variant of freedom-based individualistic theory is true. The weak thesis follows because what qualifies as an adequate range of freedoms will vary between people. Again, this is not to claim simply that differing people or differing societies make differing judgements about what level of freedom qualifies as 'adequate'; instead, my claim is that what genuinely qualifies as an adequate range of freedoms will vary depending on the type of person one is. For Ingrid, the freedom to vote or the freedom to attend certain religious ceremonies might be included within the class of freedoms whose absence would be inadequate. For Jill by contrast, if her range of freedoms lacked the freedom actually to speak in the assembly or the freedom to wear certain clothes for religious reasons, then this would be inadequate. Given this variation in what constitutes an adequate range of freedoms, the weak thesis follows.

Finally, suppose the third variant is true. According to many analyses, a person's 'freedom as such' is determined by the extent to which that person is unimpeded in performing *valuable* actions (Berlin 1969, p. 130, footnote 1; Taylor 1979b, pp. 182-83). What makes a possible action valuable might be determined by what the agent desires, or it might be determined more objectively. But however it is determined, in many cases a given action for one person could qualify as valuable while that same type of action for someone else failed to qualify as valuable - and thus, on the value-based analysis of 'freedom as such', two people could be equally unimpeded in performing the same set of actions, yet one person be more free than the other. For example, if the set of actions that Ingrid is unimpeded in performing contains all and only actions of the very same type that Jill is unimpeded in performing, then it still might be the case that Ingrid's set of actions is less valuable than Jill's. This could arise if the unimpeded set (for both of them) includes the action of speaking in the political assembly. This action could be more valuable for Jill than it is for Ingrid (this might be because Jill *wants* to speak in the assembly while Ingrid does not, or it might be because Jill's society is of a type in which the attainment of political status - a status that is *objectively valuable* - requires that one be able to speak in the assembly while the attainment of such status in Ingrid's society does not require this). In this situation, the value-based approach to 'freedom as such' implies that Jill would be more free than Ingrid although both held equivalent sets of unimpeded actions. It follows that the rights that are individualistically justified by one person's 'freedom as such' need not be identical to the rights individualistically justified by other persons' 'freedom as such': Jill's 'freedom as such' might individualistically justify a right to speak in the assembly while Ingrid's might not, because only for Jill will this right contribute significantly to her 'freedom as such'. So the third variant of the freedom-based individualistic approach to rights, when coupled with a value-based analysis of 'freedom as such', implies the weak thesis.¹³

The general conclusion is that any feature of individuals that might plausibly be selected by rights theorists as individualistically justifying people's human rights (interests, freedoms or other features such as people's chosen projects), will vary between different people; and the human rights thereby justified will vary. Even if – *contra* the strong thesis – certain abstract individualistic right-justifying features are shared by everyone (e.g. an interest in not being harmed, or in some control over one's environment), and hence certain human rights are shared by everyone (e.g. the right not to be harmed, or the right to some political participation), the specific form such shared rights take will be widely variable, commensurate with variation in the specific form of people's right-justifying features.

3.3 *An objection: the weak thesis is too weak to be interesting*

The weak thesis might strike some readers as obvious:

Human rights are treated as essentially universal, but substantial space is allowed for variations in implementing these universal norms. Core rights “concepts” laid down in authoritative international documents, such as equal protection and social security, should be considered largely invariant. But they are subject to differing “interpretations”, within the range laid down by the concept. And concrete “implementations” of these interpretations have a wide range of legitimate variation (Donnelly 1999, p. 83).

Proponents of Donnelly's view might dismiss the weak thesis as uninteresting, on the ground that the rights that are not shared (the differing specific ‘interpretations’ or ‘implementations’ of the shared rights) are *merely derivative*, in contrast to the *ultimate* or *basic* shared human rights. Of course, if the strong non-universality thesis is true (see §3.4 below), then Donnelly-style readings of the weak thesis fail, for the strong thesis implies that there are no shared human rights at all. But the weak thesis, as I have defended it, is more significant than Donnelly's analysis suggests.

My individualistically grounded version of the weak thesis differs from Donnelly-style positions in three ways. First, Donnelly maintains that the shared, abstract rights specify the most fundamental requirements that laws and cultures should respect, but that it is morally desirable to allow these shared human rights to take varying specific forms.¹⁴ By contrast, my defence of the weak thesis implies that a given non-shared specific individualistically justified right will be just as fundamentally morally important as the more abstract shared right of which it is a specific version. For example, on my account, Jill's right-justifying interest in speaking in the assembly will individualistically justify a human right for her to speak in the assembly that will be as morally fundamental as her more abstract human right to political participation. Hence, on my approach, respect for Jill's specific human right to speak in the assembly is not merely morally allowed or desirable, but is morally required. Furthermore, the specific non-shared right (that is, Jill's right to speak in the assembly) will not be justifiably substitutable, for Jill, by some alternative specific, non-shared form (e.g. a right to vote) of the more abstract shared right to political participation.¹⁵ There is no ‘leeway’ for interpreting Jill's human right here in various specific ways - rather, Jill's human right specifically to speak in the assembly is a non-substitutable pre-legal right which governments and communities ought to respect, a right whose importance reflects the great importance of its specific individualistic justifying ground (i.e. Jill's specific interest).¹⁶

Secondly, Donnelly's approach implies that the need to respect variations in the interpretation of shared human rights derives from the need to respect some variations in social norms.¹⁷ By contrast, I have argued that if we take the individualistic approach seriously then people's human rights will vary because their *individual*

right-justifying features (e.g. interests, freedoms, projects) vary. Such variation in individual right-justifying features will sometimes be generated by differences in social norms, but this is not the only source of such variation. My discussion in §3.2 revealed that variations in people's individualistic right-justifying features can be generated by people's differing concerns (e.g. Jill's and Ingrid's differing religious concerns), by people's differing characters and choices (e.g. these factors might influence how Ingrid and Jill evaluate voting, or the freedom to attend religious ceremonies), and by the way that differing social forms make different activities necessary in order to realise the same concern (e.g. Jill's small society, unlike Ingrid's larger one, makes speaking in the assembly necessary for adequate political participation). Some of these variations are generated by social norms, but these are not the only source of variation. And differences in social norms will not always generate variations in individualistic right-justifying features: the mere fact that there exists in a particular society a social norm requiring that people be able to vote is not in itself sufficient to justify 'interpreting' the shared human right to political participation as, in that society, a human right to vote. To draw this inference, one needs to show that, for a given individual, this social norm reflects relevant features (interests, freedoms or projects) of right-justifying importance for that individual. In certain cases, social norms will shape people's right-justifying features so that people's human rights reflect their social norms (see §4.1 below for the suggestion that Chinese and Taiwanese norms requiring that people care for their aged parents have shaped parents' interests in such a way that most Chinese and Taiwanese parents hold human rights to be cared for by their children in old age). But social norms need not always shape people's individualistic right-justifying features. A social norm favouring no more than voting might prevail in a small society where most individuals hold right-justifying interests in speaking in the assembly. In this case, my individualistic approach implies that people's human rights would not be determined merely by the prevalent social norm. Instead, most people would hold human rights to speak in the assembly. Thus, unlike Donnelly-style views – which maintain that when there are variations in the specific versions of abstract shared human rights, these variations are grounded directly in variations in social norms – my theory maintains that variations in the specific versions of people's human rights are grounded in individual differences that are sometimes but not always generated by differences in social norms.

Thirdly, my arguments suggest that there are fewer shared human rights than a proponent of the Donnelly-style reading of the weak thesis might think. For example, my arguments suggest that not all the rights listed in the UN Universal Declaration of Human Rights will be shared by each person. I postpone discussion of this point until I have examined the strong thesis.

3.4 Arguing for the strong thesis

Let us assume again that what individualistically justifies one person's human rights are that right-holder's *interests*. On this assumption, one is led to the strong thesis if one believes that people are too varied for there to be any universal interests at all (not even general, non-specific important interests, such as the interest in political participation, the interest in not being killed or the interest in autonomy). For if there are no universal interests, then for any human-right-justifying interest held by one person, there will be some other people who lack that interest and hence lack that human right. For example, if I were an unusual performance artist, I might consider 'being murdered' as something whose occurrence would be in my interests as an

ultimate form of performance. Arguably, in some cases I might be correct in thinking this; I would then lack the interest that, for most of us, individualistically justifies a right against being murdered. Alternatively, some anorexic people have claimed that dying from anorexia in front of webcam video cameras is a performance which is centrally in the anorexic person's interest.¹⁸ Probably such a claim is normally mistaken, but arguably such a view of one's interests should not be ruled out as in principle always mistaken – and someone whose interests were genuinely configured in this way would lack certain commonly held human rights.

Can freedom-based individualistic theories also support the strong thesis? The first variant of the individualistic freedom-based approach will support the strong thesis if there are no specific freedoms that are of right-justifying importance for everyone; the second variant will support the strong thesis if there is no common core to what counts as an 'adequate range of freedoms'; the third variant will support the strong thesis if what qualifies as 'freedom as such' can differ radically from one individual to another. Each of these strong-thesis-supporting positions seems potentially defensible.

However, I am inclined to deny that the strong thesis is true. It seems to me that there are likely to be a few extremely abstract human-right-justifying interests, freedoms, projects or other features that everyone shares - and hence a few universally shared human rights. I doubt these will be much more concrete than *an interest in having some control over one's life*, or *an interest in one's life going in some sense as one wishes*. And even if such general individualistic right-justifying features are shared by all actual humans, they need not be shared by all logically possible bearers of individualistically justified rights: to qualify as a bearer of individualistically justified rights, I doubt a being must share anything like the concerns that most of us have.

Whether or not the strong thesis is true, my discussion should urge us to interpret the weak thesis radically. In particular, my discussion suggests that if there are any shared human rights, they are fairly abstract and thus we should not regard all the 'human rights' listed in legal documents - such as the UN Declaration of Human Rights - as universal. For example, it is doubtful that every person through time – or even that everyone alive today – holds right-justifying features that individualistically justify their having the right to a nationality or the right to work. For some ways of life, the very concepts of 'nation' or 'work and leisure' are inevitably inapplicable (e.g. certain forms of priesthood?); and some people's characters and choices make the possibility of a nationality or the option of working, while comprehensible, irrelevant to their interests or their freedom.¹⁹ If human rights are grounded in the individual's interests or freedom, then it follows that not every individual will hold human rights to a nationality or to work. Instead, what we all share are more abstract right-justifying features, features that perhaps justify rights to *some degree of control over our social and physical environment*, and perhaps to *some minimally adequate level of welfare*, but not necessarily to the specific type of control and welfare conferred by nationality or work. Instead, the shared abstract rights take widely differing specific forms for different individuals, reflecting the differing individualistic right-justifying features of the right-holders.

3.5 *An objection: varied foundations might justify shared rights*

One critical response to my arguments accepts that there are few universally held individualistic right-justifying features (e.g. few universally held interests, projects or valuable freedoms), but maintains that nonetheless the differing right-justifying

features of different people individualistically justify certain human rights held identically by all people. That is, a certain set of *universally held* human rights might be individualistically justified by people's *varying* interests - or even by *interests* for some people and *freedoms* for others. This view maintains that if I were the unusual performance artist for whom being murdered was the ultimate performance then while I would lack the interest that most people hold in not being murdered, nonetheless I would still hold alternative interests (or other right-justifying features) that would individualistically justify a human right that I not be murdered.

This retort should be distinguished from the common hope that different cultures might be able to reach 'consensus' on a certain set of human rights norms 'while disagreeing on why they were the right norms' (Taylor 1999, p. 124; see also An-Na'im 1999, pp. 165-68; Cohen 2004). This common aspiration is for inter-cultural *agreement* on a set of human rights, rather than (as envisaged by the retort I have mentioned) for people, whether or not they realise or agree with this, actually to hold appropriate features that, although diverse, would genuinely *justify* a shared set of human rights.²⁰ Furthermore, in articulating the aspiration for inter-cultural agreement, some theorists allow *non-individualistic* theories to qualify as appropriate tools - alternative yet complementary to individualistic theories - for use in fostering international consensus on the standard legal lists of human rights. For example, Chan suggests that Confucianism would support a right to freedom of expression 'in terms of [this right's] contribution to healthy politics'; here Chan offers a non-individualistic justification for the right to freedom of expression: '[b]oth Confucius and Mencius hold that social and political discussion and criticism are necessary to prevent culture and politics from degenerating' (Chan 1999, pp. 228-29). In my view, if Confucianism is a genuinely non-individualistic theory (as Chan's presentation here suggests), then even if it is a useful instrument for consensus-building, it should not be regarded as supplying appropriate justifying grounds for what I have called human rights.²¹ I do not claim this for the *conceptual* reason that the concept of 'human rights' is inherently individualistic. Rather, I claim this for the *moral* reason ascribed to Rawls and Dworkin in §2.3 above: morally important rights cannot be non-individualistically justified, because such justifications could in principle require that rights be disallowed for one person or group when this would best serve the wider collectivity; such a possibility is morally unacceptable and this unacceptability undermines any non-individualistic theory of human rights.²²

Thus the retort to my arguments for the non-universality theses, rather than aspiring merely for consensus on a set of universal human rights, and rather than admitting non-individualistic theories as possible human-right-justifiers, must maintain instead that a variety of *individualistic* right-justifying features, different for different people, could *justify* a fairly wide set of universally held human rights for all. This retort is not very persuasive. Perhaps certain rights (e.g. a right to a minimal degree of freedom) are likely to be individualistically grounded in varying ways for different people, and most people are likely to hold this right on some individualistic basis or other. But it is doubtful that there will be many shared human rights grounded in diverse ways like this, and there is no guarantee that there will be any such rights. Once we allow the possibility of someone having no interest in not being murdered, it then seems doubtful and dogmatic to insist that this person must still have some interest or other right-justifying feature that would individualistically justify their holding a right not to be murdered. So if we want to be sensitive to the possibility that there are few universal individualistic right-justifying features, then we should be ready for few human rights to be universally held.

3.6 *A further objection: the non-universality theses and powers of waiver*

Some theorists maintain that all human rights are waivable (Hart 1955; Steiner 1994). A focus on waivability might seem to reveal both non-universality theses to be uninteresting: *of course* different people (seem to) hold different human rights, because some people choose to waive their human rights while others choose not to.

This way of downgrading the non-universality theses is mistaken on two grounds. First, it is not clear that my individualistic approach will result in all human rights being waivable, because it is not clear that for every human right, some feature of the right-holder will be of sufficient importance individualistically to justify the existence of the relevant power of waiver.

Secondly, even if every human right involved a power of waiver, any ensuing waiver-based divergence in people's human rights would differ markedly from the divergence envisaged by my arguments for the non-universality theses. When, in my earlier examples, Jill holds a human right that Ingrid lacks (a human right to speak in the political assembly), this is not a right that Ingrid once held but has chosen to waive. It is, rather, a right that Ingrid never held, because (given that adequate political participation within Ingrid's society does not require the ability to speak in the assembly) this right was never individualistically justified for Ingrid. The appeal to powers of waiver cannot explain this type of divergence between Ingrid's and Jill's human rights.

4. NON-UNIVERSAL HUMAN RIGHTS AND CULTURAL DIVERSITY

4.1 *Answering critics of human rights*

Even in its weak form, the thesis that different people can hold different human rights has important consequences for those who criticise human rights on grounds that the concept is insensitive to cultural diversity. In the 1990s debate over the distinctiveness of 'Asian values', the leaders of Singapore and Malaysia raised this concern:

*Human rights merely reflect the local values of Western European and North American nations; it is therefore inappropriate to see there as being any moral duty to ensure that human rights are respected in nations outside Western Europe and North America.*²³

My discussion can go some way towards alleviating this worry.²⁴ If human rights are individualistically justified then what human rights a given person will hold will depend on what that person is like, which in turn will depend in part on the distinctive nature of that person's society. Suppose that due to the nature of P's society, as P grows up one of her core interests turns out to be an interest in *playing a part in her community*. On the interest-based individualistic account sketched earlier, if P's interest in playing a part in her community is of sufficient importance, then it will ground a justification for a human right protecting her ability to play a part in her community. By contrast people like Q, growing up in less community-minded societies, will not develop the relevant interests that would justify a human right of this form.

This type of reasoning should be applied to current disputes. Consider the debate about whether Chinese and Taiwanese legislation giving elderly parents the right to be supported by their children involves the legal implementation of a pre-legal human right (Chan 1999, pp. 235-36; Parekh 2004, p. 23). One concern is that this would be a non-universal human right, a human right that is absent in North American and Western European nations, where the elderly hold at most a general human right to

support, rather than a specific *right to be supported by their children*. On my approach, this non-universality is not a problem. If, due in part to the nature of her society, a Chinese person develops an interest in being cared for by her children, and this interest is of great importance, importance sufficient on its own to ground the justification for certain rights for this person, then this person will hold a human right to be cared for by her children. By contrast, people growing up in less family-orientated societies will probably not develop the relevantly important interests that would justify a human right of this form. This shows the flexibility offered by the individualistic approach to human rights. Even if ‘human rights’ is a concept which has developed *historically* in Western Europe and North America, nonetheless the *content* of the human rights of people from outside these regions need not be Western European or North American, if human rights are understood as individualistically justified.

4.2 *Two problems*

My approach opens the possibility not merely that people from different nations might hold divergent human rights, but also that different people within one nation or small community might hold divergent human rights. From this it follows that the legal implementation of human rights through international, national or even local bills of rights must always be inexact. Given the possibility of an individual’s right-justifying features diverging from those of most members of that individual’s society, there is no guarantee that any right on some legal list instituted within a given legal jurisdiction will be held pre-legally as a human right by all the people subject to that jurisdiction. This should not lead us to dismiss the extant national bills of rights, nor the international declarations of universal human rights. By extending legal protection for the morally justified human rights of many people, the national and international legal lists of rights bring huge benefits while only sometimes mis-ascribing human rights to people. But our attitude to these documents should reflect the fact that they are universalising legal approximations to a more diverse moral reality.

Perhaps if people and governments knew that not everyone’s human rights can be legally implemented through bills of rights, then this would threaten to undermine the rule of law - governments would no longer feel constrained to ensure that bills of rights were fully implemented, and people would lose confidence in the law’s ability to defend their human rights. But the mere fact that there will inevitably be some lack of fit between any legal lists of rights and the moral reality of human rights does not, in my view, undermine the requirement that governments do their best to enforce people’s varying human rights. Nor does it undermine the usefulness of legal bills of rights. Legal institutions incorporating bills of rights can be designed to ensure that people’s varying human rights are respected, for example by also incorporating legally robust institutions for appeal against judicial decisions, institutions that allow for detailed examination of particular cases, and for the possibility of decisions that recognise that an individual’s human rights might sometimes diverge from the standard legal lists of rights. Such institutions can, I think, help maintain the rule of law despite the lack of fit between human rights and legal lists of rights.²⁵

A second problem is epistemological. Underlying my argument for the weak thesis is the premise that whatever individualistically justifies human rights (perhaps core interests or valuable freedoms), the specific versions of these things that are of right-justifying importance for one person (such as the interest in voting, or the freedom to attend church) will not be equally of right-justifying importance for everyone else. In other words, I deny that there is some highly specific objective list of features that

will individualistically justify the same rights for everyone. If the strong thesis is defensible, then it will rest on the stronger premise that there is not, even in the most general non-specific terms, an objective list of features that will individualistically justify the same rights for everyone. Yet I also reject the crude relativist theses that a person's right-justifying features depend simply on what that person's society deems to be important, or on what that person themselves values. Both a person's society and a person's own choices can influence the features that justify human rights for that person, but this influence is not inevitable. It follows that a person's individualistic right-justifying features can be fairly epistemologically inaccessible. For example, the human rights of some anorexic-persons-requesting-to-stage-their-own-deaths could be different to those of other anorexic persons making the same request, and we can rely fully neither on the person themselves nor on their peers or the wider community to know what their right-justifying features are. So we face an epistemological quandary. This is the price we have to pay for treading the correct path between the universalist 'objective list' view and crude relativisms.

Despite this problem, epistemic dead-ends are not inevitable. In some cases, one can be confident in judging what some of a person's right-justifying interests or freedoms are (e.g. your actions might justify me in being confident that you have a strong interest in your family's welfare, even if you are not aware of this yourself). And even when one cannot be confident about one's understanding of a *particular person*, one can still be confident in regarding certain interests or freedoms as generally likely to be of individualistic right-justifying importance for *most people*. In discussing female genital mutilation, Parekh writes '[i]t inflicts irreversible physical harm, is sexist in nature, violates the integrity of the child, makes irreversible decisions for her, endangers her life, and removes an important source of pleasure' (Parekh, p. 276; see also Dorkenoo 1995, pp. 29-58). One should be confident in judging that practices inflicting 'irreversible harm', that are 'sexist' and that 'violate the integrity of the child' are generally likely to violate most people's important right-justifying features. Thus if Parekh's characterisation is correct, this provides good epistemic grounds for assuming that most women's important right-justifying features will be violated by genital mutilation, even in cultures where the practice is prevalent. Nonetheless even when some such generalising presumption is warranted, the individualistic approach leaves open the possibility of many divergent cases: cases where forms of the practice for certain women do not constitute human rights violations, and cases where disallowing the practice would constitute a human rights violation. The individualistic approach requires that all parties should respect the specific right-justifying features of the relevant individual person – including respect for the possibility that that person holds human rights divergent from those of the majority.²⁶

5. CONCLUSION

Human rights are often understood as both universal and in some sense individualistic. In this paper, I have defended a particular way of understanding the individualism of human rights: human rights are *individualistically justified*. I have shown that if taken seriously, this undermines the view that human rights are universally held. Instead, widely differing people will hold widely differing human rights. This can quell the concern that human rights must always involve distinctively Western European or North American values.

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¹ These criticisms have been forcefully expressed in the debate over the relationship between Asian values and human rights (see the papers in Bauer & Bell 1999, including the discussion of the views of Lee Kuan Yew and Mahathir Mohamad (Bauer & Bell 1999, pp. 3-9)). See also, for example, Brown 1999.

² I have elsewhere defended a particular Hohfeldian analysis of the general concept, 'rights', and that analysis is presupposed here (Cruft 2004). Some will want to add a fourth condition to my conditions (i)-(iii): (iv) human rights are justified simply by their holders' 'humanity' (e.g. Donnelly 1989, p. 12). If human rights are understood in this way then – assuming every human being equally bears the property of 'humanity' – the same human rights must be held universally by all human beings, and my non-universalist view of human rights must be rejected on conceptual grounds. Theorists who think that human rights must, as a matter of conceptual necessity, satisfy this fourth condition, should then read my argument as establishing (a) that there are no (or, perhaps, very few – see §3.4) human rights, but nonetheless (b) that *rights that nearly-but-not-quite qualify as 'human rights'* (because they satisfy conditions (i)-(iii) but not (iv)) exist and are individualistically justified and non-universally held. I, however, am not convinced that current usage compels us to regard all human rights as necessarily satisfying condition (iv). The phrase 'human rights' is nowadays often used simply to denote rights satisfying merely (i)-(iii) (i.e. *morally important pre-governmental rights*). For helpful comments on this issue, I am grateful to an anonymous referee for the *Critical Review of International Social and Political Philosophy*.

³ I refer here to the freedom-based view of rights expressed in Hart's well-known 1955 article; in more recent work Hart modified this view, somewhat reducing the role of freedom in justifying certain rights (Hart 1973, p. 197 and pp. 200-201). For support for my freedom-based reading of Griffin, see Tasioulas 2002, p. 84.

⁴ It should be noted that both individualistic and non-individualistic theories, as I have explained them, offer what might be called 'value-responsive' theories of the justification of rights: they both maintain that the moral justification for any right is grounded in the fact that that right is required as the appropriate response to certain independently valuable aspects of the world (either independently valuable aspects of *the individual right-holder*, or independently valuable aspects of *some wider group or collectivity*). By contrast, contractarian and constructivist theories hold that being chosen or choosable is central to the justification of a set of rights; these theories deny that a given right is morally justified simply because the existence of such a right is the only appropriate response to *features of the world whose value is independent of whether they are chosen or choosable* (Rawls 1971; Gauthier 1986; O'Neill 1996). It is beyond the scope of this paper to offer arguments in favour of the value-responsive approach and against its alternatives. My argument should rather be taken as an argument *within* value-responsive rights theory.

⁵ For a much fuller version of this argument, see my Cruft 2006. A defender of the individualistic approach to my property rights over my pen might argue that such rights are concrete specifications of more abstract rights (such as a right to autonomy) that are individualistically justified. But unless my control over my pen is *essential* to securing me the level of autonomy required by my individualistic right-justifying features, then my property rights over my pen are not in my view genuinely justified by my individualistic right-justifying features. Only the more abstract right is so justified. And given that my control over my pen is not, under normal circumstances, essential to securing me the level of autonomy required by my individualistic right-justifying features, my property rights over my pen cannot be individualistically justified. For clarification, see §3.3 and note 16 below.

⁶ Raz shows that there are some rights whose existence is supported by the fact that they serve the common good: e.g. a town planner's rights against unjust dismissal; the right to freedom of expression (Raz 1995, pp. 49-55). If these rights were genuinely non-individualistically justified, then they would not qualify as 'human rights' on my approach. However my approach does not imply that just because a right serves the common good it cannot be individualistically justified; in my view Raz's example-

rights, while valuable in part because they serve the common good, are nonetheless individualistically justified because the mere fact that they serve their individual holders' interests would be sufficient to generate powerful reasons in favour of such rights, even if they did not also serve the common good (see note 10, point (1) below). By contrast, in my view there are other rights (including most property rights and promissory rights) that are not of sufficient value to their individual holders for them to qualify as individualistically justified; my account denies that such non-individualistically justified rights qualify as 'human rights'.

⁷ In writing of 'liberals' and 'communitarians', I do not deny that there are significant overlaps between liberalism and communitarianism (Mulhall & Swift 1996), including overlaps between liberal and communitarian views of rights. My aim is simply to show that my two-tier view (and, in particular, the 'first tier', according to which human rights are individualistically justified) is compatible with a range of positions within the liberal-communitarian debate.

⁸ This is not the claim that humility and self-effacingness are only *called* 'virtue' due to certain social facts. Rather, it is the less obvious claim that humility and self-effacingness *genuinely constitute* virtue due to certain social facts.

⁹ See Parekh's claims about the social formation of 'human nature' (Parekh 2000, pp. 114-41).

¹⁰ There are (at least) three further issues that an individualistic approach to human rights must tackle, but these are not my primary focus here. (1) My claim that a right is individualistically justified when it is *grounded ultimately* on some feature of its holder requires further explanation. I propose to explicate this as follows: a right is individualistically justified if and only if its serving some intrinsically important feature of its holder is both (i) a necessary condition for the existence of the right and (ii) a sufficient condition for a very strong yet defeasible reason in favour of the existence of the right (a reason that could be defeated if the right proved extremely burdensome to others). Condition (i) distinguishes individualistic justifications from consequentialist and communitarian justifications, while condition (ii) reflects the fact that there can be no right that would be justified even if it imposed massive burdens on others. (2) Groups can hold rights, and it is sometimes claimed that some group rights are human rights (for arguments in this direction, see Bauböck 1999). This might seem at odds with my thesis that all human rights are individualistically justified. However, on closer examination the oddity turns out to be merely linguistic: according to the concept of individualistic justification employed in this paper, a group right R will qualify as individualistically justified (and hence as a human right) whenever R is justified ultimately by what it does for the particular R-holding group; thus my concept of individualistic justification allows that a group right (e.g. a right to national self-determination), justified on communitarian grounds that focus on how the right serves its particular collective holder (the nation), will qualify as an individualistically justified human right so long as its justification is not ultimately grounded in how the right will serve people or groups other than or in addition to the right-holding group (e.g. non-nationals, or other nations). (3) It is sometimes assumed that if a right is individualistically justified then its justification must involve only agent-relative reasons (Mack 1999 and 2000, pp. 78-84). My conception of individualistic justification contrasts with this agent-relative view: according to my account, a right is individualistically justified when the importance of some feature of its holder grounds agent-neutral reasons for the right's existence, reasons that are binding on everyone whether or not their interests or preferences are served by the existence of the right. For more extensive discussion of these several points, see my Cruft 2005, pp. 36-37; and especially Cruft 2006.

¹¹ For a related denial that human rights are universal *across time*, see Tasioulas 2002, pp. 86-87 and Gorman 2003, pp. 115-22.

¹² Perhaps the right-justifying interests are *core, basic, vital or important* interests. In this paper, I do not take a stance on what distinguishes right-justifying interests from others; all I seek to show is that whatever marks out certain interests as of individualistic right-justifying importance, these right-justifying interests will vary from person to person and hence so will the rights thereby justified. Note that whatever distinguishes right-justifying interests from others should ensure that *unimportant, pathological* and *repressive* interests are unable to justify rights.

¹³ Steiner and Carter have argued that one's 'freedom as such' depends simply on the range of options open to one, independently of the value of those options (Steiner 1994, pp. 42-54; Carter 1999, pp. 119-47; for responses to Steiner's and Carter's arguments, see Kramer 2003, pp. 441-55). The value-independent analysis of 'freedom as such' might seem to ground individualistically justified rights that are genuinely universally held - for on the value-independent approach, the individualistic right-justifying ground ('freedom as such') will be the same for every person. However, the value-independent concept of 'freedom as such' is not well suited to individualistic justification. To say that P's 'freedom as such' individualistically justifies rights for P is to say that P's 'freedom as such'

deserves protection by rights, independently of how this protection serves or affects the ‘freedom as such’ of others. This approach (as specified so far) gives no limit to the rights that are thereby justified: according to the value-independent approach, my ‘freedom as such’ would be served not only by my holding familiar rights to freedom of speech and rights not to be tortured, but also by my holding rights to control whatever worldly resources I want, and rights to harm others. Even though these last rights seem to give me an unjustifiable degree of control over others, nonetheless these rights would protect and enhance my ‘freedom as such’ (at least when this is construed along value-independent lines). In response, defenders of the value-independent approach based must introduce limits to individualistic justifications grounded in a person’s ‘freedom as such’. One way of limiting such individualistic justifications would be to retreat to a value-based analysis of ‘freedom as such’; this might allow one to argue that intuitively unjustifiable rights (such as the right to damage others) do not genuinely enhance anyone’s ‘freedom as such’. I have already shown how value-based analyses of ‘freedom as such’ support the weak thesis. An alternative way of limiting freedom-based individualistic justifications is to maintain that only *specific important freedoms* - rather than *freedom as such* - justify the protection of rights (a parallel move is made by interest-based theorists; they do not hold that ‘interests as such’ individualistically justify the protection of rights; rather, certain *specific important* interests individualistically justify rights - see note 12 above). Or another way of limiting such individualistic justifications would be to hold that rights are individualistically justified only insofar as they secure *an adequate degree of freedom* for the individual. To adopt either of the latter two approaches is to return to the first and second variants of freedom-based individualistic theories - and I have shown how these variants support the weak thesis. A further alternative would be (i) to maintain a commitment to a value-independent notion of ‘freedom as such’, but simultaneously (ii) to abandon individualism. This approach is exemplified by theorists who see rights as justified by how they contribute to the maximisation of aggregate freedom, or by how they contribute to the securing of equal (or some other favoured distribution of) freedom (Rawls 1971, pp. 195-257). But my two-tier theory would deny that rights justified on such *non-individualistic* freedom-based grounds are human rights.

¹⁴ Donnelly writes of the need for ‘significant *allowance* for cross-cultural variations in human rights’ (Donnelly 1989, p. 112, my emphasis).

¹⁵ For clarification of the concept of ‘substitutability’, see Wiggins 1987a, p. 16.

¹⁶ A corollary of my contention that the specific form of one’s human rights reflects the specific form of one’s individual human-right-justifying features is that one’s human rights are *no more narrow and specific* than is necessary to protect one’s individual human-right-justifying features: thus, e.g., it is normally mistaken to argue that one’s property rights over one’s pen are human rights justified by the individualistic importance of one’s minimal autonomy, because control over one’s pen is not normally necessary for one’s minimal autonomy. See note 5 above.

¹⁷ This is evident in Donnelly’s limited defence of ‘internal judgements’ (Donnelly 1989, pp. 114-15). See also Walzer’s related claim that different communities offer their own ‘thick’ interpretations of shared ‘thin’ rights (Walzer 1994).

¹⁸ I am grateful to Helen Brimacombe for raising these cases and for directing me to the discussion at <http://www.eating-disorder.org/prosites.html> (accessed January 2002).

¹⁹ This is not merely to claim that certain people’s interests or freedoms would not be served by working now or by currently having a nationality; it is rather to claim that certain people’s interests or freedoms would not be served by *the continuing option* of working or of having a nationality.

²⁰ I do not intend to disparage the aspiration for discursive consensus. Rather, my concern is simply with the underlying justifying grounds for human rights, rather than with whether people agree on these rights.

²¹ Confucianism could be given a more individualistic interpretation. For example, Cohen suggests that Confucianism would demand that a person hold rights in order that that person’s individual status as a duty-bearer be appropriately respected (Cohen 2004, p. 205). For discussion of further strands of individualism in Confucianism and Buddhism, see Tatsuo 1999, pp. 50-54.

²² I am not here dismissing non-individualistic theories as morally irrelevant; I am merely claiming that they are inappropriate as grounds for human rights. Nor am I claiming that human rights can never justifiably be overridden in order to serve the wider collective interest; I am merely claiming that appealing to the collective interest can never justifiably be used to deny that a particular person holds a human right - instead at most the collective interest can justify overriding that person’s human right while recognising that the person still holds this right.

²³ See the discussion throughout Bauer & Bell 1999.

²⁴ Note that my argument cannot alleviate the following further concerns: 1. Given the history of Western European and North American colonialism, it is illegitimate for Western European and North American nations to force other nations to respect human rights. 2. Given the importance of respecting national sovereignty, it is illegitimate for any one nation to force other nations to respect human rights. These are both important points that human rights theorists should consider seriously.

²⁵ I am grateful to Richard Bellamy for pressing me to consider this point about the rule of law.

²⁶ The approach sketched here concerning female genital mutilation could also sensibly be applied to the case of anorexic people who claim a right to stage their own deaths. It seems epistemologically reasonable to make the generalising presumption that the genuine right-justifying features of most anorexic people who claim a right to stage their own deaths do not support their being allowed to die of anorexia - but the individualistic approach leaves open the possibility of divergent cases, cases where particular people's human rights require that they be allowed to stage their own anorexia-driven deaths.