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Equal Concern and Respect

Chapter 2 described the Universal Declaration model. This chapter offers a series of increasingly deep and substantive—and thus increasingly controversial—justifications. I argue that the Universal Declaration model is rooted in an attractive moral vision of human beings as equal and autonomous agents living in states that treat every citizen with equal concern and respect. I will also argue that a certain kind of liberalism provides a good justification for this system of rights.

I. Hegemony and Settled Norms

I begin with a descriptive, empirical claim: human rights have become a hegemonic political discourse, or what Mervyn Frost (1996: 104–11) calls “settled norms” of contemporary international society; that is, principles that are widely accepted as authoritative within the society of states. Both nationally and internationally, full political legitimacy is increasingly judged by and expressed in terms of human rights.

The six leading international human rights treaties (on civil and political rights, economic, social, and cultural rights, racial discrimination, discrimination against women, torture, and the rights of the child) had an average of 172 parties in early 2012.¹ Even more notable is the penetration of human rights into bilateral, multilateral, and transnational diplomacy. In the 1970s, controversy still raged over whether human rights were even an appropriate concern of foreign policy. As late as 1980, only a handful of states had explicit international human rights policies. Today, however, human rights are a standard subject of bilateral and multilateral diplomacy.

1. Calculated from United Nations Treaty Collection, <http://treaties.un.org/>.

Most national societies are also increasingly penetrated by human rights norms and values. Both governments and their opponents appeal to human rights much more frequently and more centrally than just a few decades ago. Compare, for example, the terms of debate and the range of political options seriously considered nationally and regionally today in Latin America, Africa, and Asia with those of the 1960s and 1970s. The Arab Spring of 2011 indicates the substantial penetration of these ideas into the Middle East as well.

The collapse of the Soviet Union and its empire, and the retreat of dictatorial regimes in all areas of the world, suggests that, when given a chance, people in the contemporary world usually choose human rights. That choice has been made with varying degrees of enthusiasm and understanding. For many, human rights are a “default option,” accepted only because the leading competitors have been delegitimized. Nonetheless, in contemporary international society there is no widely endorsed alternative.² When given a choice, experience suggests that people rarely choose the alternatives that dictators of various stripes claim that they prefer (but tellingly refuse to allow them the opportunity to choose freely).

Even China, where in the 1980s the very use of the term “human rights” could land one in jail, has reluctantly come to adopt that language. Such uses, to be sure, are often cynical. Nonetheless, the need to appear to be acting on behalf of human rights tells us much about dominant values and aspirations. Even cynical uses pay tribute to the moral imperative of a commitment to human rights. As the Helsinki process in central and eastern Europe suggests (see Thomas 2001), such norms can take on an independent life of their own, with consequences very different from those intended by cynical endorsers.

Even where citizens do not have a particularly sophisticated sense of what a commitment to human rights means, they respond to the general idea that they and their fellow citizens are equally entitled to certain basic goods, services, protections, and opportunities. The Universal Declaration, I would suggest, offers a good first approximation of the list that they would come up with, largely irrespective of civilization, after considerable reflection. More precisely, there is almost nothing in the Universal Declaration that they would not put there, although one might readily imagine a global constitutional convention coming up with a somewhat larger list.

The prominence of human rights in contemporary international society is not unrelated to their endorsement by the world’s leading power, the United States, and its principal allies. Example, however, has been far more powerful

2. This is perhaps a modest exaggeration. Islamic fundamentalism is perhaps a real challenger in several countries, and one with genuinely universalistic aspirations. Xenophobic nationalism might also be seen as a recurrent challenger, but one that is fundamentally inegalitarian and rarely capable of universalization (and thus of less interest, for reasons discussed below).

than advocacy—which has often been clumsy, even insulting—or imposition. Human rights have moral and political authority that goes well beyond their backing by power (force). They dominate contemporary political discussions not only, or even primarily, because of the support of materially dominant powers but rather because they respond to some of the most important social and political aspirations of individuals, families, and groups in most countries of the world. Human rights have become internationally “hegemonic” in a Gramscian sense of the term.³

2. An Overlapping Consensus on International Human Rights

My claim that there is an international consensus on the system of human rights rooted in the Universal Declaration is *relatively* uncontroversial—although we will return to several elements of contention in parts 2 and 4. My more controversial argument that this consensus is more voluntary than coerced would be substantially strengthened if I could account for how it came about in the face of the considerable—at times profound—philosophical differences that exist between and within civilizations, cultures, and societies in the contemporary world. John Rawls’s idea of an overlapping consensus offers a descriptively accurate and morally attractive explanation.

Rawls distinguishes “comprehensive religious, philosophical, or moral doctrines,” such as Islam, Kantianism, Confucianism, and Marxism, from “political conceptions of justice,” which address the political structure of society, defined (as far as possible) independently of any particular comprehensive doctrine (Rawls 1996: xliii–xlv, 11–15, 174–76; 1999: 31–32, 172–73). Adherents of different comprehensive doctrines may be able to reach an “overlapping consensus” on a political conception of justice (1996: 133–72, 385–96). Overlapping consensus offers a plausible answer to the question “how is it possible that there can be a stable and just society whose free and equal citizens are deeply divided by conflicting and even incommensurable religious, philosophical, and moral doctrines?” (1996: 133). Although formulated initially for domestic societies, this idea has an obvious extension to international society, particularly a culturally and politically diverse, pluralist international society. Such a consensus, I am claiming, has come to develop on the rights of the Universal Declaration.

3. Gramsci’s discussion is scattered through *Selections from the Prison Notebooks* and can be roughly followed using the index in that book (1971). For an extended secondary discussion, see Femia (1981: 1–129). Compare also Cox (1996: chaps. 6, 7). I use the term “hegemonic” here descriptively, and without any necessary implications of class domination (which is essential to Gramsci’s own account), but in what I take to be the root sense—namely, ideological power arising from the effective exclusion of viable normative alternatives within the mainstream of a society.

An overlapping consensus is partial rather than complete; comprehensive doctrines converge but do not completely coincide. The consensus is political rather than moral or religious. It is not, however, *merely* political. In particular, it is more than a *modus vivendi* between irreconcilable views that are for practical reasons forced to coexist. Rather, it reflects a reasoned agreement despite many important differences at a deeper philosophical level.

An overlapping consensus on internationally recognized human rights means that there is a striking convergence on a vision of the limits of political legitimacy in the contemporary world. Looked at from the bottom up, there is a transnational normative convergence on the basic expectations that citizens may legitimately have of their societies and governments.

This strategy of “justificatory minimalism,” as Joshua Cohen describes it, “aims to avoid imposing unnecessary hurdles on accepting an account of human rights (and justice), by intolerantly tying its formulation to a particular ethical tradition. It is left to different traditions—each with internal complexities, debates, competing and conflicting traditions of argument, and (in some cases) canonical texts—to elaborate the bases of a shared view of human rights within their own terms” (Cohen 2004: 213; cf. Lindholm 1999: 69–73). That shared vision represents, however, not a lowest common denominator but rather the robust set of human rights enumerated in the Universal Declaration. In other words, by allowing appeals to different sets of foundational values we have in effect discovered that, at least in the conditions of the contemporary world, otherwise very different peoples, traditions, individuals, and groups turn out to share something very much like the robust vision of the conditions for a life of dignity outlined in the Universal Declaration.

Human rights can be readily derived from a considerable variety of moral theories: for example, they can be seen as encoded in the natural law, as political means to further human good or utility, or political institutions designed to produce virtuous citizens. The increasing political prominence of human rights in recent decades has led more and more adherents of a growing range of comprehensive doctrines to endorse human rights—but only as a political conception of justice. For example, Muslims of various political persuasions in many parts of the Islamic world have in recent decades developed Islamic doctrines of human rights that are strikingly similar in substance to the Universal Declaration.

Human rights thus have no single philosophical or religious foundation. Instead they have many foundations—and thus much greater practical resonance than could be provided by any particular philosophy or religion. Christians, Muslims, Confucians, and Buddhists; Kantians, utilitarians, pragmatists, and neo-Aristotelians; liberals, conservatives, traditionalists, and radicals, and many other groups as well, come to human rights from their own particular paths. Today, almost all the leading paths to social justice and human dignity

centrally involve human rights. For their own varied reasons, most leading comprehensive doctrines now see human rights as the political expression of their deepest values. As Jacques Maritain famously put it, “We agree about the rights but on condition no one asks us why” (UNESCO 1949: 10)—and this is not because there is no good answer but because there are many different good answers (and each tradition remains committed to its own).

Although internationally recognized human rights do not depend on any particular religious or philosophical doctrine, they are *not* compatible with all comprehensive doctrines. The link between human rights and comprehensive doctrines, although loose, is a matter of substance, not just procedural agreement. Claims such as those in the Covenants that “these rights derive from the inherent dignity of the human person” or in the Vienna Declaration that “all human rights derive from the dignity and worth inherent in the human person” limit the range of possible comprehensive doctrines within an overlapping consensus. Most importantly, human rights, because they are held equally by all human beings, are incompatible with fundamentally unequalitarian comprehensive doctrines, which are in principle excluded from the consensus.

Are unequalitarian comprehensive doctrines predominant, or even prominent, in contemporary African, Asian, Western, or Islamic civilizations? We will return to this question in part 2. For now I will simply assert that they are not.

In their past, *all* major regional civilizations have at times been dominated by views that treated some significant portion of human beings as “outsiders” not entitled to guarantees that could be taken for granted by “insiders.” For example, there are few regions of the globe where slavery or similar forms of human bondage have never been practiced and widely justified. For most of their histories all literate civilizations have relied on unequalitarian, ascriptive characteristics such as birth, age, or gender to assign social roles, rights, and duties.

Today, however, the basic moral equality of all human beings is not merely accepted but strongly endorsed by all leading comprehensive doctrines in all regions of the world. This convergence on equalitarian comprehensive doctrines, both within and between civilizations, provides the foundation for a convergence on the rights of the Universal Declaration. In principle, a great variety of social practices other than human rights might provide the basis for politically implementing foundational equalitarian values. In practice, for reasons suggested in the next chapter, human rights have become the preferred option.

It is an exaggeration to say that “the conception of humanity as expressed in the Universal Declaration of Human Rights has become the only valid framework of values, norms and principles capable of structuring a meaningful

and yet feasible scheme of national and international civilized life” (Weisstub 2002: 2). This claim, however, does contain a kernel of truth. The Universal Declaration may not be the *only* valid framework. It is, admittedly, an incomplete framework. Nonetheless, it does represent a realistically utopian cross-cultural vision of the demands and possibilities of our moral nature, a vision that has something like universal validity for us today.

The insight of the drafters of the Universal Declaration into some of the central social and political problems of modernity has proved immensely fruitful. “While protecting the ability of diverse consciences to disagree radically about the premises and principles of ethical theory, they found a way to emphasize a number of basic findings of practical reason, to which a sufficient majority of peoples around the world had been driven” (Novak 1999: 39)—and continue to be driven.⁴ The hope of one of its drafters, Charles Malik of Lebanon, has indeed been realized, namely that the Declaration would “either bring to light an implicit agreement already operative, perhaps dimly and unconsciously, in the systems and ways of life of the various states, or consciously and creatively advance further and higher the area of agreement” (quoted in El-Hage 2004: 8). As a result, the Universal Declaration has become what it rather grandly claimed to be in 1948, namely “a common standard of achievement for all peoples and all nations.”

3. Moral Theory, Political Theory, and Human Rights

This appeal to overlapping consensus suggests that human rights fall more in the domain of political theory (political conceptions of justice) than moral theory (comprehensive doctrines). This suggestion is reinforced by the place of human rights in modern Western moral theory.

It is conventional to distinguish deontological (duty-based) theories, such as Kant’s categorical imperative, from teleological (ends-, goals-, or consequence-based) theories, such as Bentham’s utilitarianism or (neo-Aristotelian) virtue-based theories. Deontological and teleological theories posit radically different relationships between the right and the good.⁵

Right is the moral primitive for deontological theories. We are required to do what is right (follow our duty), period, independent of the effects for

4. Thus I reject the suggestion of Anthony Langlois that the Universal Declaration makes “the implicit claim . . . that human rights has the authority to stand over and above the multiplicity of traditions, religions, cultures, political ideologies and metaphysical traditions existent throughout the world” (2005: 374). Quite the contrary, the drafters saw the Declaration as emerging out of deeper foundations. Internationally recognized human rights stand “above” these deeper foundations only in the sense that a house is “above”—that is, constructed upon—its foundation. This is particularly true given the above account of multiple foundations in an overlapping consensus.

5. Within Anglo-American philosophy, Ross (1930) provides a classic discussion.

good or bad produced by our actions. “Thou shalt not . . .” In teleological theories, by contrast, the moral primitive is the good. Duty depends on the consequences of our actions. We are morally required to, within the limits of our skill and resources, increase human happiness, virtue, or some other end (or reduce human suffering, vice, etc.).⁶

This common classification of moral theories, however, tells us little about human rights, which have played a vanishingly small part in the history of Western moral theory, even during the modern era. For example, rights play no significant role in Kant’s *Grounding for the Metaphysics of Morals*. For utilitarians, rights are only second-order rules that save us the (often considerable) task of calculating utilities in particular cases. Although we might in principle imagine rights-based moral theories, in practice such a category has historically been largely an empty one.⁷ Human rights logically may be, but in fact rarely have been, taken to be a moral primitive.

When we turn to *political* theory, however, human rights often become central.⁸ For example, in part 1 of Kant’s “Theory and Practice” (1793 [1793]), which deals with individual morality, rights make no significant appearance, but rights (entitlements) become central in part 2, which treats “political right.” In fact, Kant’s contractarian political theory is centered on the rights we have as human beings, as subjects, and as citizens. More generally, human rights are at the heart, and a defining feature, of contractarian political theories. And other political theories may endorse a human rights standard of political legitimacy by other routes.

The loose and weak link between human rights and leading moral theories is an attraction rather than a drawback, allowing for a considerable degree of *political* consensus despite moral divergences. By remaining open to many egalitarian moral and political theories, human rights may allow us to handle certain questions of political justice and right while circumventing difficult and usually inconclusive disputes over moral foundations.

This openness is particularly attractive in a “postmodern” world skeptical of the possibility of finding unassailable foundations. Political theorists have increasingly turned their attention to notions such as deliberative democracy

6. Deontological and teleological theories thus posit different accounts of the relationship between means and ends. Teleologists are concerned primarily with consequences, and thus ends. Actions (“means”) are evaluated by their contribution to realizing the defining moral end (e.g., utility maximization). Deontological theories, while recognizing the instrumental value of actions, see the morality of an act as determined by its inherent nature rather than its consequences. For deontologists, moral acts are required because they are right, not because they produce some other effect in the world. They are not means to anything at all. They instantiate rather than cause or bring about the realization of the right.

7. Alan Gewirth (1982, 1996) may be a contemporary exception that proves this rule. I am aware of no pre-twentieth century exceptions.

8. Thus Dworkin (1977: 171–72) distinguishes between goal-based, right(s)-based, and duty-based political theories.

(Habermas 1993, 1996, 1998) and recognition (e.g., Gutmann and Thompson 1996; Thompson 2006). Human rights may provide a focal point for forging such a consensus or for negotiating mutual recognition. Certainly there is no other substantive ideal that has come even close to such widespread international endorsement by both governments and movements of political opposition across the globe.⁹

Therefore, in the remainder of this chapter, and in most of the rest of this book, I will be concerned with the political, rather than moral, theory of human rights. Internationally recognized human rights today provide a standard of political legitimacy. In the contemporary world—the world in which there is an overlapping consensus on the Universal Declaration model—states are legitimate largely to the extent that they respect, protect, and implement the rights of their citizens.

4. Equal Concern and Respect

What is the political conception of justice around which this overlapping consensus has formed? I want to suggest that it is something very much like Ronald Dworkin's idea that the state is required to treat each citizen with equal concern and respect.

A. Equality and Autonomy

Government must treat those whom it governs with concern, that is, as human beings who are capable of suffering and frustration, and with respect, that is as human beings who are capable of forming and acting on intelligent conceptions of how their lives should be lived. Government must not only treat people with concern and respect, but with equal concern and respect. It must not distribute goods or opportunities unequally on the ground that some citizens are entitled to more because they are worthy of more concern. It must not constrain liberty on the ground that one citizen's conception of the good life is nobler or superior to another's (Dworkin 1977: 272–73).

The state must treat all persons as moral and political equals. Inequalities in goods or opportunities that arise directly or indirectly from political decisions

9. This is only a modest exaggeration. "Peace" and "development" are probably more widely endorsed, but neither—at least in their common senses of absence of war and sustainable economic growth—provides anything like the attractive comprehensive standard of political legitimacy offered by human rights. "Justice" may also be more widely endorsed, but only in a very abstract form. When we get to the level of detail of the Universal Declaration, the differences in conceptions of justice become striking.

must be compatible with a political conception of justice founded on equal concern and respect.

This understanding of the equality of all human beings leads “naturally” to a political emphasis on autonomy. Personal liberty, especially the liberty to choose and pursue one’s own life, clearly is entailed by the idea of equal respect. For the state to interfere in matters of personal morality would be to treat the life plans and values of some as superior to others. A certain amount of economic liberty is also required, at least to the extent that decisions concerning consumption, investment, and risk reflect free decisions based on personal values that arise from autonomously chosen conceptions of the good life.

Liberty alone, however, cannot serve as the overriding value of social life or the sole end of political association. Unless checked by a fairly expansive, positive conception of the persons in relation to whom it is exercised, individual liberty readily degenerates into license and social atomization. If liberty is to foster dignity it must be not merely equal liberty for all, but liberty exercised within the constraints of a principle such as equal concern and respect.

Autonomy (liberty) and equality are less a pair of guiding principles—let alone competing principles—than different manifestations of the central commitment to the equal worth and dignity of each and every person, whatever her social utility. To justify denying or severely restricting individual autonomy almost necessarily involves an appeal to inequality.¹⁰ Equal and autonomous rights-bearing individuals are entitled to make fundamental choices about what constitutes the good life (for them), and with whom they associate, how. They have no right to force on one another ideas of what is right and proper, because to do so would treat those others as less than equal moral agents. Regardless of who they are or where they stand, individuals have an inherent dignity and worth for which the state must demonstrate an active and equal concern. And everyone is *entitled* to this equal concern and respect (with the political consequences discussed in section 1.1).

The constructivist theory sketched in chapter 1 is thus beginning to acquire some substance. Human rights simultaneously constitute individuals as equal and autonomous citizens and states as polities fit to govern such rights-bearing citizens.

B. The Universal Declaration and Equal Concern and Respect

It is a relatively simple matter to derive the full list of rights in the Universal Declaration from the political principle of equal concern and respect. Other lists of rights can also be derived from this principle. Other political

10. The obvious exception is the protection of the equal autonomy of others.

conceptions of justice may be compatible with the Universal Declaration model. I would suggest, however, that the close overlap is much more than a coincidence.

In order to treat someone with concern and respect, she must first be recognized as a moral and legal person. This requires certain basic personal rights. Rights to recognition before the law and to nationality (Universal Declaration, Articles 6, 15) are political prerequisites. In a different vein, the right to life, as well as rights to protection against slavery, torture, and other inhuman or degrading treatment (Articles 3, 4, 5), are essential to recognition and respect as a person.

Rights such as freedom of speech, conscience, religion, and association (Articles 18, 19) protect a sphere of personal autonomy. The right to privacy (Article 12) even more explicitly aims to guarantee the capacity to realize personal visions of a life worthy of a human being. Personal autonomy also requires economic and social rights, such as the right to education (Article 26), which makes available the intellectual resources for informed autonomous choices and the skills needed to act on them, and the right to participate in the cultural life of the community (Article 27), which recognizes the social and cultural dimensions of personal development. In its political dimension, equal respect also implies democratic control of the state and therefore rights to political participation and to freedoms of (political) speech, press, assembly, and association (Articles 19, 20, 21).

Equal concern and respect also require that the government intervene to reduce certain social and economic inequalities. The state must protect those who, as a result of natural or voluntary membership in an unpopular group, are subject to social, political, or economic discrimination that limits their access to a fair share of social resources or opportunities. Such rights as equal protection of the laws and protection against discrimination on such bases as race, color, sex, language, religion, opinion, origin, property, birth, or status (Articles 2, 7) are essential to assure that all people are treated as fully and equally human.

In the economic sphere, an attachment to a market-based system of production both fosters efficiency (and thus aggregate prosperity) and places minimal restraints on economic liberty, thus augmenting personal autonomy. Market distribution, however, tends to be grossly unequal (see section 13.7). Inequality is not necessarily objectionable. Equal concern and respect, however, imply an economic floor, and degrading inequalities cannot be permitted (compare Shue 1980: 19–23). In human rights terms this implies, for example, rights to food, health care, and social insurance (Articles 22, 25).

Efforts to alleviate degrading or disrespectful misery and deprivation do not exhaust the scope of the economic demands of the principle of equal concern and respect. The right to work (Article 23), which is essentially a right

to economic participation, is of special importance. Work has considerable intrinsic value, as an element of a life of dignity, as well as instrumental value in satisfying basic material needs and providing an economic foundation for personal autonomy. A (limited) right to property (Article 17) can be justified in similar terms.

Finally, the special threat to personal autonomy and equality presented by the modern state requires a set of legal rights, such as the presumption of innocence and rights to due process, fair and public hearings before an independent tribunal, and protection from arbitrary arrest, detention, or exile (Articles 8–11). More broadly, the special threat to dignity posed by the state is reflected in the fact that all human rights are held particularly against the state. Moreover, they hold against all types of states, democratic as much as any other (compare section 13.3). If one's government treats one as less than fully human, it matters little how that government came to power. The individual does have social duties (Article 29), but the discharge of social obligations is not a precondition for having or exercising human rights.

The substantive attractions of this particular “realistic utopia” (Rawls 1999: 11), I would suggest, go a long way toward explaining the hegemonic power of the Universal Declaration model. This, I believe, largely accounts for the overlapping international consensus on the rights of the Universal Declaration.

5. Toward a Liberal Theory of Human Rights

Equal concern and respect, understood as a political conception of justice, can be endorsed by a variety of comprehensive doctrines. I turn now to one, liberalism. The chapter thus moves from relatively descriptive to largely prescriptive argument. I argue that a particular type of liberalism provides a strong and attractive normative foundation for the Universal Declaration model—although, as the idea of overlapping consensus indicates, many other foundations are also possible.

A. Defining Liberalism

“Liberalism” is a complex and contested set of orientations and values. It is *relatively* uncontroversial, however, to say that it is rooted in a commitment to liberty, freedom, or, in the formulation I prefer, autonomy. More precisely, liberals give central political place to *individual* autonomy, rather than the liberty of society, the state, or other corporate actors. Liberals see individuals as entitled to “govern” their lives to make important life choices for themselves, within limits connected primarily with the mutual recognition of equal liberties and opportunities for others.

	Rights-based	Good-based
Thick		
Thin		

Figure 4.1 A typology of liberal theories

Liberalism also is specially committed to equality¹¹—although most liberal (and non-liberal) theories and all liberal (and non-liberal) societies ultimately permit substantial economic, social, or political inequality. Liberty is not a special privilege of the elite but (in principle) available to all. *Equal liberty for all* is at the heart of any liberal political vision.¹²

Not all liberals, though, are friends of rights, let alone human rights, and different liberals cash out the commitment to equal liberty in different ways. Figure 4.1 categorizes liberal theories along two dimensions: the extent to which they emphasize rights or the good (or virtue, or some other value) and the substantive “thickness” of their conceptions of those core values.

Locke is the seminal figure in the strand of liberalism that grounds the commitment to equal liberty on natural (or what we today call human) rights. Its roots go back at least to Leveler and Digger arguments during the English Civil War. Kant, Paine, and Rousseau were leading eighteenth-century proponents. Rawls and Dworkin are prominent recent American representatives.

Liberalism, however, also has a strong historical association, going back at least to Hobbes, with utilitarianism, a good-based theory that makes human

11. Dworkin (1985: chap. 9) offers an especially forceful argument for the centrality of equality to liberalism.

12. There are striking analogies with the motto of the High Commissioner for Human Rights in 1998, the year of the fiftieth anniversary of the Universal Declaration: “All human rights for all.”

rights at best a second-order or derivative political principle. (The seminal figure is Bentham, who famously described natural rights as “simple nonsense” and imprescriptible natural rights as “nonsense upon stilts.”) This was the dominant vision of liberalism in Britain in the nineteenth century. A microeconomic version underlies contemporary “neoliberal” market-oriented policies.

My purpose here is to advance a rights-based liberal defense of the Universal Declaration model. Although many good-based liberals participate in the overlapping consensus on international human rights, their views will not be considered here. Furthermore, microeconomic, utilitarian “neoliberalism” is fundamentally opposed to the liberal human rights perspective I defend, as we will see in more detail in section 13.7. (Neoliberal equality involves political indifference to competing preferences—unbiased treatment in the marketplace—rather than guaranteed access to essential goods, services, and opportunities.)

Turning to the second dimension of our typology, the range of recognized rights, the end points of the continuum are represented by what I label “social democratic” and “minimalist” (or libertarian) liberalism. A liberalism compatible with the Universal Declaration model must be strongly egalitarian, must actively embrace an extensive system of economic and social rights, and must reflect a robust conception of democratic political control (compare section 13.3).

The European welfare state is the leading practical exemplar. *All* internationally recognized human rights are seen as entitlements of individuals—social and political claims that impose duties on the state and society—rather than mere liberties. Even with recent welfare state retrenchments, all the states of western Europe lie toward the top left of Figure 4.1.

At the bottom left lies a minimalist liberalism that emphasizes individual personal liberties and includes only a short list of economic and social rights. In some circles this is referred to as “classical” liberalism. In the United States it is often called “libertarian.”

Minimalist liberalism’s truncated list of human rights is substantively incompatible with the Universal Declaration model. Whatever its historical pedigree or philosophical merits,¹³ it is best seen as a critique of the substance of the Universal Declaration model, despite the considerable overlap on civil and political rights.¹⁴ For the past half century, *no* Western liberal democratic regime, not even Reagan’s America or Thatcher’s Britain, has pursued libertarian minimalism (compare section 14.5).

13. Section 3.1 criticizes minimalism’s characteristic attack on economic and social rights.

14. Most minimalists nonetheless participate in the international overlapping consensus on human rights, subordinating their unease with economic and social rights to their overriding (even defining) commitment to civil and political rights.

A politically important (although perhaps not theoretically coherent) “intermediate” rights-based liberal perspective emphasizes personal and civil liberties, a modest list of economic and social rights provided by a welfare state, and primarily procedural democracy. This “American” vision is much more willing than the libertarian to restrict personal liberties in order to remedy invidious inequalities. It also is somewhat more sympathetic to the idea of state action to assure minimum access to social and economic goods, services, and opportunities. But the American welfare state is much less robust than those of Europe. In the United States this perspective is usually referred to as “liberal,” pejoratively by the right. I will treat it as the thinnest plausible liberal conception of the Universal Declaration model.

Both “American” and “social democratic” liberalisms are committed to a democracy that operates only within the substantive requirements of equal human rights for all and to a welfare state that supplements a market system of production with substantial “welfare state” redistribution—in order to assure equal human rights for all. I will use “liberal” without qualification to refer to this shared political ideal based on an underlying vision of equal concern and respect.

B. Equality, Autonomy, Neutrality, and Toleration

Liberals often make exaggerated claims for the neutrality of their principles.¹⁵ Liberalism, however, no less than any other substantive moral or political position, privileges some competing conceptions of the good and marginalizes others. Any list of human rights cannot but make substantive judgments about the range of conceptions of the good life that are considered within the pale of reasonable argument. The real issue is not *whether* certain views are excluded but the *grounds* for inclusion or exclusion. I will defend tolerant, liberal “neutrality” toward a wide range of (but not all) competing visions of the good life.

Liberal neutrality—neutrality bounded by liberal principles—is an expression of the core liberal values of equality and autonomy in a world without indubitable moral and political foundations. If we cannot be certain of the substance of the good life, particularly in its details—more precisely, if our own certainty is not something that is shared by many of those with whom we interact, if we have sufficient respect for them, and if we are committed to the basic moral equality of all human beings—then a stance of at least principled tolerance is required for all conceptions of the good life that respect the equal

15. Daniel Bell (1993: 3–4; 1996: 660–62) succinctly but perceptively identifies this shortcoming of many liberal theories.

dignity of all human beings. Commitment to individual autonomy provides additional support for tolerant liberal neutrality: one is entitled to make such determinations for oneself, within the bounds set by the equal autonomy of others.

Looked at from the other side, to impose a particular substantive conception of the good life would be to infringe or deny the equality and autonomy of those on whom it is being imposed. And if one might be wrong, that denial cannot even be justified by paternalistic arguments. Liberal political theory thus seems especially attractive in a world that is skeptical of ostensibly secure, “indubitable” moral foundations (which, conversely, militate against liberal neutrality).

Liberal neutrality, however, is not—cannot be—neutral with respect to claims that some groups of human beings are categorically superior or inferior to others, and thus have different basic rights. Liberals also are not neutral with respect to theories that deny individuals and groups the right to pursue their own conception of the good (so long as they allow exactly the same right to other individuals and groups).

Of course, liberal *intolerance* toward those who categorically attack equality and autonomy is vulnerable to skeptical external challenge. In practice, however, I do not think that many liberals (or their critics) would be embarrassed to reject out of hand those who claim that some human beings are categorically superior or inferior to others. And I do not believe that liberals (or others) need apologize for rejecting out of hand arguments that some groups are entitled to pursue their conception of the good life at the cost of the good life, thus defined, of others. Quite the contrary, in the contemporary world it is those who challenge the basic moral equality of all human beings and their right to considerable space to choose for themselves the good life, rather than liberals, who are likely to be embarrassed by their own arguments.

Many non-liberals, as well as good-based liberals, are likely to note that most of the real work in the preceding paragraphs is done by the claim of equality. Autonomy provides additional support, but most of the same conclusions can be reached through appeals to equality alone. Therefore, my argument supports, or is at least compatible with, a cluster of positions much broader than liberalism—so long as they are egalitarian and committed to a centrally rights-based political theory. Liberals, in other words, are only one group of participants in the overlapping consensus on the Universal Declaration.

6. Consensus: Overlapping but Bounded

At the risk of some repetition, I want to reemphasize the bounded nature of the consensus on the Universal Declaration model. Bhikhu Parekh may be correct in claiming that “some values are embedded in and underpin all

human societies” (1999: 135). That list of values, however, is both short and stated at such a high level of generality as to have little substantive bite. Because most societies have rejected the very notion that all members of *Homo sapiens* are in some important sense equally human beings (compare chapters 8–10), whatever consensus on values does exist will not help us much with human rights.

The overlapping consensus on the Universal Declaration model is *not* a transhistorical, “anthropological” consensus (compare sections 5.1, 5.2). It does not imply that every person, every society, or even every government accepts the Universal Declaration. Rather, the claim is that most leading elements in almost all contemporary societies endorse the idea that every human being has certain equal and inalienable rights and is thus entitled to equal concern and respect from the state—and that what holds this otherwise disparate group together is a fundamental commitment to human equality and autonomy.

Participation in the overlapping consensus on the Universal Declaration model is only possible for those who see “human being” as a fundamental moral category and who see human beings in some important sense as autonomous actors. These “foundational” commitments define the range of views that must be taken into account in cross-cultural and cross-philosophical discussions, to which part 2 of this book is devoted. Those outside the community thus defined should be listened to and perhaps even sought out—because of our own commitment to respect for all human beings and tolerance of diversity, in an effort to change the minds of those who hold such views, or to sharpen our own views by subjecting them to external critique—but proponents of such views are legitimately treated as “unreasonable” in some important sense.

It is not illogical to claim that some members of *Homo sapiens* are born to be slaves or untouchables or subordinated to adult males. It is not necessarily incoherent to claim that members of one racial or ethnic group ought to be subordinated to another. It is, however, almost by definition *morally unreasonable in the contemporary world*. In particular, it is beyond the pale in almost all countries today to advocate social institutions that enforce qualitative differences between groups of human beings, especially when those differences are defined by ascriptive characteristics. Such institutions are not expressions of alternative conceptions of human rights. They fundamentally challenge the idea of human rights.

The core commitment to equality and autonomy underlying the Universal Declaration model suggests the importance of uncoerced consensus. Those same principles, though, also require that the range of substantive positions within that consensus be strictly bounded by a shared commitment to equal autonomy for all.

This is perhaps the essential insight in Rousseau's distinction between the general will and the will of all:¹⁶ there are some individual wills that simply cannot be allowed to be expressed in the general will if it is to maintain its moral character. When Rousseau speaks of forcing people to be free, however,¹⁷ he seems to me (as a liberal) to go too far. Nonetheless, he points toward an important insight. Some forms of behavior cannot be tolerated in a rights-protective society. Some interests must be excluded from the calculation of the public interest, no matter how deeply their proponents are attached to them.

We may be forced to live with or next to those who hold morally and politically loathsome views. Our commitment to equality and autonomy may compel us not to use force against them to try to change those views. We have no obligation, though, to tolerate attempts to impose these views on those who are judged inferior. Quite the contrary, we have (at least) a moral obligation to condemn those who would act to implement, for example, systems of slavery, caste, or racial domination (compare section 12.4), and we would seem to have a national political obligation to resist, with force if necessary, nonverbal behavior that seeks to create institutions of domination and subordination.

A system of equal and inalienable rights cannot be sustained in the face of social practices that deny the possibility of each enjoying his or her rights equally. For example, individual proponents of racial domination have the right to hold, perhaps even to advocate, their views.¹⁸ Efforts to implement them in practice, however, fall outside of the international consensus on human rights and may be—must be—resisted with all vigor.

16. *The Social Contract*, book 1, chapter 3.

17. *Ibid.*, chapter 7.

18. I say “perhaps” because such a liberty is *legally* prohibited by Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

