

# Normative liberal theory and the bifurcation of human rights

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## Abstract

This article argues that liberal arguments for human rights minimalism, such as those of John Rawls and Michael Ignatieff, contain fundamental inconsistencies in their treatment of core rights to life and liberty. Insofar as their versions of minimalism foreground rights to physical security and basic freedom of movement, they cannot coherently exclude certain social and economic protections and liberties that directly support or are even partly constitutive of these rights. Nor do they have good grounds for putting the social and private realms wholly beyond the purview of international law. ‘New’ human rights that represent an expansion of civil rights in particular beyond the classic conception to encompass, for example, the right to freedom from sexual and gender-based violence, illustrate especially well the extent to which civil, social, and economic rights violations, and their remedies, are deeply interwoven. These emergent rights also directly challenge the dichotomy between the public/political and private/social realms, and the corollary assumption that human rights violations occur mainly or exclusively in the former sphere. While the concerns that motivate arguments for human rights minimalism—considerations of pluralism and prudence—are legitimate, proponents would do best to reconsider the multiple roles that human rights in fact play, in spite of their essentially contested status.

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Liberal arguments for human rights minimalism propose a scaled-back conception of human rights centering on rights to life and liberty. Michael Ignatieff, a prominent exponent of minimalism, suggests that rights which protect human agency at the most fundamental level—the negative liberties of individuals—are the most likely claims upon which to build wide political consensus on human rights.<sup>1</sup> For John Rawls, the ‘special class of urgent rights’<sup>2</sup> which core human rights comprise are not strictly limited to negative liberties, but nonetheless foreground classic civil and political freedoms (but not—notably—full democratic political rights). Insofar as

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these liberal arguments for human rights minimalism endorse a bifurcation of rights, separating putatively core civil and political liberties off from ‘second-generation’ social, cultural, and economic rights, they diverge sharply from the prevailing view within international human rights law, which treats rights as fundamentally interwoven and indivisible.<sup>3</sup> That these defenses of minimalism have emerged in the wake of greatly increased political attention to social, cultural, and economic rights, as well as efforts by human rights movements to extend civil and political rights to encompass previously overlooked harms, is no coincidence, for they are partly a response to the steady expansion of human rights discourse—or to what Ignatieff has called ‘rights inflation.’<sup>4</sup>

Proponents of human rights minimalism appeal alternately to considerations of prudence and respect for pluralism to defend the turn toward a more modest human rights doctrine. They differ in the extent to which they emphasize minimalism in the grounding of human rights (‘justificatory minimalism’), or in the content and scope of those rights (‘substantive’), as Joshua Cohen has noted.<sup>5</sup> However, arguments for human rights minimalism share in common the supposition that human rights can and should be disaggregated and ranked for particular purposes, *pace* the orthodox view of human rights law and movements for the past few decades. In what follows, I ask whether minimalist conceptions of human rights—both those grounded in appeals to pluralism (Rawls) and those motivated more by considerations of prudence (Ignatieff)—can succeed in the light of arguments and developments in human rights practice suggesting the fundamental indivisibility of those rights. My discussion is informed by arguments attesting to the linkages between different classes of human rights, such as those by Henry Shue and James Nickel, and shares their rejection of sharp distinctions between negative and positive (human) rights.<sup>6</sup> It is also broadly compatible with capability theorists’ insights into the connections between the development of human capabilities and the conditions that sustain them, and the fulfillment of human rights.<sup>7</sup> The aim of this article is considerably more limited, however: I try to show that insofar as arguments for human rights minimalism foreground rights to physical security and basic freedom of movement, they cannot coherently exclude certain social and economic protections, and liberties that directly support or are even *partly constitutive of these rights*. ‘New’ human rights that represent an expansion of civil rights (in particular) beyond the classic conception to encompass rights to freedom from sexual and gender-based violence, human trafficking, and against other violations of physical security, illustrate especially well the extent to which civil, social, and economic rights violations—and their remedies—are deeply interwoven.<sup>8</sup>

Recent critiques of liberal arguments for human rights minimalism by Martha Nussbaum, Joshua Cohen, and Seyla Benhabib have focused on the controversial exclusion of democratic political rights from these conceptions.<sup>9</sup> These criticisms may miss their mark, however, because proponents of minimalism can readily concede that civil and political rights are enhanced by social and economic conditions (and rights), yet still insist that considerations of pluralism and/or pragmatism make expansive human rights doctrines imprudent. This rejoinder is

much less compelling once we come to see that certain civil and political human rights both depend upon and *are partly comprised of* social rights and freedoms that support physical security and basic liberty of movement. Thus, I aim to show that human rights minimalism goes wrong on even more preliminary level than that highlighted by recent democratic critics of minimalism.<sup>10</sup> Recent moves within international law to acknowledge serious but previously unrecognized harms to personal security and freedom thus pose a sharp challenge to human rights minimalism, for these violations—such as sexual and gender-based violence—demonstrate that many civil and political liberties depend crucially on certain social and economic rights and protections, such as equal legal standing and basic rights to work, education, and healthcare. The deeply imbricated character of these rights claims and their remedies thus put into question the conceptual and legal bifurcation of first and second-generation human rights<sup>11</sup>; it also challenges over-sharp distinctions between the public and private realms, and the belief that human rights violations occur only in the former. I develop these claims through a discussion of Rawls's and Ignatieff's arguments for human rights minimalism, both of which, I argue, depend upon tendentious assumptions about the causes and remedies of core violations to life and liberty.

### **PROBLEMS WITH RAWLS'S HUMAN RIGHTS MINIMALISM**

Considerations of pluralism drive Rawls's approach to the problem of which norms and principles of justice should regulate relations between liberal constitutional democracies and non-liberal states. Taking societies or 'peoples' as the ethical unit in matters of international affairs,<sup>12</sup> Rawls asks: 'What can be the basis for a Society of Peoples given the reasonable and expected differences of peoples from one another, with their distinctive institutions and languages, religions and cultures, as well as their different histories, variously situated as they are in different regions and territories of the world and experiencing different events?'<sup>13</sup> The response he gives mirrors his reply to the problem of justice at the domestic level: the institutions, laws, and norms that comprise justice in the global sphere must not be predicated upon morally comprehensive, and so controversial, doctrines. Since there exists a 'plurality of conflicting reasonable comprehensive doctrines' both within and between states, norms of global justice must instead be based on a 'public political conception of justice.'<sup>14</sup> When applied to the sphere of international relations, the fact of reasonable pluralism gives rise to a set of guiding principles that he calls the 'Law of Peoples,' which incorporate fewer characteristically liberal norms than does political liberalism, Rawls's domestic theory of justice.

A cornerstone of the Law of Peoples is the principle of respect for human rights, which Rawls understands in the usual sense of normative constraints on the ways in which states can treat their citizens without risking international rebuke and sanction. Membership in what Rawls calls the 'Society of Peoples,' however, implies an agreement only to uphold certain *core* human rights, which he describes as a

'subset of the rights possessed by citizens in a liberal constitutional democratic regime.'<sup>15</sup> It is against the background of this idea of reasonable pluralism as applied to the global sphere that Rawls develops a more minimalist and political conception of human rights.<sup>16</sup> This conception is crucially shaped by a distinction he draws between well-ordered liberal peoples and decent hierarchical societies. Whereas liberal peoples reside in established constitutional democracies, share certain common sympathies, view themselves as free and equal, and abide by the fullest form of public reason,<sup>17</sup> non-liberal peoples lack these characteristics but share a common conception of good and organize their societies accordingly. Rawls reasons that liberal societies readily adhere to a set of regulative principles contained in the Law of Peoples, which include such duties as that of non-intervention, respect for human rights, and a 'duty to assist other peoples living under unfavorable conditions.'<sup>18</sup> The principles comprised by the Law of Peoples are, in Rawls's view, minimalist enough to appeal not only to liberal peoples but also to well-ordered, hierarchical peoples.<sup>19</sup> These non-liberal peoples may interpret and affirm these principles in ways that are still compatible with the religious character and political structures of their own societies<sup>20</sup>; the Law of Peoples 'asks of other societies only what they can reasonably grant without submitting to a position of inferiority or domination. It is crucial that the Law of Peoples does not require decent societies to abandon or modify their religious institutions and adopt liberal ones.'<sup>21</sup> By setting aside morally comprehensive and uniform justifications of human rights and paring down their content, Rawls expects that societies with very different religious and political traditions can affirm these rights. As Kenneth Baynes has recently argued, Rawls's move reflects a turn away from natural rights justifications and 'controversial philosophical, metaphysical, or religious claims' about the basis for human rights, toward a more political grounding for human rights.<sup>22</sup>

Rawls therefore develops his minimalist, political conception of human rights in the context of his argument about the norms that both liberal and non-liberal societies could be expected to adopt. Perhaps the key area of difference concerns the status of democratic political rights. Non-liberal peoples differ significantly from liberal peoples in their domestic legal and political norms and structures, Rawls contends; they do not grant citizens full civic equality, but rather are 'associationist' in character.<sup>23</sup> Reasonable pluralism thus demands that the human rights comprised by the Law of Peoples reflect only a subset of the fuller range of rights that citizens of all constitutional democracies, and some communitarian or associationist societies, enjoy.<sup>24</sup> In Rawls's view, this minimal threshold of human rights include:

the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly). Human rights, as thus understood, cannot be rejected as peculiarly liberal or special to the Western tradition. They are not politically parochial.<sup>25</sup>

A casual appraisal of Rawls's list confirms that it excludes many of the human rights specified in the 1948 Universal Declaration of Human Rights [UDHR], as well as those stipulated by later human rights instruments, such as the International Covenant on Civil and Political Rights (1976), the International Convention on Economic, Social, and Cultural Rights (1966), and the Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW] (1979). From the point of view of Rawls's critics, it is the absence of individual rights of political participation and representation, and equal basic liberties more generally, that makes his approach so controversial.<sup>26</sup> Rather than granting full democratic rights, decent hierarchical societies possess a 'decent consultation hierarchy' which 'allows an opportunity for different voices to be heard,' including its expression as political dissent.<sup>27</sup> This corporatist form of political consultation, in which individuals are generally heard as 'members of associations,' together with a domestic system of law that imposes 'bona fide moral duties and obligations (distinct from human rights) on all persons within the people's territory,'<sup>28</sup> stand in for the more extensive civil and political liberties that liberal peoples possess. In Rawls's view, a lack of democratic rights may reasonably reflect a conception of the good common to a given people.<sup>29</sup>

It is indeed troubling that Rawls does not think that a minimal framework of norms governing the international realm must include democratic participation rights. But setting aside the much-discussed and complex problem of whether there is a human right to democracy,<sup>30</sup> I would like to draw attention to the 'urgent rights' of life and liberty that Rawls puts at the very top of his list of rights, and to ask what these might in turn require. Following Shue, Rawls understands the right to life as including rights to 'the means to subsistence and security.'<sup>31</sup> This does not amount to an endorsement of an extensive array of social and economic rights per se, of course; but at a minimum, it must include the right to sufficient food to avoid starvation, and the right to protection from physical violence. Shue's discussion of physical security as among the most basic of human requirements helps us to see why this is also a condition for other important rights:

No one can fully enjoy any right that is supposedly protected by society if someone can credibly threaten him or her with murder, rape, beating, etc., when he or she tries to enjoy the alleged right. Such threats to physical security are among the most serious and—in much of the world—most widespread hindrances to the enjoyment of any right. If any right is to be exercised except at great risk, physical security must be protected. In the absence of physical security people are unable to use any other rights that society may be said to be protecting without being liable to encounter many of the worst dangers they would encounter if society were not protecting the rights. A right to full physical security belongs, then, among the basic rights—not because the enjoyment of it would be more satisfying to someone who was also enjoying a full range of other rights, but because its absence would leave available extremely effective means for others, including the government, to interfere with or prevent the actual exercise of any other rights that were supposedly protected.<sup>32</sup>

Shue's contention that the right to physical security is one of the most basic rights of all and is, along with the right to subsistence (which I shall not take up here), a precondition for the exercise of other rights, is pertinent to an evaluation of Rawls's account of core human rights. If Shue is correct, then physical security, including bodily integrity, must count as a central component of what Rawls means by core human rights to life and liberty.

The right to physical security is increasingly understood to require not only that governments will refrain from abusing their citizens directly, but also that they take steps to protect them against violence suffered at the hands of non-state actors by ensuring that such violence is made punishable, and where possible, prevented. To redress the violence that undercuts the security and bodily integrity of girls and women, for example, will thus require that we look to the structures and practices in social and private life that threaten their security. Where violence is a normalized part of everyday life, government and civil society initiatives to change the surrounding social and cultural practices may also be necessary: campaigns to end child abuse, domestic violence, sexual assault, violence against sexual minorities, and gang violence, typically require more than reform of the penal code. Women's human right to freedom from violence in all its forms is a good example of a right whose realization is said to require a multipronged approach. The 1993 UN Declaration on the Elimination of Violence Against Women assigns responsibility to states for introducing legislation that criminalizes and leads to the prosecution of perpetrators of gender violence, and also for providing assistance to victims of domestic violence, rape, and 'cultural' forms of violence, such as female genital mutilation. In addition to this declaration, there are several other international and regional human rights instruments which target gender-based violence, such as the 1993 Vienna Declaration; the 1995 Beijing Declaration and Platform for Action; the InterAmerican Convention on the Prevention, Punishment, and Eradication of Violence Against Women (1994); the 'Palermo Protocol' to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Persons (2001); and the Rome Statute of the International Criminal Court (entered into force in 2002), which recognizes gender violence as a crime under international criminal law. In 2008, the UN Secretary General also launched a campaign ('Unite to End Violence Against Women') which targets the eradication of gender violence by 2015, the Millennium Development Goals deadline.

These various human rights instruments and initiatives affirming women's human right to freedom from violence share the belief that such violence is structural and so cannot be remedied without addressing practices and arrangements in the private and social spheres: in the home, workplace, schools, and the streets. They also reject attempts to place cultural practices that normalize violence against girls and women—such as forced marriage, trafficking in girls and women, widow burning, honor killings, female infanticide, and domestic violence generally—beyond the purview of international human rights instruments. As such, human rights advocacy that targets sexual and gender-based violence stresses the need to introduce national legislation to secure women's social rights, such as rights to health (including

reproductive rights), education, and equality in matters of family and personal law. The conviction underlying such policies is the belief that sexual discrimination in these domains leaves women demonstrably more vulnerable to domestic and family violence. Indeed, the CEDAW Committee went still further in its 1992 recommendation that the UN define 'gender-based violence as [itself] a form of discrimination,' holding that 'governments were clearly acting in a discriminatory way in their failure to prosecute and punish sexual and physical assaults against women as energetically as assaults against men.'<sup>33</sup>

How might we compare this broad approach to conceptualizing violence against women as a human rights violation with Rawls's more minimalist account of the human rights comprised by the Law of Peoples? As we have seen, remedying gender violence will require that Rawls address structures of social subordination and inequality; but more fundamentally, in order even *to recognize* violence against women as a violation of their human rights to physical security and bodily integrity, Rawls's conception would need to allow that such violations include harms perpetrated by non-state actors in the private and social spheres, including the family. To discount such sexual and gender-based violence as human rights violations would be inconsistent with the importance accorded to physical security by Rawls's conception of core human rights within a society of peoples. But although he does not specifically discount this violation, his belief that decent, non-liberal societies should be permitted to interpret and implement the core human rights as they see fit suggests that he would likely view the issue of violence against women as beyond the proper purview of universal human rights, at least insofar as the Law of Peoples is concerned.

This view would certainly be broadly in keeping with Rawls's belief that social inequalities are not a matter for the Law of Peoples to consider; it is also compatible with his assertion that decent hierarchical societies need not grant their citizens/subjects full political liberties, so long as they offer opportunities for political voice and even dissent. The associationist form of political consultation that Rawls suggests characterizes such societies points to a *laissez-faire* view that puts social and cultural arrangements and practices beyond the scope of international human rights law. Hence in Kazanistan, Rawls's fictional example of a non-liberal, hierarchically ordered, yet decent society, the legal inequality of women and religious (or other) minorities through differentiated rights is permissible insofar as these arrangements reflect the society's overall conception of the good: 'A decent hierarchical society's conception of the person...does not require acceptance of the liberal idea that persons are citizens first and have equal basic rights as equal citizens. Rather it views persons as responsible and cooperating members of their respective groups.'<sup>34</sup> He assures readers that political dissent is permitted; there exist mechanisms to ensure that 'the fundamental interests of all groups are represented and taken into account'; and the rights of religious minorities, while not granted rights equal to those enjoyed by the nation's majority group (Muslims), are nonetheless respected.<sup>35</sup> Clearly the pluralism that the Law of Peoples is chiefly designed to accommodate is that of national religious and political differences in the first instance, with some protections (though not equal rights) for minority religious and cultural subgroups. Should a

society choose to pursue policies of sexual discrimination and inequality, there is no principled objection to be made from within the Law of Peoples. Interestingly, Rawls urges that women's interests be represented within the special consultative hierarchies of non-liberal societies, and even suggests that women should make up a majority of those groups designated to represent their interests.<sup>36</sup> However, his broad endorsement of the right of societies to interpret the principles of the Law of Peoples in ways consistent with their own comprehensive views clearly signals that social and cultural practices and arrangements, including those directly undermine women's human rights, are beyond the scope of core human rights recognized by the Law of Peoples.

While Rawls acknowledges that the lack of equal civil and political rights for some—e.g. religious minorities and women—within non-liberal societies is problematic by the standards of liberal democratic justice, he insists that it is compatible with respect for core human rights within the minimal framework of the Law of Peoples. But here serious challenges to Rawls's position arise, which the example of violence against women helps to illustrate. It is not clear *what it is* to respect the basic human rights of a woman who is specifically denied even formal civil and political equality in her own society. If rights to life and liberty include basic freedom of movement and the right to physical security, then the denial of core social and economic rights—such as the rights to education and the right to work—in a context in which other citizens have these opportunities will inevitably result in restrictions that impair their core rights, as Rawls understand them. As Martha Nussbaum notes in her critique of *The Law of Peoples*, unequal rights in matters of personal property, divorce, and child custody, leaves women without much recourse or many exit options, thus compounding their subordination—and I would add, their vulnerability to violence.<sup>37</sup>

To illustrate these difficulties, it is helpful to imagine a present-day Kazanistan, such as contemporary Afghanistan arguably represents. An Islamic Republic with a Supreme Court, and bicameral model of political representation and presidential system, Afghanistan also grants all citizens civil and political rights in its 2004 Constitution. However, these rights, as the Constitution and other legislation makes clear, are to be interpreted in such a way as to be fully compatible with the tenets of Islam, paralleling the conditional character of the Law of Peoples. Afghanistan, which is also party to many UN human rights conventions, surprisingly also mandates representation of women in both houses of the National Assembly; a minimum of 64 seats in the lower house, the Wolesi Jirga, must be filled by women (out of a maximum of 250). By all accounts, then, this state would appear to be an ideal example of Rawls's fictional Kazanistan. Yet in March 2009, a new Shia family law was provisionally passed by the National Assembly—albeit by hasty procedures—that would apply to the Shia minority, and which would dramatically increase the restrictions on women's liberty and freedom of movement. Amongst other things, the bill stipulated that women cannot leave home without the permission of their husbands, even to seek or attend work or school, or to see a doctor; cannot refuse their husband's sex, except in cases of illness; and gives sole custody of children over



a certain age to fathers or male relatives. Following an international outcry, the lower house of parliament later introduced amendments that improved the controversial legislation somewhat, raising the minimum age of marriage for girls from nine to sixteen, for example, and removing clauses allowing temporary marriages (a form of sanctioned prostitution).<sup>38</sup> However, the law still contains numerous constraints on women's personal liberty, and is widely thought to condone rape within marriage. That this law would not only restrict Shia women's liberty but open them up to other harms and violations is beyond question; and yet, until this law drew the condemnation of activists and politicians outside of Afghanistan, president Hamid Karzai viewed the content of the law as perfectly compatible with the Afghan constitution, which nominally respect the human rights of women.<sup>39</sup>

Reflecting on these developments in Afghanistan helps to reveal the fallacy at the heart of Rawls's belief that societies can respect core human rights whilst denying social rights and civil liberties to some citizens. The gendered structural inequalities that characterize Afghan society are not ones that Rawls's conception of human rights can address, and yet, these have far-reaching implications for the securing of women's rights to life and liberty. Women's lack of equal rights within family and personal law, rights to hold and inherit property, rights to negotiate and refuse marriages, initiate divorce, and to basic education, employment, and healthcare, shape—and are partly constitutive of—their civil liberties and freedom of movement. Systematic inequalities in these areas of social and economic life also dramatically increase women's vulnerability to domestic violence and various forms of exploitation, such as human trafficking.<sup>40</sup> Yet because Rawls's view rejects social, cultural, and (for the most part) economic human rights<sup>41</sup> as too controversial to serve as norms governing relations between liberal and non-liberal societies, there can be no principled reason to protest restrictions on girls' and women's right to education, or their freedom to seek education, work, or healthcare outside the home. These conclusions reveal a problematic discrepancy between Rawls' insistence that the institutions of the basic structure of society should be just in the case of domestic liberal societies, yet such standards need not be applied in the international case.<sup>42</sup> Rawls's inconsistency, as Nussbaum has argued, also entails moral arbitrariness insofar as persons of similar cultures, religions, and traditions living within societies with liberal institutional structures deserve, on Rawls's view, to have full protection of their human rights—including sexual equality—whereas those living just over the border may have many fewer rights, yet without running afoul of Rawlsian international justice.<sup>43</sup>

Rawls apparently trusts that the minimal political rights stipulated by the Law of Peoples will in part serve as a safeguard against egregious human rights violations, since citizens will voice their opposition to unjust actions and legislation. But as we have seen, democratic rights of individual political representation are not among the special class of human rights specified by the Law of Peoples.<sup>44</sup> While Stephen Macedo has argued that collectively self-governing societies within the Society of Peoples have considerably more political rights than critics have alleged,<sup>45</sup> it seems doubtful that genuine consultation with marginalized persons can be secured in the

absence of *individual* political rights, *where such individuals collectively lack or have structurally unequal social and economic rights*. In societies where women, sexual minorities (e.g. gays and lesbians; or the hijra in India) or a particular ethnic, caste (e.g. the Dalits), or religious group are specifically denied the rights to education, to healthcare, or to seek paid work, this cannot help but affect their bargaining power vis à vis processes of political representation and voice. As the example of the introduction of a regressive Shia family law in Afghanistan illustrates, rule by a dominant religious community, supplemented by political consultation with the leaders of minority religious and ethnic groups, makes it much easier to violate the rights of some, and to ignore their pleas for redress.<sup>46</sup>

As proponents of social and economic rights, capability theorists, and women's human rights advocates have argued, the conditions for even minimal political agency are rooted in the social and to some extent economic arrangements that in turn foster and support the capacities and opportunities for such activity. This is not to say that full social and economic equality is required for the exercise of political agency; but in a context in which social and economic opportunities are non-existent or else greatly restricted for some citizens, and in which certain civil liberties are dramatically curtailed (e.g. the freedom to leave the home without the permission of one's husband), deep inequalities in social power and access to political channels will make it difficult if not impossible for marginalized persons to express their demands and interests. Thus, the problem is not merely that Rawls's theory does not require that decent hierarchical societies recognize their citizens' democratic political rights. Rather, it is that in the absence of equal *basic* social and economic freedoms and rights, the more minimal rights of political voice and consultation that the Law of Peoples *does* stipulate are undermined (for some). Even the right of political dissent which decent hierarchical societies are expected to respect is jeopardized where some citizens are systematically denied basic social and economic opportunities. As Onora O'Neill argues:

Dissent becomes harder when capacities to act are less developed and more vulnerable, and when opportunities for independent action are restricted. Capacities to act are constrained both by lack of knowledge and abilities and by commitments to others. Institutional arrangements can disable agency both by limiting capacities to reason and act independently and by raising the demands to meet the needs and satisfy the desires of others.<sup>47</sup>

If this analysis is correct, it suggests that Rawls needs to include certain key social and economic human rights within the framework of the Law of Peoples, because of the critical role these play allowing citizens to take up their civil and political rights, including rights to life, liberty and physical security. Rawls' fatalism about the permissibility of decent hierarchical societies to impose legal and social inequality under the guise of cultural or religious law would, in other words, undercut many of the core human rights of at least some of their citizens. To return to the example of Afghanistan, limits to women's access to education and economic independence, as well as restrictions on their ability to participate in many aspects of public life, made it rather easy to overlook their views on the matter of a new Shia family code. That

the provisions of this family law would have introduced even more extensive restrictions on women's social rights and civil liberties, as well as lowering the legal age of marriage for girls to nine and effectively legalizing rape within marriage, cannot help but further undermine their existing constitutional rights. The concrete power asymmetries and increased vulnerability to coercion and violence that follow from this deeply unequal scheme of rights and protections leads inexorably to the conclusion that Afghan women's basic rights to physical security and liberty are not in fact secure.

As this example also shows, Rawls's bifurcation of social and private spheres from the public, political realm, and his location of human rights within the latter, is partly what allows him to imagine that a society in which citizens have formally unequal social rights, and asymmetrical civil liberties, can nonetheless be said to respect core human rights. Rawls's implicit dependence on the dichotomy between public and private realms prevents him from seeing how these inequalities directly undermine many of the human rights that the Law of Peoples does insist upon, such as the right to life (and physical security). But more profoundly, it prevents him from even recognizing certain harms *as* human rights violations, such as the many forms of violence to which women and certain religious, ethnic, and sexual minorities are subject, and which are increasingly acknowledge as violations by the human rights community. Where such practices are essentially condoned by religious law—which Rawls views as beyond the purview of norms of international justice—there are simply no mechanisms for ensuring that the voices of insiders (and victims) who oppose such practices are heeded. Thus, while Rawls's approach to questions of international justice appears to be the logical extension of notions of toleration and reasonable pluralism to the international level,<sup>48</sup> in the end it cannot safeguard the putatively core human rights that it does affirm, namely, those to life and liberty.

### **IGNATIEFF: HUMAN RIGHTS AS NEGATIVE LIBERTY RIGHTS**

The impulse to limit human rights to a core subset, and to set aside contested and ostensibly less critical social, cultural, and economic human rights, finds full expression in Ignatieff's work. His insistence on the bifurcation of human rights, I shall argue, similarly leaves civil and political rights on a very shaky footing, and also causes him to discount harms that do not correspond to classic definitions of liberty violations. Like Rawls, Ignatieff proposes that we try to secure consensus on a core set of human rights that relate to the most fundamental human freedoms; thus, he proposes that defenders of human rights appeal to 'what such rights actually *do* for human beings,'<sup>49</sup> which is to protect their agency. In so doing, Ignatieff, like Rawls, hopes to sidestep controversial justifications for human rights that appeal to metaphysical concepts or even to what good human lives consists in.<sup>50</sup> To treat human rights as a 'secular religion' resting on controversial notions of human 'dignity, worth, and human sacredness' is seriously misguided, for it is 'likely to fragment commitment to the practical responsibilities entailed by human rights

instead of strengthening them.<sup>51</sup> Ignatieff characterizes his justification for human rights as prudential and historical, but also political in the sense that it fully recognizes the conflictual character of rights along numerous dimensions: between ‘a rights holder and a rights “withholder”<sup>52</sup>; between individuals and groups; and between competing rights or goods and claims. Adjudicating and implementing human rights will thus require ‘intensely difficult trade-offs and [political] compromises.’<sup>53</sup>

Unlike Rawls, who views human rights minimalism as in part a way of respecting the autonomy of traditional societies, Ignatieff insists there is no getting around the moral individualism at the heart of human rights doctrine: human rights apply emphatically to individuals, and supply ‘a defense of their autonomy against the oppression of religion, state, family, and group.’<sup>54</sup> Yet, because rights claims remain ‘inescapably political’<sup>55</sup> and can only work by building consensus on the norms they express, we must proceed cautiously: human rights are at their most tendentious when stretched beyond the purview of the right and into the realm of the *good*. Since this latter realm is more readily aligned with the language of positive rights, Ignatieff thinks that we need to steer clear of this terrain and limit ourselves instead to building consensus on agency rights or negative liberties,<sup>56</sup> especially classic, first-generation civil, and political rights.<sup>57</sup> Yet like Rawls, he excludes more extensive political rights from his conception of core civil and political liberties, such as that of democratic political representation or even the right to due process, on grounds of political prudence. Beyond protecting individuals’ rights to political speech and assembly, to hold property, and to enjoy protection from cruelty, repression, and oppression,<sup>58</sup> Ignatieff thinks there can be little sure agreement about the content of additional rights.

Ignatieff’s dismissal of certain social and economic human rights, however, reveals a fundamental inconsistency, one that parallels that which is seen in Rawls’s argument. If, following Shue, we understand human rights to life and liberty to include physical security, bodily integrity, and basic freedom of movement—as I believe Ignatieff does—then it is difficult to see how these can be secured in the absence of key supporting social and economic protections. Ignatieff is well aware of the broad linkages arguments noted earlier; but while he acknowledges that social and economic provisions can play a supportive role for civil and political liberties, he insists that they have no place in human rights minimalism. Not only will their inclusion risk undercutting worldwide consensus, but second and third-generation rights include many group claims and so risk diluting ‘the priority relation between the individual and the collective.’<sup>59</sup> Drawing on Amartya Sen’s work, Ignatieff argues that certain political liberties are in fact the logical condition for subsequent social and economic rights: ‘Without the freedom to articulate and express political opinions, without freedom of speech and assembly, together with freedom of property, agents cannot organize themselves to struggle for social and economic security.’<sup>60</sup> In other words, Ignatieff runs the linkages argument advanced by Shue and others in the opposite direction.

As the example of sexual and gender-based violence illustrates, however, threats to physical security and basic personal liberty cannot readily be detached from the structural conditions that make subordinated groups especially vulnerable to these harms. Particularly in deeply unequal societies, persons who lack rights and opportunities relating to housing, adequate food, basic education, work; rights in matters of personal and family law; and legal protections against group-based (e.g. sexual and gender based) discrimination all run a higher risk of all forms of physical violence and may face daily restrictions on their civil liberties. To redress these deep structural inequalities requires concrete, positive, institutional, and political commitments. As women's human rights advocates have long argued, reducing women's vulnerability to violence requires that governments take steps to protect female citizens from a variety of forms of physical harm, as well as eradicating sexual discrimination in matters of family and personal law, and ensuring access to social services and economic opportunities.<sup>61</sup> Thus, were we to accept Ignatieff's assertion that states honor their human rights obligations chiefly by refraining from violating their citizens' agency rights or by preventing others (in civil society or the family) from doing so, we would still need to consider ways to alter social structures that conduce to domestic violence, including introducing policies and rights that may help to curtail it.

Although Ignatieff's list of core rights is even more minimalist than that of Rawls, its emphasis on protecting the liberties of *individuals*—especially in the face of incursions by family and community—would in principle allow a more expansive view of what civil and political rights comprise. This is a strong suit of Ignatieff's argument. For example, it should be possible to identify hate crimes against sexual minorities as genuine human rights violations from within his view, as well as, say, rape as a crime of war. But where women's rights are concerned, Ignatieff noticeably equivocates. He is no apologist for theocracies or their nationalist cognates—he remarks at one point that 'democracy without constitutionalism is simply ethnic majority tyranny'<sup>62</sup>—but his argument has built-in limitations with respect to the kinds of harms it can recognize as human rights violations. This is in part because of the way he sharply demarcates—and privileges—civil and political rights over social and economic rights, and insists that only a select few of the former can command wide consensus. It is also a consequence of the (related) dichotomy between public and private spheres that his approach, like Rawls', presupposes. Thus, while Ignatieff's view can encompass rape as a tool of war as a rights violation, it cannot readily count domestic violence or sexual assault as similar violations, *even where the state is negligent* in protecting citizens from these harms. If human rights are subject to a strong criterion of consensus (and consent), as he suggests, then only the most egregious crimes in the social and private spheres will count, such as murder; mere subordination in the private realm does not warrant the label of human rights violation: 'If . . . religious groups determine that women should occupy a subordinate place within the rituals of the group, and this place is accepted by the women in question, there is no warrant to intervene on the grounds that human rights considerations of equality have been violated.'<sup>63</sup>

As this passage suggests, Ignatieff, like Rawls views social and cultural arrangements and practices as beyond the proper purview of international law and human rights doctrine. Given his emphasis on protecting human agency not only against states but also against society and the family, this seems a curious position to take. But he believes that human rights can be disaggregated, and also holds fast to the distinction between negative and positive liberty (and their corollary classes of rights). Seeking to limit our definition of human rights violations to the kinds of extreme harms that are recognized as such by the entire international community, non-liberal states included, Ignatieff is thus unlikely to count normalized gender violence as a human right violation. Rights are not trumps, he says; they only work if there is political consensus about the importance of the thing being protected or about an unspeakable harm.<sup>64</sup> But Ignatieff's reasoning is faulty on a number of levels. The claim that a more expansive view of human rights risks derailing political consensus is uncertain, at best. The conviction in the indivisibility of rights, and the rejection of the public/private dichotomy within human rights doctrine, are by now very well established principles within international law; if anything, the proposal to recant these developments would engender much opposition.<sup>65</sup> Moreover, social and economic rights need not be defined so expansively as to invite endless controversy. Rather, as Charles Beitz suggests, something like the human right to an adequate standard of living (Article 25 of the UDHR) merely says that states have a duty to secure their citizens' right to subsistence, and that where they cannot or will not do so, they cannot object on grounds of sovereignty to the attempts of outsiders to assist.<sup>66</sup> Most importantly, however, Ignatieff's insistence that human rights be reserved for entitlements and protections that *already* enjoy universal acceptance denies the historical and evolving character of human rights doctrines, and the steady expansion of our understanding of what constitutes unacceptable harms. Because Ignatieff is concerned to limit coercive intervention to defend human intervention to only the most 'strictly defined cases of necessity—where human life is at risk,'<sup>67</sup> he sets the bar for human rights abuses quite high. In a passage discussing the issue of women's status in non-liberal societies, he writes, 'What may be an abuse of human rights to a human rights activist may not be seen as such by those whom human rights activists construe to be victims. This is why consent ought to be the defining constraint of human rights interventions in all areas where human life itself or gross and irreparable harm is not at stake.'<sup>68</sup> This view puts Ignatieff in the unenviable position of opposing the (unanimously approved) UN General Assembly's 1993 Declaration on the Elimination of Violence Against Women. In the short twenty years since the idea of women's rights as human rights began to take a foothold, the idea that gender-based violence constitutes a human rights violation has gained wide acceptance among governments and transnational institutions, gradually emerging as a strategic priority for UN and non-governmental agencies concerned with women's empowerment and development, as well as social stability and justice more generally.

Ignatieff does not suggest we try to enlarge our view of what constitutes cruelty or unacceptable violations of a person's agency in the face of controversy over human rights; instead, he retreats to safer ground, generally illustrating his claims with

references to harms perpetrated by the state, such as false imprisonment and torture, suppression of freedom of conscience and speech. But were Ignatieff to consider other roles for human rights besides that of justifying coercive foreign intervention, he might be able to accept a more expansive conception of rights. As Beitz has argued in connection with Rawls' similarly restrictive view of the function of human rights:

Unless one intends to replace the conventional conception of human rights with a technical idea or reforming definition, one must recognize that human rights serve not only as minimum conditions for international recognition, but also, as the [UDHR's] preamble puts it, 'as a common standard of achievement' for the guidance of 'every individual and organ of society.' Human rights function as standards of conduct for governments and in the policies of various international institutions and development agencies, as shared goals of political reform among international nongovernmental organizations (the elements of an emergent global civil society), and as focal points for domestic social movements in nondemocratic societies.<sup>69</sup>

Ignatieff eschews this broader role for human rights because he believes they encourage a view of human rights as mere aspirations, rather than as justiciable liberties. Rights may be political and conflictual, but they should still entail specific duties on the part of appropriate agents. His concern is echoed by other liberal (especially Kantian) thinkers who raise similar objections to human rights proliferation. O'Neill, for example, worries that we now invoke the language of human rights in instances where it is not clear who or what is rightly charged with protecting persons against violations, or with supplying the particular good (like food or housing) to which someone claims a right. Like Ignatieff, she thinks that the promiscuous use of human rights language detached from specific duties or duty-bearers simply devalues rights. Nor should we shift gears and simply treat newer human rights—especially claims for social and economic goods—as merely aspirational, for to do so would be to break the crucial link between rights and obligations.<sup>70</sup>

The view that human rights proper must include not only a rights claims but also reasonably clear obligations and duty-bearers will obviously tend to throw cold water on emerging rights, such as number of social and economic rights; not surprisingly, the notion that there is a human right to be free from hunger and poverty is often greeted with tremendous skepticism (especially by neo-Kantians) because it is not terribly clear whose duty it is to fulfill these rights, particularly in a globalized economy. Related to the issue of whether duties to fulfill positive social and economic rights can be credibly assigned to particular agents is the problem of *capacity*: even if we *wanted* to lay the obligation to prevent hunger at the feet of, say, the government of Burkina Faso, might the fact that the country is landlocked, without natural resources, suffering from drought and deforestation, and burdened by heavy international debt, count against this duty? These are formidable challenges to social and economic rights generally, although it is worth noting that there is a growing body of international law that treats social rights to health and housing, in particular, as justiciable.

These concerns about assigning finite obligations are less pertinent, however, to the recognition of such ‘new’ human rights as violence against women, sexual minorities, and denigrated social castes. This is because assigning precise duties to protect vulnerable persons from physical harm is, on one level, unproblematic: states can introduce national legislation that criminalizes sexual and gender-based violence, and establish infrastructure to support victims. Where the issues of duty-bearers and concrete obligations pose greater difficulties is in the murkier realm of discriminatory and inegalitarian social, cultural, and economic arrangements and practices that compound the vulnerability of individuals to physical violence for the reasons sketched earlier, and which may also curtail their civil liberties. Finding ways to apply existing human rights law (especially that governing social and cultural areas of life) to redress gender inequalities without undermining legitimate forms of communal self-determination, or women’s own efforts at empowerment, is of course an enormous challenge, and well beyond the scope of this article.<sup>71</sup> But these concerns should not forestall the nearer goal of making good on human rights to life (including physical security), and basic liberty by addressing the social and economic protections that are partly constitutive of these rights.

## CONCLUSION

Recognition of newer human rights, such as the right to freedom from sexual and gender-based violence, challenges the conventional (but now widely criticized) assumption that human rights ‘proper’ are only intended to protect against harms that occur in the public realm at the hands of state actors, such as false imprisonment, torture, and ethnic genocide. Human rights minimalism remains tied to this more traditional view, and as such, fails to acknowledge a range of violations to physical security—and so, to core human rights of life and liberty—that can befall individuals in the private and social realms. Could Ignatieff’s and Rawls’s versions of human rights minimalism conceivably be enlarged to encompass ‘new’ civil harms as bona fide rights violations? I believe that to do so would derail their arguments for minimalism. To count gender-based violence (for example) as a human rights violation is to assert that individuals have claims not only against the state, but also against fellow citizens or entities in civil society who may be deemed rights violators. Once this is acknowledged, the social and cultural arrangements of states (or groups) are no longer beyond the purview of core human rights, as both Ignatieff and Rawls insist. Moreover, as I have argued, the right to protection against sexual and gender-based violence cannot be remedied without addressing intersecting social and economic rights and protections, which both thinkers reject as too controversial, or too determinate, to serve as norms for international relations. Rawls and Ignatieff are therefore thrown onto the horns of a dilemma: if they reject efforts to expand civil and political human rights conceptions to include violations against the civil liberties and physical security of, for example, women and sexual minorities, they risk charges of inconsistency and even moral arbitrariness; yet if they acknowl-



edge these as human rights violations, they must then take seriously the social and economic conditions and corresponding rights that directly redress these. I argue that they ought to do the latter, in which case the (liberal) case for human rights minimalism—whether defended on grounds of respect for pluralism or else political prudence—unravels.

This is not to deny that the underlying concerns expressed by proponents of human rights minimalism—concerns about respecting the self-determination of societies, political pluralism, and worries the inflation of rights discourse—are reasonable ones. How might normative political philosophers better respond to these challenges? Rather than retreating to a position of minimalism, scholars concerned about the devaluation of the currency of human rights in international law might do well to shift their focus to the wide range of dynamic purposes which human rights now serve in legal and political life, by turns reflecting and influencing the expansion and evolution of rights doctrine.<sup>72</sup> They might also take their cue from human rights organizations like Human Rights Watch and Amnesty International, which for many years struggled with the question of whether to expand their conception of human rights to include such social and economic rights, as well as ‘new’ civil rights violations such as violence against women and LGBT (lesbian, gay, bisexual, and transgender) persons, and disability rights. These groups eventually decided it was inconsistent to exclude these emergent rights and rights holders<sup>73</sup> in part because many serious harms entail simultaneous violations of civil liberties and basic social and economic entitlements or opportunities, or else are made possible by the latter. Human trafficking for the purposes of forced prostitution or slavery, for example, is clearly a violation of civil rights, but it depends upon an environment of poverty, lack of opportunity, and gendered subordination in areas of social, legal, and economic life (many instances of trafficking in girls particularly in parts of Asia result from forced marriages that amount to sexual slavery). To understand these complex and intersecting kinds of harms as rights violations will also require that philosophers follow the lead of human (especially women’s) rights activists in rejecting the dichotomy between public versus private harms, and in accepting that non-state actors do indeed violate rights. As women’s human rights activists, labor rights proponents, and more recently advocates of LGBT and disability rights have argued, the public/private divide obscures many serious violations that either straddle these spheres or which are played out mainly in the private sphere.

My discussion also suggests that we should not be so quick to assume that precise obligations and duty-bearers cannot be identified where ‘new’ human rights, especially social and economic rights, are concerned. In the case of newly identified civil rights violations, there have been significant recent developments in international law. It is more difficult, but by no means impossible, to assign responsibilities for meeting social and economic human rights, but some recent instructive examples include efforts by activists pressing for domestic economic policy reforms in Bolivia, Costa Rica, and Mexico, using international social and economic human rights law to contest the terms of international structural adjustment plans. In India, activist judges have used human rights approaches to press for anti-poverty legislation and

programs. And in a landmark case in South Africa in 2000, the Constitutional Court cited social and economic human rights in judging that the government has a legal obligation to provide adequate housing for citizens in living in ‘crisis situations’ (informal housing or townships).<sup>74</sup>

What Ignatieff calls ‘rights inflation’ is perhaps better viewed as the evolution of human rights doctrine to encompass hitherto unacknowledged harms, particularly those that do not conform to traditional rights classifications but rather entail intersecting civil, social, and economic rights violations. Taking these injuries seriously requires that we eschew human rights minimalism, therefore, because neither the harms themselves nor their remedies can be conceived without attending to a host of interlocking social and economic arrangements. And while liberal thinkers are right to warn against viewing human rights as merely aspirational, without any attempt to assign specific obligations, it is also true that the value of human rights does not depend strictly on whether they are immediately justiciable. Human rights minimalism as advanced by Rawls and Ignatieff recognizes the political and contingent character of human rights, but crucially overlooks its dynamic and constitutive quality: its capacity not just to reflect but to animate efforts to change our views of how human beings ought to be treated.

## NOTES

1. Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton, NJ: Princeton University Press, 2001).
2. John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2002 [1999]), 79.
3. The *Vienna Declaration* (1996) states that ‘all human rights are universal, indivisible and inter-dependent and interrelated.’
4. Michael Ignatieff, *Human Rights*, 90.
5. Joshua Cohen, ‘Minimalism about Human Rights: The Most We can Hope for?’, *The Journal of Political Philosophy* 12, no. 2 (2004): 190–213, at 192.
6. See Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, NJ: Princeton University Press, 1996 (1980)); and James Nickel, ‘A Defense of Welfare Rights as Human Rights’, in *Contemporary Debates in Political Philosophy*, ed. Thomas Christiano and John Christman (Oxford: Wiley-Blackwell, 2009), 437–455 as well as James Nickel, ‘Rethinking Indivisibility: Towards a Theory of Supporting Relations Between Human Rights’, *Human Rights Quarterly* 30 (2008): 984–1001.
7. See Martha Nussbaum, *Women and Human Development* (Cambridge: Cambridge University Press, 2000); Amartya Sen, *Development as Freedom* (New York: Anchor Books, 2000); and Amartya Sen, ‘Elements of a Theory of Human Rights’, *Philosophy and Public Affairs* 32, no. 4 (2004): 315–56.
8. See for example the excellent volume by Clifford Bob, ed., *The International Struggle for New Human Rights* (Philadelphia, PA: University of Pennsylvania Press, 2009).
9. See aforementioned article by Joshua Cohen; Martha Nussbaum, ‘Women and the Law of Peoples’, *Politics, Philosophy and Economics* 1, no. 3 (2002): 283–306; and Seyla Benhabib, ‘Is there a Human Right to Democracy? Beyond Interventionism and Indifference’ (Kansas: Lindley Lecture, University of Kansas Press, 2007).

10. Although the question of fuller democratic freedoms with which critics of human rights minimalism are concerned does indeed intersect with the issue of social and economic rights, I will address this challenge only indirectly, insofar as particular social rights may presuppose a background condition of democratic legal equality.
11. My claim parallels the claim by proponents of ‘linkages’ arguments that classic civil and political rights similarly require positive steps on the part of governments, to meet the right in question; James Nickel illustrates this using the example of rights of due process, in ‘A Defense of Welfare Rights’, 454.
12. John Rawls uses ‘peoples’ rather than states in part to signal his challenge to state sovereignty in matters of international ethics, but also because he considers societies or peoples to have a moral character that states lack. See John Rawls, *The Law of Peoples*, esp. 25–7.
13. *Ibid.*, 54–5.
14. *Ibid.*, 123.
15. *Ibid.*, 81.
16. *Ibid.*, 54–5.
17. *Ibid.*, 35.
18. *Ibid.*, 37.
19. *Ibid.*, 121.
20. *Ibid.*, 122.
21. *Ibid.*, 121.
22. Kenneth Baynes, ‘Discourse Ethics and the Political Conception of Human Rights’, *Ethics and Global Politics* 2, no. 1 (2009): 1.
23. John Rawls, *The Law of Peoples*, 64.
24. *Ibid.*, 81.
25. *Ibid.*, 65.
26. *Ibid.*, 66, 71.
27. *Ibid.*, 72.
28. *Ibid.*, 65–6.
29. *Ibid.*, 71.
30. See for example, Seyla Benhabib, ‘Is there a Human Right to Democracy?’
31. John Rawls, *The Law of Peoples*, 65.
32. Henry Shue, *Basic Rights*, 21.
33. Sally Engle Merry, *Gender Violence: A Cultural Perspective* (Oxford: Wiley-Blackwell, 2009), 85.
34. John Rawls, *The Law of Peoples*, 66.
35. *Ibid.*, 77–8.
36. *Ibid.*, 75, 110.
37. Martha Nussbaum, ‘Women and the Law of Peoples’.
38. Jon Boone, “‘Worse than the Taliban’”: New Law Rolls Back Rights for Afghan Women’, *The Guardian* (online), March 31, 2009. <http://www.guardian.co.uk/world/2009/mar/31/hamid-karzai-afghanistan-law>
39. It will be difficult to square the Shia family code with the constitution, and certain law violates various international human rights instruments to which Afghanistan is party.
40. Sally Engle Merry, *Gender Violence*, 89 and 93.
41. Charles Beitz has argued that while Rawls himself is quite vague about what is entailed by the right of subsistence, his theory could at least logically support a human right to an adequate standard of living. Charles Beitz, ‘Human Rights and the Law of Peoples’, in *The Ethics of Assistance: Morality and the Distant Needy*, ed. Deen Chatterjee (Cambridge: Cambridge University Press, 2005), 206, 210.
42. As Kok-Chor Tan has noted, Rawls is inconsistent insofar as in the domestic case he does not require toleration of—indeed probably cannot allow—‘non-liberal politics,’ since this would undermine certain individuals’ access to basic justice. Kok-Chor Tan, ‘Liberal

- Toleration in Rawls's Law of Peoples', *Ethics* 108 (1998): 276–95, at 284. See also Kok-Chor Tan, *Toleration, Diversity, and Global Justice* (University Park, PA: Pennsylvania State University Press, 2000).
43. Martha Nussbaum, 'Women and the Law of Peoples', 293–4.
  44. The privileged status accorded to societies or peoples over individuals in matters of political rights has drawn strong criticism from Nussbaum, who charges that this move is inconsistent with Rawls's domestic theory of justice (which accords priority to individuals, not groups). See Martha Nussbaum, 'Women and the Law of Peoples'; and Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, and Species Membership* (Cambridge, MA: Harvard University Press, 2006), 252–5. Benhabib also suggests that Rawls's theory lacks the right to self-government, since the Law of Peoples does not require that societies grant its members democratic political rights; without genuine self-government rights, the justification for divergent human rights doctrines, and practices across states collapses. See Seyla Benhabib, 'Is there a Human Right to Democracy?', 15.
  45. Stephen Macedo, 'The Law of Peoples: What Self-Governing Peoples Owe to One Another: Universalism, Diversity and the Law of Peoples', *Fordham Law Review* 72 (2004): 1721–38, at 1735–6.
  46. In response to the 'democratic challenge' to his argument, Rawls writes, 'some writers maintain that full democratic and liberal rights are necessary to prevent violations of human rights. This is stated as an empirical fact supported by historical experience. I do not argue against this contention, and indeed it may be true. But my remarks about a decent hierarchical society are conceptual. I ask, that is, whether we can imagine such society; and, should it exist, whether we would judge that it should be tolerated politically.' *Law of Peoples*, 75, ff 16. It is possible that Rawls would similarly insist on the hypothetical possibility of a society that denies some citizens' social rights, yet still respects their core human rights, but for reasons that I have outlined, I deny that such a possibility exists.
  47. Onora O'Neill, 'Justice, Gender and International Boundaries', in *Bounds of Justice* (Cambridge, UK: Cambridge University Press, 2000), 163.
  48. See Kok-Chor Tan, 'Liberal Toleration'.
  49. Michael Ignatieff, *Human Rights as Politics and Idolatry*, 54.
  50. *Ibid.*, 75.
  51. *Ibid.*, 54.
  52. *Ibid.*, 67.
  53. *Ibid.*, 84.
  54. *Ibid.*, 83. Ignatieff acknowledges the importance of some collective or group rights, such as language rights, but insists that these ultimately derive from the protection they offer individuals. *Ibid.*, 67–8.
  55. *Ibid.*, 67.
  56. *Ibid.*, 66–8.
  57. *Ibid.*, 89.
  58. *Ibid.*, 89–90.
  59. *Ibid.*, 89.
  60. *Ibid.*, 90.
  61. In addition to the international human rights instruments and organizations that defend women's rights as human rights, there is a growing scholarly literature dedicated to this effort: some examples include Patricia Grimshaw, Katie Holmes, and Marilyn Lake, eds., *Women's Rights and Human Rights: International and Historical Perspectives* (Basingstoke, UK: Palgrave, 2001); Radhika Coomaraswamy, 'Reinventing International Law: Women's Rights as Human Rights in the International Community', in *Debating Human Rights*, ed. Peter Van Ness (London: Routledge, 1999), 167–83; Elisabeth Friedman, 'Women's Human Rights: The Emergence of a Movement', 18–35 and Charlotte Bunch, 'Transforming Human Rights from a Feminist Perspective', 11–7 both in *Women's Rights, Human Rights:*

- International Feminist Perspectives*, eds. Julie Peters and Andrea Wolper (London: Routledge, 1995).
62. Micheal Ignatieff, *Human Rights*, 30.
  63. *Ibid.*, 19.
  64. *Ibid.*, 18.
  65. Asbjorn Eide, 'Interdependence and Indivisibility of Human Rights', in *Human Rights in Education, Science and Culture*, eds. Yvonne Donders and Vladimir Volodin (Ashgate/ UNESCO, 2007). Amy Gutmann also offers incisive criticisms of Ignatieff's conflation of 'minimal' (human rights) with "“maximally consensual” or “easiest to enforce,”" in her introduction to *Human Rights as Politics and Idolatry*, xii.
  66. Charles Beitz, 'Human Rights and the Law of Peoples', 207–8.
  67. Michael Ignatieff, *Human Rights*, 18.
  68. *Ibid.*, 74.
  69. Charles Beitz, 'Rawls's Law of Peoples', *Ethics* 110 (2000): 669–96, at 687–8.
  70. Onora O'Neill, 'The Dark Side of Human Rights', *International Affairs* 81, no. 2 (2005): 427–39.
  71. I discuss this problem in my book, *Gender and Justice in Multicultural Liberal States* (Oxford: Oxford University Press, 2006), particularly in chapter three.
  72. See Clifford Bob, ed., *The International Struggle for New Human Rights*; Brooke Ackerly, *Universal Human Rights in a World of Difference* (Cambridge: Cambridge University Press, 2008); and Thomas Risse, Kathryn Sikkink, and Stephen Ropp, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).
  73. Daniel Chong, 'Economic Rights and Extreme Poverty: Moving Towards Subsistence', in *The International Struggle for New Human Rights*, ed. Clifford Bob (Philadelphia, PA: University of Pennsylvania Press, 2009), 108–29.
  74. *Government of the Republic of South Africa and Others v. Grootboom and Others*, 2000 (11) BCLR 1169 (CC).