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Human Rights as Natural Rights

Jack Donnelly

It is a common assumption that a natural rights theory of human rights underlies contemporary human rights doctrines. The term *human rights* is generally taken to mean what Locke and his successors meant by *natural rights*: namely, rights (entitlements) held simply by virtue of being a person (human being).¹ Such rights are natural in the sense that their source is human nature.

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1. There are subtle differences in emphasis, however, between each of the major formulations, *human rights*, *natural rights* and *the rights of man*, and each has advantages and disadvantages. Natural rights stresses a grounding in human nature. It also refers to a tradition of thought which includes Locke, Paine, and Jefferson among its most prominent exponents and suggests a connection with the older idea of natural law. Such resonances add richness to the idea, but also may be a burden, for example, as is the case in the Lockean tradition's concentration on civil and political rights alone or the vague and confusing reference to natural law. Furthermore, the endowment of man with rights by nature is at best an obscure process.

The phrase *rights of man* suggests man as the source of rights. To the extent that man is viewed as not merely natural, but rational and moral, this suggests a more complicated, and probably more illuminating, source for these rights. However, this phrase, particularly in English (although not necessarily in the French *droits de l'homme*), has deeply rooted ideological connotations from the era of the French Revolution. It also has regrettable, even if easily exaggerated, sexist connotations.

Human rights seems to avoid the disadvantages of the other two terms. Like the rights of man, it suggests a subtle and particularly interesting derivation of rights from the complex moral notion of humanity; human nature as the source of the rights. However, the character of this derivation is rarely made explicit enough to be considered as anything more than suggestive. In addition, human rights may misleadingly suggest that all the rights held by human beings are human rights. Paine falls into this confusion, for example, in attacking Burke. See *The Collected Works of Thomas Paine*, edited by Philip S. Foner, New York: The Citadel Press, 1945, vol. 1, p. 273. Instead, human rights are a particular type of rights held by human beings, the rights they hold simply by their nature as human persons. Furthermore, human rights may misleadingly suggest that one is being humane, charitable or beneficent in establishing or recognizing such rights, when in fact one is giving to rightholders that to which they are entitled. However,

However, Charles R. Beitz has argued in his contribution to *Human Rights and U.S. Foreign Policy*,² that "it is misleading to view human rights on the model of natural rights"³ and that "a good deal of the philosophical insecurity surrounding the subject of human rights results from construing them on the natural rights model."⁴ Beitz advances an alternative theory of human rights, which he calls the social justice model: "According to the social justice model, human rights are entitlements to the satisfaction of various human interests that would be guaranteed to members of a group by principles of social justice roughly in Rawls' sense: principles of justice express the conditions under which social institutions may be regarded as morally legitimate, and these conditions, in the first instance, have to do with the manner in which a society's basic institutional structure distributes the benefits and burdens of social cooperation."⁵ Instead of human nature, Beitz argues that it is social justice which is the source of human rights.

Regardless of how the contested notions of human nature and social justice are defined, they are certain to yield widely divergent lists of human rights. They are also likely to yield significantly different accounts of the nature and force of human rights claims. Thus what human rights are and how human rights work are among the issues at stake in the dispute between natural rights and social justice theories of human rights.⁶

human rights is probably the least flawed of the three terms. In any case, it is the preferred term at this time in both popular and scholarly discussions.

2. "Human Rights and Social Justice," in *Human Rights and U.S. Foreign Policy*, edited by Peter G. Brown and Douglas MacLean (Lexington, Massachusetts: Lexington Books, 1979) pp. 45-63.
3. *Ibid.*, p. 48.
4. *Ibid.*, p. 55.
5. *Ibid.*, p. 59.
6. Both theories have important historical antecedents and each has considerable contemporary currency. The classic statements of a natural rights theory include Locke's *Second Treatise* and Paine's *Rights of Man*, while the seminal political documents include the American Declaration of Independence and the French Declaration of the Rights of Man and the Citizen. Beitz, in his note 16, singles out William Frankena, *The Concept of Universal Human Rights*, Philadelphia: University of Pennsylvania Press, 1952; Gregory Vlastos, "Justice and Equality," in *Social Justice*, edited by R. B. Brandt, Englewood Cliffs, New Jersey: Prentice Hall, Inc., 1962 and Richard Wasserstrom, "Rights, Human Rights, and Racial Discrimination," *Journal of Philosophy* 61 (1964) as major contemporary natural rights theorists. To this list should be added Ronald Dworkin, *Taking Rights Seriously*, Cambridge: Harvard University Press, 1977; Maurice Cranston, *What are Human Rights*, London: The Bodley Head, 1972; and probably also H.L.A. Hart, "Are There Any Natural Rights," *The Philosophical Review* 64 (1955) and A. I. Melden, *Rights and Persons*, Berkeley: University of California Press, 1977. While Beitz's social justice model is of much more recent origin, it has a growing popularity in international discussions. Furthermore, neothomistic natural law doctrines suggest a similar coincidence between justice and human rights; see especially Jacques Maritain, *Man and the State*, Chicago: University of Chicago Press, 1951; for a particularly challenging recent inquiry see John Finnis, *Natural Law and Natural Rights*, Oxford: Oxford University Press, 1980. Similar claims have been made concerning non-Western conceptions of human rights. For a thorough critical discussion of this literature see

Beitz contends that the conceptions of both rights and naturalness adopted by natural rights theorists exclude from the list of valid human rights virtually all rights except those to personal security, such as rights against torture and arbitrary arrest and detention. He argues persuasively against such an exclusion, using philosophical grounds and established international standards as expressed in the International Bill of Rights.⁷ With Beitz, I will take this international standard as authoritative, for the sake of argument, because it can be argued to be philosophically justified, because widespread international acceptance makes it largely beyond question for the purposes of international, and even much national action, and because any radically different list of rights would require considering justifying arguments far beyond the scope of an article such as this one.

However, I will argue that a natural rights theory fits this standard well, better than does Beitz's own theory. Beitz singles out important faults of well-known natural rights theories. However, a more subtle and open natural rights theory provides secure grounding for contemporary international human rights standards.

RIGHTS AND NATURAL RIGHTS

A natural rights theory, Beitz notes, views rights as "important moral claims . . . (which) typically demand immediate satisfaction."⁸ However, since numerous internationally recognized human rights, and especially several economic and social rights, are not capable of immediate satisfaction, or even satisfaction in several years, Beitz argues that a natural rights theory must conceive of them as some sort of weaker or proto-rights; but to do so leaves the list of so-called true, complete or real natural human rights fatally impoverished.

This argument, however, mistakenly assumes that the inability to realize such claims, either because of physical incapacity or higher competing claims, necessarily implies that one does not have such a right, in the full sense of that term. This misinterprets the claim for immediate satisfaction and its implication for possession of a right.

Jack Donnelly, "Human Rights and Human Dignity: An Analytic Critique of Non-Western Human Rights Conceptions," *American Political Science Review*, forthcoming (June 1982).

7 The so-called International Bill of Rights is made up of the Universal Declaration of Human Rights and the International Human Rights Covenants, and relevant passages from the Preamble, Article 1, and Articles 55 and 56 of the U.N. Charter. The Universal Declaration is United Nations General Assembly Resolution 217 A (III) of 10 December 1948. The full titles of the Covenants are the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. They passed the General Assembly as Resolution 2200 A (XXI) of 16 December 1966.

8 Beitz "Human Rights and Social Justice," p. 56.

Rights as Claims

First consider contractual rights. Suppose that A, on the way to deliver 100 widgets to B in fulfillment of his contract, stops to aid C, a seriously injured man. As a result, A arrives at the meeting late, causing B to lose an important account. While B did have a right to receive the widgets at the contracted time, in this case we would say that the claim it represents against A was overridden by C's need for assistance. The claim backed by the right was not the only claim on B, and while it did demand "immediate satisfaction," it did not, and by its nature could not, guarantee it.

Having a right justifies making or pressing a claim on others to discharge their obligation and respect the right. However, that obligation is only a *prima facie* obligation and does not necessarily assure that one will actually enjoy that to which one has a right. In this example, the right is overridden by a higher claim.

Uncontrollable physical incapacity, the lawyer's "act of nature," can also override a rights claim. Suppose that A, on the way to deliver the widgets, is hit by a truck. His partner puts the plant on overtime to replace the broken widgets, but by the time B receives them he has once more lost his account.

It is unfortunate that B has suffered this reverse. It is true that he has not been able to enjoy his right. Nonetheless, he undoubtedly did have a right to receive the widgets at the specified time. Simply because B's claim could not be satisfied does not imply that he did not have a right.

Many economic and social rights can be conceived in such terms within a natural rights theory; that is, as full-fledged rights which cannot be realized. "Cannot" is an ambiguous term. There are at least three ways in which a state, which is the "person" generally obliged by economic and social rights, may be "unable" to discharge its obligations. The first is political impossibility, in which the state "cannot" act because it would threaten the existing distribution of power or wealth. A more subtle form of political impossibility might be a lack of capacity brought about by previous political decisions, errors or corruption. The second way is moral impossibility, in which the right "cannot" be realized because to do so would threaten or sacrifice higher rights, values or interests. The third is physical impossibility, in which the objective restraints of resources or administrative capacity preclude establishing the right. While political impossibility raises issues of a different sort which cannot be pursued here, moral and physical inability to realize economic and social rights are closely analogous to the two widget examples.

For example, nearly all Third World governments are physically incapable of providing rights such as jobs and social security for their citizens. People do have such rights — they are featured prominently in the International Bill of Rights — but they are unable to enjoy them, even given the best

efforts of their governments. This is physical impossibility.⁹ Many developed and newly industrialized countries also fail to realize these rights, at least in some cases, because to do so would be incompatible with other higher rights and values. This is an example of moral impossibility.

Rights are important claims. To have a right is, among other things, to have a valid claim. But there are numerous intervening steps between the claim and its realization which may preclude enjoyment of the right—justifiably or unjustifiably as the case may be—without canceling that right or implying that there is, or was, no right in the first place. If a natural rights theory were necessarily committed to the sort of positivist account of rights which Beitz attacks—an account which many natural rights theorists do in fact adopt—then it would prove incapable of encompassing the full range of internationally recognized human rights. However, it is not. In fact, a natural rights theory is on principle compatible with virtually any plausible theory of rights, its distinguishing feature being instead the identification of human nature as the source of human rights.

Natural and Absolute Rights

Many natural rights theorists adopt a positivist theory of rights. Beyond this, however, a likely source of the exaggeration of the force of human rights claims conceived in natural rights terms is the widespread tendency to view natural rights claims as being in some sense absolute. Beitz reflects this in his characterization of natural rights as “exceptionless” and as representing claims which “no one . . . may permissibly infringe.”¹⁰ However, such a conception is neither defensible nor a necessary part of a natural rights theory.

If natural human rights were absolute, there could be no more than one natural right,¹¹ unless we make the unrealistic assumption that there are rights which never conflict with one another. However, even the most minimal list of internationally recognized human rights contains numerous rights.

Not only logic but also experience weighs against the idea of absolute natural rights. Society does not treat human rights as exceptionless. Anti-suicide laws, libel laws, compulsory education, and mandatory vaccination or treatment for certain diseases all involve exceptions to basic human rights; exceptions which, if often controversial, nonetheless are clearly capable of plausible justification.

9 While Beitz explicitly recognizes that “rights in general are not absolute,” he does not carry this over to natural rights in particular; *Ibid.*, p. 55

10 *Ibid.*, p. 48.

11 It is probably not incidental that this is Hart’s conclusion; “Are There Any Natural Rights.”

However, all that a natural rights theorist, or any human rights theorist, must hold is that, as far as rights are concerned, human rights represent the strongest (moral) claims available. At best, they are relatively absolute.

It is easy to see how natural rights may be forced to give way to other (natural) rights. However, they are not even absolute vis-à-vis nonrights claims and demands. Much as B's right gave way to C's non-rights claim on A for assistance, natural rights may, in extreme cases, justifiably be overridden by considerations of higher values, or even utility. For example, conscription and curfews in riot areas override the basic natural right to liberty on the basis of the requirements of public order or social need.

None of the cases considered has involved the justified violation of a right, which perhaps suggests a weaker sort of absoluteness. The instances of physical and moral inability to discharge a rights-based obligation involve a failure to realize the right in question, but it would be wrong to say that anyone violated the right. Conscription or imprisonment come closer to that meaning, but it still would be awkward and misleading to speak of the state violating one's right to liberty by the draft or by imprisoning one for committing a heinous crime. However, in the most serious of cases it might even prove justifiable for basic natural rights to be violated, in the full sense of the term.

Imagine a terrorist on top of a skyscraper at lunchtime holding a businessman abducted at random as a hostage. With him he has two canisters of chemicals which, if mixed, will produce a nerve gas that will kill thousands of innocent people. He demands that several private and public figures be delivered to his associates at another location to face "the people's justice." Imagine also that the only way to stop him involves shooting or otherwise surely killing the hostage.

While shooting will undoubtedly violate the hostage's right to life, only the most extreme, almost mindless, deontological theory would conclude that it was not justified; a strong argument can be made that failure to shoot would be morally unjustifiable. While this case is extraordinary, it clearly shows that even the most basic natural rights are only relatively absolute, in any sense of that term.

Rights do typically take priority over other considerations, and they typically take priority over merely utilitarian considerations. This is perhaps the most important single feature of rights claims. As Dworkin puts it, rights are "trumps."¹² Nonetheless, to treat rights as absolute is to present this central feature of rights—a feature which is especially characteristic of natural rights as the highest class of rights—in an unjustifiably exaggerated form.¹³

12. Dworkin, "Taking Rights Seriously," especially pp. xi and 90

13. Another possible source of confusion in Beitz's argument is a misapplication of the maxim that "ought implies can." I have argued that countries which cannot establish economic and social rights do not "violate" the rights of their citizens. In line with this

NATURAL RIGHTS AND HUMAN RIGHTS

The conception of naturalness adopted by natural rights theories is the second, and most pressing problem with these theories, according to Beitz.¹⁴ A natural right is one which is, by definition, possessed simply by virtue of being a human being. Since it is grounded in human nature, it is held universally and equally by all people, in that human nature is possessed equally by all human beings. Given that these rights are essential to the maintenance of a life worthy of a human being — that is, they are essential to the protection and realization of human nature and dignity — they hold against the whole world, not just some special group. Beitz argues, however, that most internationally recognized human rights, and especially economic and social rights, fail to share these features of natural rights.¹⁵

The Scope of Natural Rights

Indeed, it is difficult to find more than a few rights among those listed, for example, in the Universal Declaration, that satisfy all four conditions. Rights of participation, for example, are not *universal* if it is true, as some argue, that politics at low levels of economic development cannot support participatory institutions, or can do so only at unacceptable cost. To choose another type of example, some economic rights, like the right to a satisfying job, may not be possessed by *persons as persons* if the philosophical basis of such claims has to do with the special relations in which people stand as members of a functioning scheme of social cooperation (as, for example, on a Rawlsian view of social justice).¹⁶

I would like to begin with rights of participation. If what “some argue” is correct, rights of participation would not be capable of (justified) universal implementation. However, it does not necessarily follow that they are not universally held, which is all that a natural rights theorist must, and usually

maxim one would say that, all things considered, such countries have not failed to do what they “ought” to do, since they have done everything they “can” to discharge their obligation. However, this incapacity in no way entails the absence or deficiency of economic and social rights. Not all rights imply “can.”

Having a right puts one in a position to press special claims; and asserting that right advances such a claim. However, there may be other claims, as well as restrictions of scarcity or incapacity (i.e., the absence of “can”) which require that rights claims not be acted upon. “Ought” implies “can” not *prima facie* — regardless of capacity to discharge it, a moral ought implies a *prima facie* duty — but only in the final judgment. However, a rights claim is but one aspect of the “final judgment” concerning what ought to be done in the case in which the claim is made. “Cannot” does not necessarily imply “no rights.”

14. Beitz, “Human Rights and Social Justice,” p. 56.

15. Beitz works directly from Wasserstrom, “Rights, Human Rights, and Racial Discrimination,” who singles out the features stressed in this paragraph.

16. Beitz, “Human Rights and Social Justice,” p. 56.

does, mean by the claim of universality. For example, Paine's claim that natural rights are universal certainly was not meant to imply that they were in fact universally recognized and implemented, but only that all humans possess them and therefore may press especially strong claims for their implementation. Beitz only shows that the realization of rights to participation is politically or morally impossible which, as I have shown, does not entail holding that one does not have such a right.

To have a right to *x* is to be entitled to *x* and thereby to be in a position to press special claims for *x*. To have a human right is to have a right of a particularly strong type, the basis of which is at issue here. If the world or particular societies are structured in such a way that enjoyment of the right is regularly denied or frustrated—that is, if the right is not widely implemented—that is a regrettable, even deplorable, shortcoming. However, it is a shortcoming of social and political institutions and practices and does not entail that one does not have the right, is not entitled to *x*, or is not morally justified in claiming *x* as a right.

Even in this somewhat attenuated form, natural rights still are important possessions. If one has a right, even if that right is not regularly respected, one is in a stronger moral position than those who demand the same treatment, or make competing demands for scarce resources, on other grounds. Many people may claim that they ought to be treated in a certain way, on a variety of grounds. But if one can further claim that one is entitled to that treatment (that one has a right to it) the claim is strengthened considerably. Having even an unrespected (human) right, while not as valuable to the rightholder as a respected right, is still of considerable moral import.

The Source of Natural Rights

A natural rights theory attributes human rights solely on the basis of one's humanity; that is, human nature. This feature brings us to the second counter-example in the passage quoted above: the question of whether the right to a job is held simply because one is a human being. Beitz actually suggests only that the right to work may not be held on this basis. The real issue, however, is whether a natural rights theory can adequately comprehend a right like the right to work.

Natural rights theorists argue that persons, simply as persons, as human beings, are entitled to be treated in certain ways. These entitlements are expressed in the form of human rights, which serve to protect or realize essential human attributes, potentials, or holdings. What one is entitled to simply as a person is a function of a theory of human nature, a philosophical anthropology, which presents an account of what it is to be a human being or moral person.

Can we have a theory of human nature which would imply, say, a right to work? Of course. Probably the best known such theory is the familiar humanist reading of Marx, especially the *Manuscripts*. If humans, by nature, are creative laboring beings, and if meaningful productive work is required to realize their potential (in a way analogous to the need for an unfettered intellect and conscience), then a natural right to work clearly follows.

Many natural rights theorists have not adopted such a theory of human nature. However, this is a contingent feature of the work of particular writers, not a shortcoming of natural rights theories *per se*. A natural rights theory specifies the source of human rights (in human nature) but does not offer a list of human rights; it specifies the form of the rights, while the content is provided by the particular theory of human nature that one adopts.¹⁷

Obligation and Natural Rights

These first three aspects of naturalness amount to different ways of considering the same issue and are obviously implied by the fact that human nature is the source of the rights. Assuming that human nature is possessed universally, equally by all and with no conditions other than that one be a human being, natural rights will be similarly held. However, the fourth feature, that the right is held against the whole world, is quite different. Rather than being concerned with the nature of the right-holder and basic features of the distribution of human rights, it specifies the bearers of the correlative duties of these rights.

Natural rights are what jurists refer to as rights *in rem*, rights to some “thing” which therefore hold in relation to all who come into a position to infringe the rights; i.e. they hold against the world at large. The human nature underlying natural rights is essentially a moral nature, which human rights aim to protect. This is often referred to as human dignity. An essential part of that dignity is a basic moral equality, which might be expressed as an equality of respect. Human rights give expression to this basic minimum of respect, and unless they were rights *in rem*, only some would be required to render this respect; that is, some people would not be required to treat others as fully moral persons possessed of minimum human dignity.

Nearly all personal rights, and probably most civil and political rights, are conceived of as rights *in rem*. However, most economic and social rights are generally viewed as rights *in personam*; that is, rights which may be claimed only against a specified class of persons, that class being the state in

17. It could be argued, with some justice, that this reading involves something of a departure from the historical natural rights tradition, which has tended to adopt a vaguely Lockean/liberal theory of human nature. However, I can think of no sound theoretical reason for locking a natural rights theory into this or any other particular theory of human nature.

the case of economic and social rights. Therefore, on first examination, it would seem as if a natural rights theory cannot encompass them.

However, one might view the reference to a particular state as a mere practical accommodation to a world of sovereign states, and thus of no major theoretical significance. One might even argue that the disparity between the moral character of the right, as a right *in rem*, and its legal character, as a right *in personam*, provides the basis for arguments to alter the current (unjust) international order; theory being used to criticize and seek the transformation of the world rather than being seen as invalidated by the shortcomings of national and international politics.

Another possibility would be to retreat partially from holding that natural rights are rights *in rem* by arguing that there is strong conceptual justification for treating economic and social rights as rights *in personam*. For example, one might argue that a person's nature is both individual and social and that those rights which are dependent on his or her social nature have a particular, although not necessarily exclusive, reference to a given state or society. This would involve not an *ad hoc* reformulation to rescue the theory but rather a modification based on the central feature of natural rights theories, the derivation of these rights from a person's nature — which happens to have aspects which give rise to both *in rem* and *in personam* rights.

Finally, and most significantly, one might even question exactly how different these two sets of rights really are. In practice, rights *in rem* are not held against everyone in the world, let alone against all equally and in the same fashion. Even personal rights to, say, freedom of speech or the equal protection of the laws, cannot be claimed against just anyone. In particular, one cannot call on just any government to protect or enforce these rights. An American living in New York cannot make rights claims against the government of Zambia to protect his or her right to freedom of speech. Even a right *in rem*, when it comes to giving force to that right, makes special reference to particular states.

The special reference of economic and social rights to states is primarily, if not entirely, of this nature as well. For all internationally recognized rights, legal responsibility for enforcement is apportioned to sovereign states. All internationally recognized human rights make special reference to a particular state with regard to the actual implementation of the rights. Both the Civil and Political and Economic, Social and Cultural Covenants establish human rights held in relation to particular states, even if the source of the right lies in universal human nature. There is no more an international responsibility for implementing personal rights than there is for implementing economic and social rights. While the consequences of the absence of international responsibility sometimes may be greater in the case of economic and social rights, such differences involve the substance of the right and the way in which particular rights fare in contemporary cir-

cumstances, whereas the theories of human rights considered in this article specify formal characteristics of natural rights such as their source, scope, and extent.

A SOCIAL JUSTICE THEORY OF HUMAN RIGHTS

Even if a natural rights theory is able to handle the full range of human rights, it still may prove to be less desirable than a competing theory. Therefore, it is important to consider Beitz's social justice model. As discussed earlier, this theory views human rights as "entitlements to the satisfaction of various human interests that would be guaranteed to members of a group by (Rawlsian) principles of social justice."¹⁸

Social Justice and the Universality of Human Rights

Since Rawlsian principles of social justice are in large measure contextual, the definition of human rights will similarly alter with context under a social justice model. Beitz sees this ability to incorporate factors such as culture and economic development as a major advantage of the theory.¹⁹ It is, however, a serious drawback, for it renders human rights no longer universal, in clear contradiction to the fundamental principles underlying international human rights.

The United Nations adopted the Universal Declaration of Human Rights, in which human rights are clearly and unambiguously conceptualized as being inherent to humans and not as the product of social cooperation. These rights are conceptualized as being universal and held equally by all; that is, as natural rights. The first paragraph of the Preamble of the Declaration speaks of "the equal and inalienable rights of all members of the human family." Article 1 begins "All human beings are born free and equal in dignity and rights." Article 2 is even more unambiguous. "Everyone is entitled to all the rights and freedoms 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 [emphasis added]." The International Human Rights Covenants are equally explicit in claiming that "these rights derive from the inherent dignity of the human person," which is universal.²⁰

Human rights are equal and inalienable and hold without distinctions of any kind because they are based on human nature, which is likewise univer-

18. Beitz, "Human Rights and Social Justice," p. 59

19. *Ibid.*, pp. 59–60

20. They also repeat that the rights are "equal and inalienable" and that they are held "without distinction of any kind."

sal, equal and inalienable. A natural rights theory, but not the social justice model, preserves the essential universality of human rights.

Ranking Human Rights

A natural rights theory, to the extent that its underlying theory of human nature did not make hierarchical distinctions among those human attributes and potentials deserving protection through human rights, would not imply any clear lexical ordering of human rights. Beitz seems to take this to be a serious drawback, especially in contrast to the fairly clear, if complex and difficult to arrive at, orderings which would be provided in a Rawlsian social justice model.²¹

However, internationally recognized human rights are not hierarchically ordered. In fact, one of the few points on which all sides seem to be agreed in contemporary discussions is that all human rights are "interdependent and indivisible."²² Hierarchical rankings among rights would thus appear to be a decided disadvantage of the social justice model.

Moreover, ranking will be necessary in the implementation (rather than the definition) of these rights. Resource scarcities, social and cultural conditions and political problems may constrain the realization of the full complement of human rights. Such choices between rights, however, will be largely pragmatic and of little theoretical interest. In fact, in making these choices, considerations of social justice probably ought to play an important part. However, strategic principles of political action must not be confused with those principles which provide the moral grounding for human rights.

Manifesto Rights

Beitz suggests that many basic human rights, especially economic and social rights, have the character of proto-rights claims. Such "manifesto rights," as Joel Feinberg calls them,²³ are essentially claims that one ought to have established, or receive better protection of, a human right. While they lack the full force of human rights claims, they are nonetheless stronger than

21. Beitz, "Human Rights and Social Justice," pp. 58–59. For example, he criticizes natural rights theories for ignoring, or being unable to handle, the question of "what human interests are the most important all things considered"; *Ibid.*, p. 58.

22. See, for example, General Assembly Resolution 32/130 of 16 December 1977 and the discussions of the Assembly's Third Committee under the agenda item "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms."

23. Joel Feinberg, *Social Philosophy* (Englewood Cliffs, N.J.: Prentice Hall, Inc. 1973), pp 55–97.

mere interest claims. Beitz takes it to be important to capture this “manifesto sense,” arguing, for example, that a virtue of the social justice model is that it “more adequately represents human rights, in the words of the Universal Declaration, as ‘a common standard of achievement for all peoples and all nations.’”²⁴

Although an essential use of human rights is to seek transformation of established practices, to the extent that human rights are presented merely as “manifesto rights,” as mere standards of achievement, they are seriously misrepresented. Probably the most important use of human rights is to demand social change. Nonetheless, human rights involve much more than such demands.

Manifesto rights suggest that the problems faced by right-holders in enjoying these rights lies in the nature of the rights themselves; that the rights are somehow lesser or defective rights. The problems are more accurately seen as lying in the world than in the rights. These rights are only less easily realized, not less truly rights, or even necessarily less important rights than are other rights.

A manifesto right is a particularly important interest, goal, or value which presses for recognition. So are human rights. But human rights are not merely interests, goals, or values; they are entitlements. This special, additional force of human rights claims is not captured in the ideas of manifesto rights and standards of achievement.

In fact, manifesto rights are not really rights at all; or at least they need not be. The claim that a positive right ought to be established—which is what the claim of a manifesto right amounts to—need not be based on a right/entitlement to what is claimed. But without that entitlement one cannot speak of having or holding a right and the claim made will not be a rights claim, in the strict sense.

The social justice model would even seem to dissolve the basic distinction between human rights and numerous other (non-rights based) goals, principles, and values. If all interests which would be guaranteed by social justice are human rights, then the list of human rights is likely to be remarkably long, and often incongruous. For example, one can easily argue that, in a country such as the United States, extended maternity or paternity leave with pay, a college education without cost, compensation to victims of violent crime, a national health care system, and inexpensive, public cultural facilities are dictates of social justice. However, few would argue that these services are human rights, as would be required by the social justice model.

In contrast, a natural rights theory more reasonably recognizes numerous interests that would be guaranteed by a just society but which are

24 Beitz, “Human Rights and Social Justice,” p. 60

not human rights. Only those interests essential to one's standing as a moral person, one's status as a fully human being, are human rights.²⁵

In respect to the international documents, the Universal Declaration of Human Rights only appears to support Beitz's social justice model. The Declaration is "a common standard of achievement" because it is a General Assembly resolution and as such, according to the United Nations Charter, is only a recommendation. The basic justifying principles underlying the Declaration clearly suggest a natural rights theory.

Furthermore, the Declaration is only the first, preambulatory, part of the International Bill of Rights.²⁶ It was issued in 1948 largely as an interim statement of principles while work continued on a comprehensive international human rights treaty. That interim turned out to be eighteen years, the treaty became two separate Covenants, and it took more than nine additional years for the Covenants to enter into force. Nonetheless, today human rights at the international level are more than just one social goal among many others. Through the Covenants, and several other international and regional instruments, they are binding legal obligations of states.

The shortcomings in enforcing public international law are monumental. Furthermore, states voluntarily place themselves under these obligations by ratifying or acceding to the Covenants. However, this is a reflection of the state of international law rather than of the basic character of the rights. Even though the actual implementation of human rights in most of the world is a long way off, human rights today are more than just standards of achievement in the way that "energy independence" or a balanced budget are standards of achievement. A natural rights theory, in contrast to the social justice model, captures this special force by treating human rights as basic moral entitlements.

CONCLUSION

While Beitz's theory is coherent, it is not compatible with established international human rights principles. As I have shown, the Universal Declaration and the Covenants are clear in grounding human rights in human nature and

25. Beitz's views on manifesto rights are in curious agreement with prominent natural rights theorists, such as Feinberg and Cranston, which is especially surprising given that their accounts of human rights are essentially positivist, in sharp contrast to Beitz's. However, where Feinberg dismisses manifesto rights as merely proto-rights, Beitz expands his definition of human rights to include them. In contrast to both of these approaches, my argument has been that manifesto rights are indeed not human rights, but that no major internationally recognized human rights are merely manifesto rights; i.e., that Feinberg's assignment of economic and social rights to the class of manifesto rights is idiosyncratic—not essential to a natural rights theory—while Beitz's expansion of the definition of human rights is not only unnecessary but destructive of the concept

26. See note 7

human dignity, not social justice. Beitz's theory thus amounts to a radical reconstruction of the concept of human rights rather than the exposition it is presented to be.

Is such a reconceptualization desirable? If Beitz were correct that a natural rights model encompasses no more than personal rights, there might be something to be said for moving towards a social justice model. However, because this is not the case, there seems to be little reason to abandon a natural rights theory. While a social justice model can do nothing of importance which cannot be done by a natural rights theory — it is no simpler, it is no clearer, and it fails to provide a more comprehensive or less contentious set of principles by which to derive a list of human rights — it is in conflict with existing international principles. In addition, it collapses human rights and social justice, erasing an important, serviceable and widely recognized concept.

Finally, such a reconceptualization would seem to weaken claims of many human rights by reducing them to manifesto rights, or simply the dictates of social justice. One of the reasons that, at least since the eighteenth century, there has been a preference for the language of human rights over the language of social justice is precisely the added force of the claim of natural or human rights, the true rights of man. A natural rights theory, but not the social justice model, preserves this force.²⁷

27. It should be noted, however, that establishing the utility of a natural rights theory of human rights only begins to answer the basic theoretical questions about human rights. For example, before one can really say how human rights work, one needs to take account of rights in general and of how human rights are similar to, and different from, other kinds of rights. Before one can derive a philosophically justified list of human rights one must develop an explanation of how human nature gives rise to human rights, and present a theory of human nature. Thus a natural rights theory, in the skeleton fashion sketched here, is only the first step, and a relatively easy step, towards a satisfying and deeply informative theory of human rights.