Grounding Human Rights

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The first part of Michael Ignatieff’s characteristically thoughtful and elegant essay draws our attention to three major facts:

First, that there really has been a human rights revolution. In the years since the Universal Declaration of Human Rights of 1948, and with increasing urgency since the end of the Cold War, a great international system of what he calls “juridical, advocacy, and enforcement” instruments has developed for protecting our human rights. These rights are encoded not only in the UN treaties, declarations, and conventions but also in regional agreements, and in much recent constitution making around the world. That is, they have been imported into the legal systems of many states.

A second fact is that it can be hard, in practice, to decide how—or even whether—to exercise the powers of one country or of the community of nations against a single state that fails to observe the norms encoded in those instruments, in the face of the need for stability and order. The demand for respect for individual human rights occurs within the framework of the sovereignty of states, and often a state that abuses human rights remains a better option for its citizens and for the rest of us than anarchy or collapse into long-term civil war.
His third observation is that there is, as a result, a need for serious thought about when, how, and whether the international community should engage in military intervention in defense of the rights of certain citizens when they are abused by the states in which they live.

Let me call these the three key facts.

I agree with much of what he says on these topics. Even when I do not, his positions strike me as reasonable, as helpful starting points for a conversation about the issues he raises. But my job here—perhaps the job of philosophy always—is to insist on distinctions and on details, in short, to kibitz, while simultaneously attending to the big picture. I should like, therefore, to make a few methodological observations about the issues he raises in the earlier parts of his essay, to defend a particular view of how we should proceed in thinking about rights, and then to show—this will be the kibitzing—that this requires me to demur about some of the details. I should say at the start that I do not have any wisdom on the question of what the rules of humanitarian intervention should be: this, I agree, is a crucial question, and much of what Michael says about it, I repeat, strikes me as eminently sensible. Let me remind you, however, of his conclusion in this area, because I would like to record here one demurral that is not philosophical but political.

Michael Ignatieff says that

[the crisis of human rights relates first of all to our failure to be consistent—to apply human rights criteria to the strong as well as to the weak; second, to our related failure to reconcile individual human rights with our commitment to self-determination

and state sovereignty; and third, to our inability, once we intervene on human rights grounds, to successfully create the legitimate institutions that alone are the best guarantee of human rights protection.

I think, however—here is my demurral—that it is not, as he suggests, necessarily a problem that we recognize the distinction between strong and weak states when we decide what pressures to exercise. For, as he says elsewhere, one fundamental guide in intervention, as in just wars generally, is whether we have the resources to succeed: and success means leaving things better at the end than they were at the start. This makes a difference not only in thinking about military intervention but in other cases: in China, the concern with “face” means that public challenges tend to be less productive than private ones, as Mary Robinson has found as the UN High Commissioner for Human Rights; in Turkey, on the other hand, as earlier in South Africa, being held publicly to certain standards that are thought of as the standards of civilized nations can be effective because it matters (or mattered) to those states that they should be perceived in those ways. Now I very much agree with Michael about one of the cases that he clearly has in mind here: the treatment of prisoners, especially in state as opposed to federal prisons, in the United States, in my view, clearly falls below certain standards to which we are committed by international treaty (and, as it happens, I think, by the American Constitution, properly understood). We—especially we citizens of this country—ought to be insistent that something be done about this if we are sincere in our attachment to those standards. But the fact that the stan-
dards are universal and that, therefore, they apply equally everywhere does not mean that we can ignore the distinction between weak and strong states in deciding how to go about trying to get them enforced.

Let me also say at the start that I agree very much with the last of the points in the passage I have just quoted. Systems of law that recognize human rights ought to be instituted and implemented in practice everywhere, and that should be our common aim.

Much of what I will have to say has to do with the second set of questions raised in that summary paragraph: questions about self-determination and sovereignty. But, being a philosopher, I am going to get there by a roundabout route.

Against Philosophy: Untheorized Agreements

Philosophy, I said, is kibitzing plus attending to the big picture.

To attend to the big picture, let me say first of all, is not necessarily to insist on philosophical or metaphysical foundations. It seems to me, as it does to Michael Ignatieff and did to the drafters of the Universal Declaration, that it is an important advantage of international humanitarian law that it does not proceed by deriving human rights from metaphysical first principles. These laws do not say—as the American Declaration of Independence did—that our rights flow from our being created equal (which presupposes, of course, that we were created at all). I think that it is an advantage because human rights as they actually exist are, above all, creatures of something like law: they are the results of agree-

ments promulgated by states, agreements that set rulegoverned constraints on the actions of states and individuals, sometimes requiring action, sometimes forbidding it. They are used by officials to justify actions both within and across states, and they are called upon by citizens of many states claiming protection from abuse. The wide diversity of people who call upon them includes, as Michael Ignatieff rightly insists, a substantial diversity of opinion on matters metaphysical—on religion in particular—and even if there is a single truth to be had about these matters, it is not one that we shall all come to soon.

What lay behind the thinking of those who first developed the European liberal doctrines of human rights—I am thinking here of seventeenth- and eighteenth-century theorists—was, in part, the history of barbarous religious warfare within Western Christendom, and the conviction that, since people could not be forced into religious conformity, we were going to have to learn to live with religious differences. Now these earlier documents were nevertheless still framed within a Christian order: Locke did not think that it made sense to extend toleration to atheists (in part because he thought only theists could be trusted to keep oaths that they had sworn). Nevertheless, they began to acknowledge (what had long been acknowledged under Muslim law) that communities of different faiths ought to be allowed to practice their religions, within certain limits, even in states where one particular faith was established.

The major advantage of instruments that are not framed as the working out of a metaphysical tradition is, obviously, that people from different metaphysical traditions can accept them. The major disadvantage is that
without some grounding—metaphysical or not—it is hard to see why they should have any power or effect. The mere making of declarations that one should behave this way or that does not in general lead people to act in conformity with them, especially in the absence of mechanisms of enforcement. So, granted that they are so weakly philosophically grounded, there is a puzzle about what gives human rights instruments their power.

The answer, I think, is implicit in Michael Ignatieff’s remark that “[h]uman rights has gone global by going local.” People around the world, working in different religious and juridical traditions, have nevertheless found reasons to support various human rights instruments because those instruments embody protections that they both want and need. We do not need to agree that we are all created in the image of God, or that we have natural rights that flow from our human essence, to agree that we do not want to be tortured by government officials, that we do not want our lives, families, and property forfeited. And ordinary people almost everywhere have something like the notion of dignity—it has different names and somewhat different configurations in different places—and desire something like respect from their fellows and believe that they merit it unless they do evil. From these diverse roots, enthusiasm for many human rights has grown. In effect, for many of our human rights, the reason why we do not need to ground them in any particular metaphysics is that they are already grounded in many metaphysics and can already derive sustenance from those many sources.

A simple example, which I have used before, can come from the traditions of Asante, where I grew up. Free As-

ante citizens—both men and women—in the period before our state was conquered by Britain, as well as since, are preoccupied with notions of personal dignity, with respect and self-respect. Treating others with the respect that is their due is a central preoccupation of Asante social life, as is a reciprocal anxiety about loss of respect, shame, and disgrace. Just as European liberalism—and democratic sentiment—grew by extending to every man and (then) woman the dignity that feudal society offered only to the aristocracy, and thus presupposes, in some sense, aspects of that feudal understanding of dignity, so modern Ghanaian thinking about politics depends, in part, on the prior grasp of concepts such as animuonyam (respect). It is clear from well-known Akan proverbs that respect was precisely not something that belonged in the past to everybody:

_Agya Kra ne Agya Kwakyere, emu biara mu nni animuonyam._ (Father Soul and Father Slave Kyereme, neither is respected; that is, whatever you call him, a slave is still a slave.)

But just as _dignitas_, which was once, by definition, the property of an elite, has grown into human dignity, which is the property of every man and woman, so _animuonyam_ can be the basis of the respect for all others that lies at the heart of a commitment to human rights.

When it comes to those cases where the different traditions part, a metaphysical grounding would not help us. For when someone argues that the human rights tradition is too individualist, and so that certain individual rights have a lesser weight than community interests, and argues in the name of Confucian values or Maoism or
Hinduism or Islam, the return to first principles will simply take us from one terrain of disagreement to another where there seems no reason to expect greater hope of resolution.

In a recent Tanner Lecture, Cass Sunstein defended the notion of "incompletely theorized agreements" in American constitutional law. What I am defending here is a similar freedom from high doctrine in the development of the international law of human rights: we should be able to defend our treaties by arguing that they offer people protections against governments that most of their citizens desire—protections important enough that they also want other peoples, through their governments, to help sustain them. Once we seek to defend these rights in this pragmatic way, we can appeal to a very diverse set of arguments: perhaps some rights—to freedom of expression, for example—are not only necessary for dignity and the maintenance of respect but also helpful in the development of economies and the stabilization of polities. And all of these are things that are wanted by most people everywhere.

To say this is to make a point that is exactly a pragmatic one. It is not to say that the legitimizing foundation of human rights is the consent of a majority of our species. And so it is not, in particular, to agree with the position attributed to most Americans by Paul Kahn, as Michael citcs him, to the effect that rights acquire their legitimacy from the consent of the governed. I do not think this is a coherent idea because our most fundamental rights restrain majorities, and their consent to the system that embodies those restraints does not entail their consent to the rights themselves—otherwise there would be no need of them. If consent is an empirical notion, then most Americans do not consent to many rights that we actually have: the right, for example, even if we are condemned for capital crimes, to marry. The point about widespread assent that I am making is only that we can understand much of the success of human rights talk as a reflection of the fact that it speaks to people in a wide diversity of positions and traditions, and that, because of that chord of resonating agreement, we can find support for the human rights system in many, many places. Part of the point of articulating these ideas in international documents, widely circulated and advertised, is just to draw attention to that core of agreement and help to give it practical force. Since human rights can be sustained in these ways without metaphysical debate, and since metaphysical debate is unlikely to yield consensus, let us proceed to endorse and enforce them without it as much as we can.

What I have just said is a point about what sort of fact the first key fact is. And I want to underscore a crucial point that Michael Ignatieff makes. Simply put, the spread of human rights culture and the growth of human rights NGOs all around the world does not amount to the diffusion of a metaphysics of Enlightenment liberalism. To the extent that that is right, we do not have to defend it against the charge of ethnocentrism.

**Methodological Individualism**

I should now like to make a general point about the second key fact: the fact that there is the possibility of practical conflict between individual rights and state sovereignty. At a number of cruxes in his argument, Michael
Ignatieff raises questions about balancing the rights of individuals against the demands of various collectivities. He also mentions cases where what is at stake are competing collectivities—Serbs and Albanian Kosovars, Turks and Kurds, even, several times, Americans, on the one hand, and the international community (or perhaps just Europeans), on the other. In the face of the issues raised here, he seems both inclined to make concessions toward one sort of collectivity—the nation-state—and to be wary about acknowledging the desire for self-determination on the part of others—such as the Kosovars or the Timorese.

I confess to sharing these instincts: I am skeptical about acceding too much to subnational groups, even, as he is, skeptical about rights to self-determination that are already supposedly embedded in international law; and I am a lukewarm enthusiast, as he is too, for the nation-state and for civil rights associated with location rather than ancestry. And I think it is easy enough to see why we are both likely to be unsympathetic to such views. Michael Ignatieff is a Canadian of Eastern European ancestry educated at Harvard and living in London. In a moment I am going to discuss the work of a Ugandan intellectual of Asian ancestry who was his roommate at Harvard: a man who has just moved from the University of Cape Town to Columbia University. I am an Anglo-Ghanaian, born in London, raised in Ghana, living in Boston. The week before I delivered the original version of these remarks, I traveled down from Kumasi, in Ghana, to Accra, the capital, in a car in which the languages were Japanese, English and Asante-Twi, with a young man whom I have known since he was an infant, because we grew up on the same street, who now lives partly with his Japanese wife just outside Tokyo. The last time Michael and I met (before the lectures that form the basis of his essays in this volume) was at a Catholic university in Brabant in Holland, a country we here think of as the ur-Protestant society. We—he and I—are exactly the kinds of world travelers whom our enemies think of as "rootless cosmopolitans," lacking the authentic rooted group identities that claim collective rights: we are people who have no use for group rights ourselves because our own movements across the boundaries of states require the protection of our individualities, not the acknowledgment of our groups.

I think that people like us have a special responsibility to resist these inclinations we share because of the kinds of lives we share, and to try to engage with some sympathy with the claims of groups that are not of much use to us. This is in keeping with the generally pragmatic approach I urged at the start: let's see what kind of case for group rights as a legal practice might meet the interests and the needs of actual people in a way that might generate consensus on endorsing those protections in international instruments.

Before proceeding with those questions, however, I think it will be helpful to make two distinctions: one about individualism and one about group rights. The distinction about individualism in the sphere of rights is between what I will call methodological individualism and substantive individualism. Methodological individualism about rights I thoroughly endorse. It is the view that we should defend rights by showing what they do for individuals—social individuals, to be sure, living in families and communities, usually, but still individuals. Substantive in-
dividualism about rights is the view that rights must always attach to individuals: that human rights, as framed in our conventions and in law, should always be the rights of persons, not of groups. It is substantive individualism that I am going to ask us to interrogate. We can then take up my first point—that rights are fundamentally creatures of law—and ask what laws, including what laws assigning rights to groups, would be good for individuals.

But that interrogation can proceed usefully only if we make a second distinction: that between two ways of thinking of group rights. One is to think of them as exercised collectively: for this to work in practice, there have to be mechanisms by which the groups can be legally identified and institutions through which their interests can be asserted. If an American Indian tribe has the collective right to run a gaming casino, it must be decided both who belongs to that tribe and how they should decide whether to exercise the right. The right of self-determination is a group right of this sort, and it raises both kinds of questions. Who is a Palestinian, a Kurd, a Tibetan? And how should they decide to exercise their rights? Call group rights of this sort collective rights.

A second conception of group rights is the idea that the law, whether national or international, might treat each member of certain groups as being individually entitled to certain claims qua member of the group. For example, each member of the English hereditary peerage used to be able to exercise the right to a trial by the House of Lords. Call group rights of this sort membership rights.

Membership rights are individual rights in a certain sense: they belong to individuals. But those who say they are skeptical of group rights often mean to be challenging membership rights. What they are objecting to is the idea that a state should relate to any citizen in virtue of his or her membership in a group rather than simply as a citizen. It was an objection to the membership rights of whites (and the membership burdens of blacks) that underlay much of the opposition to American Jim Crow and to apartheid. The only membership rights that have a large body of support are the membership rights of citizens of democratic states: it is widely thought to be fine to treat citizens and noncitizens differently before the law, for example, in deciding who may take jobs where.

Collective rights tend to have more friends, however. Most people think that it is just fine that Utah or the city of Cambridge or the Catholic Church can exercise rights, through the ballot box or (in the case of churches) through whatever consensual internal mechanisms they agree upon.

Rights, Race, Custom

I was lucky to hear a talk by that roommate of Michael Ignatieff’s from Uganda the day before I was to reply to the Tanner Lectures on which Michael’s essays here are based. His name is Mahmood Mamdani. (Given the quality of their lectures, I wish I could have been a fly on the wall on that room at Harvard!) Mahmood Mamdani was talking about the legacies of colonialism in African states. Roughly, the picture was this: the colonial state divided people into two categories. There were citizens, who had races (White, Indian, Arab), civil rights, and a separation of powers under the rule of law; then there were subjects,
who had tribes, under customary law, and a chief who had been turned into a despot, through the ignoring of the different corporate sources of power (age sets, clans, etc.) of the precolonial order. Membership in tribes was decided by suppositiously traditional means, and which tribal jurisdiction you came under depended on what tribe you belonged to, not on where you were living. If you combine custom with the idea of indigeneity, as happened in British indirect-rule customary law, you get not only membership rights but also exactly the sorts of discrimination between individuals that leads to skepticism about membership rights. Migrant labor, traders, capitalists, all of whom move across customary jurisdictions, end up having no customary status; and if you assign special rights to people qua members of tribes, you end up discriminating against the nonindigene: thus the Ban-yamulenge in Congo are “really” Rwandese Tutsis and so must leave; the Igbo traders in northern Nigeria are really easterners and so may be killed; the Asian capitalists, large and small, in Uganda are really members of no tribe and so can settle nowhere.2

One obvious suggestion here is to tie rights not to indigeneity but to residence, but to allow that this will mean that some minority residents of some regions will be governed in part by standards they do not think of as authentically theirs.

Listening to Mahmood Mamdani talk, I was bound to reflect on my own experience of custom, especially since I had just returned from spending a week participating in the final funeral rites of the late king of Asante and talking to the new king about his ambitions for putting his own position to positive use.3

This is not the place to say in detail how I think we should deal with the problem that Mahmood Mamdani raised for Africa’s inheritance of the framework of customary law. But it provides a good example of the sorts of questions we have to answer if we are to think sensibly both about group rights as collective rights, the right of the Asante to continue their kingship within the Ghanaian republic, and about membership rights—the possession by Asante indigenes, however defined, to land rights that are not held by others. What I have been suggesting is that in thinking about such questions as matters of international human rights law—for example, “Is the persistence of Asante customary law consistent with the human rights of non-Asante Ghanaians resident in the Asante region?”—we should be guided by two thoughts.

First: we should ask what features of the international regime can be “taken local” by allowing people and peoples to see that they have interests that can be served by the institutionalization of those rights.

Second: if collective and membership rights are urged, they should be evaluated, in the same way, by our asking whether they would be good, on balance, in the actual circumstances, for individuals.

In sum I want to defend the utility of human rights as practical instruments for serving human purposes, for that way we can gather, I believe, a greater consensus behind them; I am open to group legal rights—both membership and collective—but only as instruments in the service of enriching the lives and the possibilities of individuals. Since taking human rights local and a preference for individual over collective rights are both features of
Michael Ignatieff's proposals in these essays, I hope that these will be seen by him—and by everyone—as friendly elaborations of some of the themes he has so helpfully begun to set before us.

NOTES


Debates with the PTA and Others

DAVID A. HOLLINGER

If I were a patriarchal, theocratic authoritarian, an official of a sovereign nation-state organized in relation to a traditional culture, eager to use the technologies of the West but equally eager to avoid social and political liberalization, I would be very suspicious of Michael Ignatieff. I'd say to him something like the following. You, Ignatieff, claim that you don’t have designs on the entirety of my culture, so long as folks can leave it when they wish. You say that your human rights agenda is limited to providing the basis for what you call "any life whatever," and that you imagine many different kinds of social goods in a culturally plural world. You imply that you expect my culture to continue pretty much unchanged except that we have to stop killing our women when they dishonor us men. But you do not understand the extent to which my culture is defined by the very things you are against. And you do not understand that the liberals in my midst, whom you like to cite as examples of the diversity of my own tradition, are selling out to the West, are profaning the faith of their fathers by using the name of this faith as a cover for de facto Western liberal ideas, and are undercutsing the political culture of our state by seeking to introduce a free press, by trying to weaken the
civic role of our ecclesiastical authorities, and by asking that we educate our women. These sellouts are your cultural colonials, Ignatieff, who are of use to you because of their own continued, public affiliation with my religion and my state and my culture; they make it seem that your project is directed not against us but only against what you imply is one part of us. You thus divide us and potentially conquer us by encouraging these liberals not only to liberalize but to liberalize within our tradition rather than by renouncing it and owning up to their adoption of foreign, ultimately Western values. And the difficulty of separating out your ostensibly minimalist human rights agenda from the larger project of liberalization is shown by the fact that your human rights agenda gets the most support within my society from these same liberals, these same sellouts. Hence you, Ignatieff, are more subversive than you allow. You acknowledge that my society has divisions within in, but you are taking sides, supporting the subversives and opposing me and my kind. You seem to be willing to accept the continuation of my way of life, but the sharp distinction you draw between a minimalist human rights agenda and a more wholesale transformation of culture and politics in individualist, egalitarian directions will not stand up: your human rights agenda is a slippery slope, a foot in the door, the camel’s nose in the tent—you can pick your figure of speech. You remind me of those American liberals in the 1950s and early 1960s who said that the end of segregation would not mean intermarriage, but in 1967 the Supreme Court ruled unconstitutional the laws of Virginia and other states prohibiting interracial marriage, and now such marriages are increasing, especially in the military, where the atmos-

sphere of a secular civic government is the least confined by local custom. So while you now disaggregate basic human rights from the more sweeping individualism, egalitarianism, and democratic political culture so often associated with human rights, and while you tell even members of your own tribe that human rights is just a tool kit and not part of a more ambitious program of global reform, I as an old-fashioned patriarchal, theocratic authoritarian see through your designs. I will not be deceived into putting at risk my culture, my patriarchy, my theocracy, my authority, just to satisfy the demand for what you call minimal human rights.

But fortunately for Ignatieff, and even more fortunately for me, I am not a patriarchal, theocratic authoritarian. I take on this fictional persona in order to bring out several of the issues raised by Ignatieff’s approach to human rights theory. Two such issues are, first, the viability of the distinction between a minimalist human rights program and the larger matrix of Enlightenment aspirations out of which the human rights program as understood in the North Atlantic West has emerged, and, second, the boundaries of the moral community being invited to accept this distinction, and to accept Ignatieff’s overall justification for human rights. The complaints of our patriarchal, theocratic authoritarian—whom I will henceforth flag with the acronym PTA, reminding us incidentally of the often conservative cultural concerns of some groups closer to home—illustrate the first of these two issues more vividly than the second. But the second issue, too, comes into view when we decide how seriously to take the PTA’s opinions. Just whom is Ignatieff trying to persuade? Does he—do we who sympathize with his
endeavor and share the dilemmas on which his essays are so refreshingly forthright and resourceful a commentary—care about the PTA except as a strategic matter? Is our own confidence in the human rights project diminished because of the objections raised by the PTA?

Before I comment on these two issues, I want to acknowledge that it is a struggle for me to find much to argue with in Ignatieff's essays. I find myself so appreciative of his exemplary good sense, his cautious theoretical refinements, his candid secularism, and his ability to take account of context-specific constraints and possibilities, that I invoke the alien persona of the PTA by way of getting into the critical mode. Ignatieff is, to my knowledge, unique in his ability to address simultaneously and effectively the concerns of both human rights activists and human rights theorists. His example stands as a commanding rebuke to those activists who regard theory as little more than an invitation to be precious and divisive, and a rebuke, also, to those theorists who find the historical particularity of the activist's daily work to be an irrelevant distraction. The great value of Michael Ignatieff's essays is not the basic justification for human rights that he articulates, excellent as that justification is. The great value of these essays is, rather, the model they provide for deliberation in human rights matters, for taking a variety of considerations into account in relation to every human rights decision, for patiently staying with the project even though victory is rarely in sight.

In regard to the first of the two issues—the viability of so sharp a distinction between a minimalist human rights program and that program's broader matrix of Enlight-
willy-nilly, connected to an international politics that would promote the social, cultural, and political conditions conducive to the diminution of cruelty?

Ignatieff cites Amartya Sen to the effect that human rights are important as a stepping-stone toward a more general human welfare. Minimal human rights, followed by a free press and democratic government, maximize the opportunity that a society will avoid the calamity of China’s Great Leap Forward. If the PTA read this part of Ignatieff’s essay, the ambitious liberal reforming cat would surely be out of the human rights minimalist bag. And I wonder what percentage of the pro-human-rights constituencies in China, Indonesia, or Algeria today are eager to renounce the hope of democracy and the rule of law? If there is good reason to believe that human rights can serve as a vanguard for democracy, why, other than strategic necessity, should we be quiet about this prospect? Strategic minimalism makes good sense strategically, but it carries the same risk carried by its famous sibling, strategic essentialism: the risk that it shall deceive its own advocates.

This uncertainty about the relation of strategic minimalism to what we really think brings us to the question of just whom one wants to persuade. Ignatieff presents the “spiritual” crisis of human rights as internal to “us,” but he seems to regard this crisis as the result, at least in part, of our taking seriously the sensibilities of people like the PTA. The minimalism of Ignatieff’s theory of human rights, his divestment of one argument after another until we are finally reduced to a variation on the Golden Rule—“the basic intuition,” as he puts in his concluding paragraph, “that what is pain and humiliation for you is bound to be pain and humiliation for me”—follows importantly from the range of the perspectives he wants to satisfy. Arguments with greater density, arguments that exploit the historically particular intellectual and moral traditions sharpened within the West against the West’s own propensity for murder, these arguments, Ignatieff ruefully discards. In so doing, Ignatieff reenacts in our time the drama of 1947 and 1948 that he so sensitively recounts: the silencing of certain ideas in order to render one’s formulations acceptable in a larger and more diverse community. Yet the drafter of the Universal Declaration were trying to create a document that would be signed by sovereign states, all of them, if possible; hence the demands of strategic minimalism were implacable. These demands need not be quite so controlling of a theory designed to motivate and mobilize a constituency smaller than the entire United Nations.

I wonder whether Ignatieff’s strategic minimalism has not exercised too much influence over the terms on which he tries to convince himself and others in his own tribe of the soundness of the human rights endeavor. My fear is that Ignatieff, despite his open and robust affirmation of individualism, despite his pointed complaint that human rights activists have conceded too much to cultural relativism, is himself too eager to get the PTA’s assent, too willing to scale back his justification of human rights so that even the PTA might find that justification cogent and convincing. Perhaps we can more readily convince ourselves that we are right if we admit that the world is indeed so plural, culturally, that not everyone
can be brought to accept even the Golden Rule? Perhaps the spiritual crisis of human rights can be more easily resolved if we scale back not our theory of human rights but the circle of people whom we want to persuade of that theory's validity.

Such a turn would seem fully consistent with Ignatieff's welcome willingness to justify human rights in terms that will not satisfy those for whom theism is indispensable. The religious and the secular subcommunities of our tribe can develop their own variations on human rights theory without getting in each other's way. Ignatieff seems not to object to religious belief as a basis for human rights so long as those who accept that basis will refrain from foisting it upon the rest of us, telling us, their secular allies, that without God we have no sound theory of human rights. Ignatieff wisely does not try to persuade religionists to give up their religious foundation for human rights.

So, too, might Ignatieff loosen up a bit on the children of the Enlightenment. I do not find the statements by Elie Wiesel, Kofi Annan, and Nadine Gordimer nearly as troubling as Ignatieff does. These utterances are hyperbolic, but exaggeration is not idolatry. When these figures use terms like "religion" and "creed" to talk about human rights, I read them in the same way I read Ignatieff when he describes human rights as a tool kit: all are using figures of speech. Our choice of metaphors is significant, but when Ignatieff elaborates on agency and negative liberty and individualism, what he says might well strike someone else as a creed of sorts. The principle of individual agency is not so modest, given the extent and depth of the forces arrayed against such agency. Ignatieff does a terrific job developing a nonidolatrous theory of human rights, but the strength of his theory is somewhat obscured by his presenting it primarily as an alternative to idolatry. Rights inflation may be unwise for all the reasons Ignatieff gives, but there may be room for a bit of thickness in secular as well as religious justifications for human rights. The danger is not so much that we will all be stampeded into accepting too thick a justification of human rights, but that we will diminish the size and energy of the human rights community by rendering unwelcome in it some people who join because of theories that neither Ignatieff nor I—my own secular sentiments are very much like his—can accept.

Why do I think we need to keep more open than Ignatieff does the door for people with thick theories of human rights? Because we need all the help we can get. As we develop awareness, thanks partly to Ignatieff's writings here and elsewhere, of how frustrating human rights activities become, of how complex are the politics of human rights, of how truly difficult it is to get anything done right, the more we may need the confidence in the human rights endeavor that thick theories can provide. The challenge may be less to develop a single minimalist theory of human rights than to coordinate the activities of people motivated by several somewhat thicker theories, and to connect the common denominator of these theories to the actual politics of the world. No one has done more than Ignatieff to show us how this can be done. But if the religious are to be granted their Yahweh and their Christ, their Ten Commandments and their Sermon on the Mount, then we secularists should be allowed our Locke and our Rous-
The Moral Imagination and Human Rights

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Michael Ignatieff begins his first essay with an incident reported by Primo Levi in If This Is a Man: Levi is standing opposite the chief of the chemical department at Auschwitz. His life depends on convincing this erstwhile colleague that he—Levi—is a competent chemist and hence more useful to the camp alive than dead. He remembers that Dr. Pannwitz, the man on the other side of the desk, stared up at him with a "look [that] was not one between two men . . . [a look] which came as if across the glass window of an aquarium between two beings who live in different worlds." If, Levi says, he could have explained the nature of that look—one not between two humans beings but—to take the metaphor literally—between a human being and some other, in this case, aquatic species, one might explain "the essence of the great insanity of the third German [reich]." A least one form of moral progress, Ignatieff suggests, consists in the degree to which "we act upon the moral intuition that Dr. Pannwitz was wrong" and, conversely, subscribe to the view that "our species is one, and each of the individuals who compose it is entitled to moral equal consideration." Progress in this sense is nothing more, or less, than the global dif-
fusion of the Golden Rule—the expansion of the species category "human" as the bearer of a moral franchise—into ever expanding spheres.

There is, however, a second and perhaps more mundane sense of moral progress to which Ignatieff turns immediately: that is, progress as the increasing acceptance of "human rights instruments." This is a juridical development; the emphasis here is less on "human" than on "rights." Its history begins, of course, in the Enlightenment and finds its first great legal articulation in the French Revolutionary "Declaration of the Rights of Man and Citizen." There are foreshadowings of what would become an international human rights before the late twentieth century: one thinks of the legal foundations of the nineteenth-century suppression of the slave trade and of the ineffective noises made in protest against the Armenian massacres. But there were no actual covenants or treaties guaranteeing group or individual rights. Ignatieff is right to begin with the slow but steady climb out of the near collapse of European civilization in 1945. A jurisprudential revolution was meant to guarantee "Never again." Before 1948 only states had internationally recognized rights; in that year—a sort of ground zero—the Universal Declaration of Human Rights granted such rights to individuals threatened by states or by oppressive customary practices, that is, by communities. In 1948, too, the Genocide Convention protected the rights of religious, racial, and ethnic groups threatened by persecution or extermination; the next year, 1949, the Geneva Convention guaranteeing noncombatant immunity was strengthened; in 1951 came conventions protecting the rights of refu-

gees. Finally, in 1953 the European Convention on Human Rights. And, of course, there are various national histories—the progress of the civil rights movement in the United States, for example. Progress in this second sense is expansion of rights based in law rather than in fellow feeling.

And finally, there is the history of moral progress as the history of the advocacy revolution and the advent of institutions to punish human rights offenders. Those whose rights have been trampled are no longer alone; the state's monopoly on international affairs has been broken, and literally hundreds of organizations watch for human rights abuses by whoever might commit them. War criminals and perpetrators of genocide are on trial as we speak.

But this triumphalist story is incomplete. Why is there a deep sense of perplexity and discouragement among human rights activists at the very same time that human rights language seems to be everywhere. Why, to put it differently, would any one of us not be tempted to demur from the first part of Ignatieff's essay by simply offering a list: a million civilians dead, tortured, bombed, or displaced here, maybe two million there, 500,000 or 100,000, maybe only tens of thousands somewhere else; India and Pakistan; Biafra; El Salvador and Nicaragua and the bombing of civilians in Vietnam, to get closer to home; the dirty war in the Argentine; Pinochet's Chile; Cambodia; Palestine; Algeria, both during its war with France and during its war with itself; Bosnia; Croatia; Kosovo; Rwanda; Chechnya. Where is moral progress here? It is tempting, as Ignatieff says, to let this catalog answer
for itself: we are disappointed with what the international human rights movement has achieved because abuses increase faster than our ability to stop them.

But he offers a different answer. Human rights activism has been insatiable in its demands and insatiably disappointed because it fails to define the limits of its reach. With a horizonless view of the potential of the human rights movement and of the efficacy of military and other forms of intervention, we in the West have put the legitimacy of the rights standard itself into question and in some situations have even made bad situations worse. These essays thus articulate limits—first of all, on the circumstances under which the human rights movement and the governments it influences will impinge on the sovereignty of states and, specifically, use military force to right some wrong: the limits of intervention, in other words. It is justifiable only in such cases where all standards or fairness and the protection of the individual have collapsed—where negative liberty is in serious jeopardy—and not in all those cases in which a particular Western standard of democracy and political openness is not met.

At the heart of Ignatieff’s position—governing his account both of moral progress and of a politics of intervention—is the point that he makes near the end of his first essay: that “legitimate institutions . . . alone are the best guarantee of human rights protection.” I think this is a terribly important, and well-taken, point—but I do not think that it rests either in a history of the universalization of the species category “human” designating a moral subject, or in the history of moral progress as the universalization of “rights.”

Put differently, Ignatieff’s fundamental point is that it is an error to rely for the protection of human rights on the conversion of the world’s people and governments to a set of universal principles. We should strive instead to expand the writ of constitutional guarantees for individual self-determination: constitutional guarantees of negative liberty. If this is the case, the problem may not be so much a matter of learning to consider some distant creatures as human and hence worthy of decent treatment. Nor is it primarily one of articulating the conditions under which one might want to protect others when such treatment is not forthcoming, that is, developing an international politics of intervention. We must, rather, create the conditions under which our fellow humans treat their neighbors as themselves, developing local political cultures that protect individual liberties.

In this context, I want to suggest two alternative histories that arrive at much the same place as does Ignatieff. In so doing, I do not want to detract from his emphasis on the revolution in world politics that the post-1948 rights revolution has wrought. But I do think that the possibility of a world in which legitimate institutions protect individuals from tyranny, death, and oppression depends on historically quite specific conditions of local political culture that deserve attention. I do not want to suggest that cultural understanding will protect anyone; there is little evidence for this and much to the contrary. But I do want to propose that the sort of constitutionalism Ignatieff proposes is grounded in specific, historically rich, political conditions.

Let me begin with the history of the “intuition that Dr. Pannwitz was wrong.” It is a history of the expansion less
of the category "human" than of the moral imagination that allows us to regard the suffering of distant humans as making the same sort of claim on us as the suffering of proximate ones. The imperative to treat those outside of one's intimate circle humanely is, of course—as Ignatieff has written elsewhere (The Needs of Strangers)—a long-standing one. "Love the sojourner therefore, for you were sojourners in the land of Egypt" (Deut. 10:18–19). "I was a stranger and you welcomed me" (Matt. 25:35), Jesus said, in the context of telling his disciples that any act of kindness to another human in need is an act of kindness toward him. "Humanities is the general name given to those virtues in whom seemeth to be a general concorde and love in the nature of man," says Sir Thomas Elyot, the author of the first English work on moral philosophy, in 1531.

Humane behavior in this sense entailed neither a universal abstract theory of right nor a commitment to human equality—social or juridical. Clearly acts of charity, hospitality, and courtesy were as often practiced by social superiors to their inferiors as to their equals or superiors. Indeed, in an aristocratic society such acts of humanity were meant to produce the nexus of hierarchically ordered attachments, mutual obligations, and rewards that constituted the social order predicated on inequality. Efforts to expand the domain of obligation must begin with the recognition that in the first instances humanity was local—autarchic. Those who mattered were those who were close and already connected.

The history that Ignatieff points to as beginning with the antislavery movement constitutes the story of the unlikely—in some instances even undesirable—reversal of what appears so natural: the story of how the suffering of distant strangers came to matter as much as one's own suffering or that of one's near and dear. This is Diderot's Chinese mandarin problem. It is an extraordinary demand that Adam Smith understood with fine precision: "If he were to lose his little finger to-morrow," he says, he "would not sleep to-night. But, provided he never saw them, he will snore with the most profound security over the ruin of a hundred millions of his brethren, and the destruction of that immense multitude seems plainly an object less interesting to him, than this paltry misfortune of his own." And two centuries later, after Auschwitz, it is echoed by Primo Levi:

If we were able to suffer the sufferings of everyone, we could not live. Perhaps the dreadful gift of pity for many is granted only to saints. . . . and to all of us there remains in the best of cases only the sporadic pity addressed to the single individual, the Mitmensch, the co-man: the human being of flesh and blood standing before us, within the reach of our providentially myopic senses.

Humanity for Diderot, Smith, Primo Levi—and, indeed, most of us—in the first instance begins at home.

The question then becomes, How is distant suffering to become the equivalent of suffering at home? And the answer that began to be articulated in the late seventeenth century and is repeated every day as we see documentaries about Rwanda, or photographs of mass graves in Bosnia, or of starving children in the Sudan, is that "the soul expands herself abroad, and finds that she is actually related to all surrounding beings," to use Nicolas Male-
branche's metaphor. Something—a faculty and some stimulus to that faculty—allows us to reach out; something that by the eighteenth century was construed to be a natural sympathy. Perhaps, as William Wollaston argued in the 1720s, “human nature” was constituted with a generic disposition that “renders us obnoxious to the pains of others, causes us to sympathize with them, and almost comprehends us in their case.” For Wollaston this disposition is almost physiological; our reaction is direct and in response, it seems, to an actual, present distress: “[I]t is grievous to hear (and almost to hear of) any man, or even any animal whatever, in torment.”

It is precisely this sense of immediate local sympathy that came to be expanded through what we might call the moral imagination, the capacity to somehow feel the exigency of wrongs suffered by strangers at a distance. As Adam Smith most famously argued, the imagination brings the outer world in:

By the imagination we place ourselves in his situation, we conceive ourselves enduring all the same torments, we enter as it were into his body, and become in some measure the same person with him, and thence form some idea of his sensations. . . . His agonies, when they are thus brought home to ourselves, when we have thus adopted and made them our own, begin at last to affect us, and then we tremble and shudder at the thought of what he feels.7

Thus images and words substitute for the sound of the cry, for the sight of blood and mangled flesh, for the look of suffering.

In an important sense this story has reached its dénouement. Today technologies of all sorts bring the human rights abuses of the whole wide world home, and we seem to have no difficulty in encompassing—at least on occasion—all of humanity within the fold of our compassion. Successors to the economic boycotts of the 1790s against sugar have become commonplace as we eschew all sorts of products produced under bad conditions in much of the Third World. The British efforts to restrict the world slave trade were but the first instance of an international politics of human rights that—as Ignatieff has told us—now enjoys center stage.

The difficulty now is not that of regarding a stranger as a fellow human and thus worthy of moral regard: it is, rather, that in much of the world intimates treat one another badly. As Elaine Scarry has argued in The Body in Pain, much of the most horrible violence of the past decades has been directed against those closest to the perpetrators—civil, not international, conflict. Not surprisingly, perhaps, the abstract “human” is easier to cherish and respect than the all-too-real creature next door. In one sense this may seem to be the dilemma of Dickens’s Mrs. Jelleby, who cares so deeply for the children of some obscure African country while her own children run wild. But not quite. Her children did not murder one another.

The historical question I should like to put to Ignatieff’s account of the politics of human rights is the following: Under what conditions are differences—deviations of various sorts from cultural norms, from dominant political or religious or sexual beliefs and practices—tolerated and regarded as compatible with civilization and
with civilized conduct, and under what circumstances are they not? It seems to me that the extraordinary feature of so many contemporary abuses of human rights—and of their earlier historical forms under whatever name—is that almost in an instant one group seems to find another not merely objectionable, wrong, inferior, or even hostile but so deeply antithetical not just to this or that civilization but to the very idea of civilization itself as to be unworthy of life. And then, quite dramatically, the threat seems to vanish.

In some cases, of course, the object of such repugnance is successfully destroyed. Clearly the very existence of native Americans in California was thought to be incompatible with modern life, and genocide did not end until all but the tiniest handful of Indians were left alive. But this is not the only resolution. In European history one might ask the question in the form posed by J. H. Plumb in his account of the rise of political stability in England: why did rulers and other public servants, and, by extension, their subjects, come to die in bed and not at the stake or the block or in fratricidal war? (One does not want to push this too far, as one remembers the Scottish Highlands and Ireland.) Another obvious case might be the French Wars of Religion. On August 23–24, 1572, some six thousand Protestants in Paris were murdered in all manner of brutal ways. Proportionately this would be the equivalent of nearly a third of a million people murdered in one night in New York or Los Angeles. There followed more murder in the provinces and several decades of fratricidal war. And the denouement: a legal decree of toleration by a king strong enough to enforce it; the institutional protection of individual rights. A strong state to the rescue, to use, somewhat anachronistically, Ignatief’s point about sovereignty in his first essay.

His second essay argues that one needs only a thin theory of rights—a commitment to the protection of the individual, the idea of negative liberty—to accomplish such an end. But perhaps we do not need a universalistic notion of rights at all to protect the individual; historically rooted, or other so-called traditional liberties and restraints, might do. Hermann Hesse, reflecting on the Great War, remarked that it had “destroyed and lost for the greater part of the civilized world . . . beyond all else, the two universal foundations of life, culture and morality: religion and customary morals.” What is gone, he said, is a “traditional, sacred, unwritten understanding about what is proper and becoming between people.” Maybe not just religion and customary morals, but certainly something other than a universal precept. What divides the two sides in the fratricidal war in Sri Lanka is not varying views of human rights but a chasm between their respective views of the state; and what is needed to effect a cessation of atrocities is probably the general acceptance not of a theory of rights but of a common view of power and its exercise. I would not presume to explain why the Tudor policy in Ireland was far more ghastly than Gladstonian policy—however benighted the latter might have been—but the answer is not the development of a theory of human rights. The most horrible abuses of our world do not seem to end because one side has suddenly come to its jurisprudential or philosophical senses. (Occasionally human rights abuses—apartheid in South Af-
rica would be a recent example—do end for the old-fash-
ioned eighteenth-century reason that people far away
come to recognize them as morally exigent.)

One might thus generalize from the first essay as fol-
lows: a politics of human rights must observe the con-
straints Ignatieff has so cogently presented. It must un-
derstand—as our predecessors did—the virtue of order
over anarchy in all but the most dire circumstances.
Hence Ignatieff’s stress on respecting state sovereignty
and on constitutional guarantees. The international hu-
man rights movement ought to support the weak against
the strong; the language of human rights is a weapon in
that struggle. It should choose its interventions carefully,
following certain criteria, and with careful attention to
the sufficiency of means to ends. But it is within the spirit
of Ignatieff’s first essay, I think, to suggest that an inter-
national politics in support of individual liberties might
look beyond rights to supporting the social and cultural
conditions under which neighbors can cease to regard
one another as incompatible with civilization and instead
return to “what is proper and becoming between people.”

NOTES

1. Sir Thomas Elyot, The Boke named the Governer (London,
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3. Adam Smith, Theory of Moral Sentiments, ed. A. L. Macfie and

4. Primo Levi, The Drowned and the Saved, trans. from the Italian
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5. Nicolas Malebranche, The Search after Truth, trans. and ed. by
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6. William Wollaston, The Religion of Nature Delineated (London,
1724; Delmar, N.Y.: Scholars’ Facsimiles and Reprints, 1974), 139–
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7. Smith, Theory of Moral Sentiments, 1, [1.1], 9.


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