1. Reconstructing Human Rights

‘Now architect, now archaeologist, now a man whose hand is in the past. Somebody is made to face the changes; somebody is built to last. What do you know, still living so young? Tomorrow is no burden; time can be overcome.’

-The Constantines, “Time Can Be Overcome”

I am a human being. You are a human being. We are human. These simple propositions have become ethical claims of the highest order. They express expectations of recognition, concern and equality. Those expectations take social form as rights: rights that protect us from torture, from arbitrary imprisonment, from hunger and deprivation, which entitle us to standing within our communities, participation in politics, productive work, engagement in cultural life, privacy sufficient to live without undue interference and many other protections and privileges. In promising these protections and privileges human rights redefine political relationships by altering how we see ourselves and how we share our lives with others. Human rights are a transformative political idea, although one that many of us now take for granted. Yet, if we take the ethical value of human rights seriously then we need to recognise the profound claims they make along with the radical social changes they demand. Human rights assert that people, whether alone or in community with others, count for something; that they are owed respect and voice whomever they are, irrespective of existing hierarchies of protection and privilege; and they assert that political authority is only legitimate when everyone counts. These profound claims force us to reconsider the known coordinates of social justice and in doing so upsets the given order. Human rights are disruptive.

When we look past the everyday ubiquity of rights talk to measure the depth of the demands they make of us, we see why human rights generate a powerful need for justification – a need for certainty. If the ethical claim contained in the simple proposition “we are human” can call into question the social and political order, then what gives that claim such power? Its power engenders a desire in us to unearth what is truly worthy of concern in our shared humanity and to clearly define what privileges and protections our social institutions must uphold. Yet this is the juncture where human rights get tangled, and where the first signs emerge that the ethical postulate that each of us should count for something is also a decidedly political question, a question of who determines what our humanity consists in and which protections and privileges it should grant us. While the ethical demands entailed by our common humanity can lead to ubiquitous rights claims (as human rights can apply to everyone everywhere) the act of asserting a definite meaning to
our humanity and articulating a specific programme of rights leads to a dizzying multiplicity of rights claims. Human rights are ambiguous.

For some the meaning of human rights seems as obvious as their widespread use is welcome – even where the difficulty of agreeing on a final understanding means dissent persists, this is only a practical limitation on the otherwise transcendent authority of rights. For critics, however, the impossibility of achieving a final account of human rights is a consequence of the unacknowledged partiality of all universal claims, which suggests that rights claims multiply because they are fundamentally about the exercise of power rather than the realisation of transcendent moral authority. A great deal of effort goes into thinking about, defending, criticising and agitating for human rights, but their meaning seems to remain stubbornly contestable and their value worryingly debatable. What if this lack of consensus is neither a temporary step on our way to a more complete understanding of rights, nor a consequence of the fundamentally ideological nature of universal rights claims? If we reject this dichotomy, then we can start with the idea that human rights are endlessly contested because the meaning of humanity is itself inherently contestable, such that the uncertainty we have about human rights is an indication of their power to disrupt the given order of things in multiple ways. Rather than defining what human rights are in an authoritative way and defending their status as principles necessary in our contemporary condition, what we need is an assessment of the goods that human rights might achieve and the dangers they may present. Human rights are political.

Despite their everyday appearance human rights are a troublesome idea that resists easy or final evaluation. Governments invoke them as reason for military intervention, while they also provide a frame for opposition and protest– sometimes against the very same governments. They are part of the technocratic mandate of institutions, while they are also used by the marginalised and oppressed in their struggles for justice. At their most grand human rights aspire to be lay the foundation for a global order that protects and empowers every individual, allowing them to realise their full freedom and autonomy under the rule of law. While at their worst human rights are little more than ideological dross left over from a Western project of global expansion and dominance, justified as a civilising project but delivering violence, oppression and inequality. My question then, looking through this morass, is what should we make of human rights? The double meaning in that question is important. How do we judge human rights? Their salience and ubiquity demands an evaluation. Also, what can human rights do for us? Given the reality of human rights as an
existing and ambiguous set of ideas and practices, we must consider what, if anything, they are good for.

Human rights are what we make of them. Taking their disruptive, ambiguous and political qualities as a starting point, I argue that human rights are only as good as the ends they help us realise. This claim rests on a view that we must attend to what ethical principles actually do in the world to know their value, on both the conceptual and practical levels. So, for human rights we need to consider how the identity of humanity and the concept of rights shape our thinking, while also attending to the ways that human right practices effect us in the world. Neither the conceptual or practical moment is privileged rather they are always intertwined. Further, our judgment of the value of human rights must be conscious of both what rights have been as well as what they might become. This work, both archaeological and prophetic, is done with knowledge that human rights are multiple, that there are many histories of rights, some celebrated and others silenced,¹ and that there are many human rights futures to be realised, again some claiming the mantle of progress and others working in more subversive ways.²

1.1 The Work that Rights Do

Many authors have appealed to the positive consequences of human rights, claiming that the good work they do provides a justification for both the dominance of rights discourse and the exercise of political power to uphold those rights.³ Michael Ignatieff is among the most influential figures making this argument.⁴ He grounds his defence of rights on the claim that they represent the West’s best response to its own barbarity and that human rights provide a set of political practices that are good at preventing the worst abuses of individuals by the modern state.⁵ Further, he argues that human rights are not addressed to victims or perpetrators so much as bystanders, that they appeal to the powerful to do something and

⁴ Ignatieff, Human Rights as Politics and Idolatry, 53–58.
⁵ Ibid., 4–5.
provide needed legitimacy to acts of intervention. My starting point is different and my claim that the value of human rights depends on what they do in the world rests on an understanding of ethics that rejects the conventional dichotomy between deontological or consequentialist theories, and instead begins from the specific situations in which ethics are put to work. Whether we are thinking in terms of principles or outcomes, or even sentiments and virtues, the value of our ethics rests in how they enable us in those situations where we are called upon to act, not in their capacity to provide an absolute rule. So, to know the value of human rights it is insufficient to gesture to their positive consequences as general norms, rather their value must be proven in context, and it must be proven continually by looking to what they enable us to do and become. A problem with Ignatieff’s argument is that he speaks of the consequences and practices of human rights as if they were singular and uncontested. This is a fundamental point of contrast with the approach taken here. Across time and space human rights vary, both the meaning and practice of rights shifts, such that we cannot casually say that the human rights regime that developed in the United Nations from 1945 is the same tradition that inspired 18th century revolutions in Europe and North America, nor can we claim that the invocation of human rights by George Bush prior to the invasion of Iraq in 2003 is the same practice as human rights claims made by third world social movements. So, along with attending to the specific situation, an understanding of what we can make of human rights also requires that we attend to the politics of human rights, their contestability and multiplicity, as well as the way they work within already existing hierarchies of power.

The philosophical merits of human rights are the subject of constant disagreement among theorists. For social scientists, the effects of human rights in political life are equally contested. This implies that there are no simple answers to the questions generated by the ascension of human rights as an ethical and political ideal. Understanding human rights is a task always only half-finished, despite the efforts of many to clarify the confusions and

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6 Ibid., 8.
10 For a recent and invigorating example of the diversity of philosophical debate on human rights see Costas Douzinas and Conor Gearty, The Meanings of Rights: The Philosophy and Social Theory of Human Rights (Cambridge University Press, 2014).
contradictions that human rights throw up. Therefore, my aim is to begin by taking human rights as they are, while also suggesting what they might become, without trying to reconcile contradictions or deny tensions. This starting point subverts the kind of authority that a philosophical account of human rights would normally require, as I begin with the presumption that human rights are not one thing and that their consequences do not speak for themselves in a singular voice. The work here, then, aims to reveal some important aspects of human rights and gestures towards one way we might develop them in the future, but it does not aspire to a complete account of what human rights are or a final judgement on their value.

This alternative approach is necessary because human rights cannot be justified, or even known, with any finality. While defenders of human rights have been engaged in an extended project of philosophical justification, those justifications fail to move critics from their sceptical starting points. Each contortion of reason performed to show that some feature of human experience is definitive of the ethical worth of the individual cannot help but draw distinctions—a distinction between what is privileged and what is devalued in our malleable human nature. This distinction, however, always rests on some appeal to authority, often to the authority of reason, but no matter how carefully crafted the argument there comes a point where authority as power is simply asserted. Likewise, the insights of critics do not penetrate the intellectual armour of human rights believers despite the debilitating power those critics imagine their attacks to have. Critics point to the way rights shape our subjectivity so that we see ourselves as individuals dependent upon government authorities and tied to each other primarily through contractual relationships, and they reveal how rights can reinforce the power of the sovereign.

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12 Or so it would seem given the intractable debate over human rights, and universal moral principles more broadly, which is an issue taken up in greater depth in the next chapter.

13 The arguments of Alan Gewirth, James Griffin and John Tasioulas show this line of thinking, as the account of what is special about human nature is made more pedestrian and plural, but the need to distinguish the valuable from the contingent persists. Gewirth focuses on the rational necessity of the value of autonomy, which Griffin defends in looser terms of personhood, and which Tasioulas undermines by suggesting that there are a plurality of things we find valuable in our humanity – yet none of the three are willing to consider the move to privilege itself. See, Alan Gewirth, “The Epistemology of Human Rights,” Social Philosophy and Policy 1, no. 02 (1984): 1–24; James Griffin, On Human Rights (OUP Oxford, 2008); John Tasioulas, “Human Rights, Universality and the Values of Personhood: Retracing Griffin’s Steps,” European Journal of Philosophy 10, no. 1 (2002): 79–100.

14 In the next chapter these claims will be looked at in greater depth, particularly the discourse ethics of Jürgen Habermas, who grounds the authority of communicative reason on the idea of a performative contradiction, such that denying certain principles is impossible, or at least irrational. The argument to be made will focus on the way even this appeal rests on the asserted rather than necessary authority of the imperative to be rational.


democratic political community.\(^\text{17}\) As vital and penetrating as these critiques are, they miss aspects of our experience of rights. First, they do not address in detail how rights-thinking shapes us as individuals and societies at the psychological and sociological levels.\(^\text{18}\) This not only leaves open the question of how far philosophical critique can shift our subjectivity in response to the presumed liberal subjectivity inculcated by human rights talk, but it also reveals that critics of rights often fail to account for how and why individuals and communities continue to make use of rights. Human rights advocates are happy to exploit this lacuna, pointing to the necessity of human rights as an account of justice in our supposedly post-ideological age. The critic’s abstraction from our variegated experience of rights also reveals the presumption (shared with human rights advocates) that rights are one thing and that we can know them with certainty, as critics often fail to trace the complex ways human rights are used and understood by the people taking them up. The impasse between critics and advocates is not the result of intellectual dishonesty on either side, but rather substantive disagreements about what human rights do as well as a rarely acknowledged agreement that human rights are single thing that can be known and judged in abstract rather than practical terms.

Advocates and critics see different objects when they look at human rights, and the consequences of what they see are determined by how they understand their task. Advocates see ubiquity and paint it as consensus, as an emergent agreement on the rights due to every human being. Critics see ubiquity as well but paint it as the pervasive imposition of power, both discursive and material, which seeks to control the meaning of “humanity” as a justification for ethical principles.\(^\text{19}\) Adjudication is hopeless, and to insist on a middle-way solution only hides the problem that despite our intellectual contrivances human rights are not one thing but rather many different things to different people. Our ethics are likewise more


\(^{19}\) The divergence between defenders and critics of human rights can be seen in the contrast between Seyla Benhabib and Giorgio Agamben’s accounts: Benhabib sees human rights as central to a renewed Enlightenment project that protects individuals from society and government, while Agamben suggests that human rights are the vanishing point at which political community disappears, leaving only the unrestrained power of the sovereign over the defenseless individual. Agamben, *Means without End; Seyla Benhabib, Dignity in Adversity: Human Rights in Troubled Times* (Cambridge: Polity, 2011).
than a transcendent set of rules or an expression of force and control. Continuing to engage from within these confines limits our ability to see the harm and the good that human rights do, by suggesting that the diverse practices and plural ideals of human rights can be judged in abstraction. The test of the worth of human rights, I want to suggest, is in action, in their consequences in specific contexts. Those consequences, however, are plural, reflecting contrasting understandings of human rights and the diversity of how those rights are realised in practice. The way we have traditionally thought about rights makes it difficult to recognise their plurality and ambiguity. The limits imposed by our received understanding provides reason to rethink human rights, to reconstruct our understanding of what human rights are and reimagine what they might be. This new starting point allows us to contemplate rather than resolve the ambiguity of rights.

In asking what human rights can become, the anti-foundationalist assumptions of my own position are revealed. Human rights are not only resistant to final justification, they are a social creation; on its own this is not a novel starting point, but my argument builds on previous work by focusing on the contestability of human rights. For example, Richard Rorty famously argued that human rights are nothing more than a liberal democratic construct. Rorty suggested that our liberal human rights culture, which is primarily concerned with preventing cruelty and extending sympathy, was one of the better forms that the malleable human animal had created for itself. His argument has been influential because it is both philosophically sophisticated and politically appealing, especially to certain comfortable liberal audiences. Rorty’s anti-foundationalism is neatly articulated: there is no essential human nature, or fundamental ethical truth, yet we are able to understand others and ourselves without those grand philosophical conceits. We are able to live together in ways that are less exploitative and violent. As malleable animals that have linguistic capacities for poetic re-description, we are able to dedicate ourselves to empathy over manipulation, to care over cruelty, both as individuals and communities. Making better selves and communities is not dependent on philosophical truth, which Rorty relishes in asserting. Categorical imperatives and felicitous calculations may inspire our poetic works of the self, but these truths are beautiful revolutionary dreams, not facts that press upon our will with the weight of necessity. Therefore, philosophical truth may have rhetorical value, but it is not the substance of ethics. Rorty advises us to focus on education, on inscribing sentimental rather than

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rational intelligence on to our selves. It is from this understanding that Rorty defends human rights for the contribution they make to the realisation of our utopian ends, by encouraging us to resist cruelty and extend our sympathy to all human beings. The specific cultural origins or philosophical confusions of human rights, then, need not worry us unduly, as long as they do good work. Despite his incisive analysis of the human condition, Rorty's liberal ironism is politically naive on this point, and therefore his defence of human rights falters. It is exactly this tendency to see human rights as a singular project guided by powerful liberal states that needs to be challenged.

Rorty accepted the limits of Enlightenment rationalism and argued that philosophical thinking has given way to a 'constant awareness that any new theoretical proposal was likely to be one more excuse for maintaining the status quo.' This led him to abandon the idea of liberalism as a vocabulary with final and complete justification; instead he based his defence of liberalism in its positive consequences in reducing cruelty and encouraging creativity. Rorty's naivety, however, comes out when he down plays the lack of freedom in liberal societies.

A large part of Foucault's work - the most valuable part, in my view - consists in showing how the patterns of acculturation characteristic of liberal societies have imposed on their members kinds of constrains which older, premodern societies had not dreamed. Yet these constraints do not seem to bother Rorty, nor do their cruelties and limitations, suffered most fully by the marginalised and oppressed, give him reason to question his own liberal commitments. The indictment opened up by Foucault's critique of liberalism goes further still if we consider the effects of neoliberal capitalism and increasingly powerful state and international bureaucracies in our contemporary world on a global scale. Yet, Rorty provides few resources to respond to these unjust conditions of widening inequality, persistent deprivation, neo-imperial military adventurism, the erosion of democratic institutions, and the loss of freedom to logics of securitisation. Instead, he suggests that the institutions of liberalism are sufficient.

I think that contemporary liberal society already contains the institutions for its own improvement - an improvement which can mitigate the dangers Foucault

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22 Ibid., 57.
23 Ibid., 63.
sees. Indeed, my hunch is that Western social and political thought may have had
the last conceptual revolution it needs.24

The effects of this complacent politics are magnified when we focus on the unequal
relationships that are so common in world politics, in which social systems of control extend
beyond the forms of bio-political governance Foucault traced, merging with existing power
hierarchies defined by imperial ideologies, racist imaginaries and patriarchal violence. Rorty
speaks of the marginalised and oppressed, but, despite their exploitation within a largely
liberal world order, they apparently give the liberal ironist no reason for resistance to her own
culture, as if she already knows the marginalised and oppressed have nothing to contribute
and are only waiting for human rights and other liberal remedies to be extended to them.

So victims of cruelty, people who are suffering, do not have much in the way of
language. That is why there is no such thing as the "voice of the oppressed" or the
"language of the victims." The language the victims once used is not working
anymore, and they are suffering too much to put new words together. So the job of
putting their situation into language is going to be done for them by somebody
else.25

For Rorty, that “somebody else” should be a powerful liberal somebody.

Any engagement with the voice or language of the abused is lacking, as well as any
suggestion that liberal culture in its ideational and material elements could be complicit in
such suffering. It seems Rorty's liberal ironist is not so willing to interrogate her own
vocabulary. A central thought pursued here is that it is not pain that silences the oppressed
but the inability or outright refusal of the already empowered to hear what they have to say.26

The oppressed, I contend, do speak and in fact use human rights in ways that challenge the
liberal culture Rorty celebrates. Further, I argue that if we want to understand human rights
and their potential we need to look to those voices and languages that Rorty presumes do not
exist – but in fact they do and always have. This book is in a sense a response to Rorty's
initial move, one that takes seriously the idea that human rights should be judged by what
they enable us to do, but which rejects Rorty's flawed account of what human rights have
been and what they can become. Importantly, I want to try to reveal rather than obscure the
ways that liberal cultures of human rights are complicit in violence and oppression, noting
that the good will expressed in such sentiments is compatible in many instances with

24 Ibid.
25 Ibid., 94.
26 Bhambra and Shilliam, Silencing Human Rights.
hierarchy, exploitation and violence. For example, we do not have to doubt the intentions of advocates of humanitarian intervention to question the value of human rights as they are used to justify violence and death in acts of war. Whatever one’s view of humanitarian intervention, it is important to confront the tension in killing some human beings to protect the rights of others. Further, throughout the text I explore the idea that human nature is malleable, but insist that malleability also means the idea of humanity is ambiguous and contested in its political and ethical significance, which leads to a view of human rights as a language and culture that is fundamentally plural, and which has both radical and conservative potential. Human rights are not liberal ironism – or at least, not only liberal ironism.

Are we ready for what human rights offer us? Rather than asking if liberal human rights can be justified, I want to ask what we might make of human rights – and what human rights might make of us. This question is one I take from a woman named Virginia Lee. I met Ms Lee while doing research on the human right to housing, studying how communities across the United States were struggling to access safe and affordable housing using the idea of human rights to fight against the destruction of public housing, processes of urban displacement, predatory lending by banks and a growing foreclosure crisis. As I sat in her immaculate front room, Ms Lee shared with me a question that her father once posed to her, which she used to orient herself. “Are you ready for what democracy offers you?” Her father, who, along with his daughters, was politically active during the civil rights movement in the United States, would ask this question of his children, encouraging them to study and learn about the world they lived in so they could take advantage of the opportunities they had to pursue social justice. Ms Lee is a long time resident of Washington DC’s Shaw neighbourhood and has spent decades defending and fighting for the human rights of local residents. Drawing on her experience she spoke of human rights as part of her advocacy, as a way of promoting fairness and equality for everyone, which respected the differences between people while using the idea of shared humanity as a call to serve others. This advocacy, however, is conceived of as fundamentally democratic and focused on relationships of equality between activists and individuals suffering injustice. These relationships of equality are nurtured through seeing the work of human rights as one of teaching and learning, aimed fundamentally at building the power of individuals and communities to claim rights for themselves. This understanding of human rights departs from

27 Interview with Ms Virginia Lee, 13 August 2013 in Washington, DC.
28 Ms Lee also took part in the 1963 March on Washington, DC.
Rorty’s by assuming that human rights are not simply a set of privileges and protections that empowered actors bring to the oppressed, a gesture that invokes the \textit{mission civilicatrice}, but rather that human rights are a tool that can be used in projects of empowerment and solidarity. Ms Lee spoke of how she had tried to pay back her good fortune and opportunities by being of service to others, but at the same time her work on housing rights was rooted in her personal struggle, as well as that of her community, to ensure access to decent housing. She also talked about human rights enabling a form of education in which the oppressed were encouraged to take power for themselves, not to rest in dependence or wait for salvation. Further, she recognised that oppressed individuals and marginalised communities had power and knowledge of their own, that they had much to teach the privileged. In contrast to Rorty’s account of human rights providing a language for the oppressed rendered mute by their suffering, Ms Lee sees human rights as a language developed out of the experiences of the oppressed and that creates relationships of solidarity and service rather than dependence and superiority.

It is in rethinking the politics of human rights that the connection Ms Lee draws between democracy and human rights comes to the fore. As an ambiguous social construct we could develop many different understandings of human rights, but one way in which that idea can be developed is to bring out the democratic power of human rights, of its central notion that everyone counts. This commitment to a democratic understanding of human rights is seen in the work of many groups organising and fighting for their rights, in which they focus on building the power of affected communities to challenge the existing configuration of privilege and protection through a language of common humanity. For example, groups in the United States fighting for a human right to housing have invoked the idea of common humanity to fight for a reconstruction of the idea of property itself, claiming that housing is not a commodity but a right because of the foundational importance it has in the lives of both individuals and communities. This claim then necessitates a further call for the extension of democracy – not only as participation in the electoral process, but also as an expansion of democratic social relationships.

Focusing on how human rights are used to make radical political claims gives us a different set of insights and questions with which to wrestle. First, we can consider the way the identity of “humanity” is invoked as a formally inclusive but substantively ambiguous ideal that is nonetheless always exclusionary it its particular articulations. A focus on how human rights are used helps us to turn from the endless philosophical project of justification and critique to a consideration of how humanity as an identity is put to work, both to justify
existing privileges and protections (and their inevitable exclusions) and to contest those givens – to inspire struggles to reconstruct the existing social order. Second, examining the contestability of human rights highlights how they do the work of restructuring the social order, as specific accounts of human rights suggest particular readings of how our common humanity should shape our political relationships in contexts of opposition and contestation.

We can begin to see how human rights can support different visions of society. On one hand, human rights can encourage a technocratic neo-liberal order based in a conception of the rights holder as individualised, depoliticised and vulnerable, such that individuals need powerful institutions run by elite experts to provide for their security and well-being. While on the other hand human rights can also inspire struggles for community power, political participation and emancipation from complex systems of social control and exclusion. This leads on to the third insight we find by starting with how human rights are used, which is that human rights are always political. Human rights are a tool, a way of making claims, and therefore what they may help us to achieve is dictated in part by the ethos we carry with us.

“No one should count” is a proposition with many different meanings and I want to suggest that a democratic understanding of human rights requires a democratising of human rights as an idea and a practice. In many ways the work here is a critique of human rights as we have known them as an elite and academic idea, but it is also an attempt to provide a way of connecting human rights as they are invoked in the work of Ms Lee to a broader account of human rights as a democratising ethos. Further, I argue that a democratising human rights ethos enables challenges to the existing order by evoking the idea of humanity as an ambiguous identity that can ground a claim for meaningful inclusion in the political process but which does not depend on existing privileged identities.29

With the central aim of this work in mind (and hopefully clear by now), the next task is to say something about how this work is being done. At first glance, the injunction to attend to the consequences of rights might seem to entail a move away from theoretical reflection and towards strictly empirical study. Such a simple contrast between theory and empirics is misleading. The implication of a focus on the consequences of rights is not that we do not need to think philosophically about rights, but rather that a different philosophy is needed. My claim is that rights do a multitude of things and that humanity as an ethical and political identity has particular effects, both of which need to be made part of how we think

29 The idea of grounding I am appealing to here is that our ethical and political claims have a foundation that is always particular to the specific contexts we are acting within, and therefore it is always contingent and temporary. Further still, the grounding we claim is also contestable and always potentially an act of violence as well as legitimation.
about human rights. Further, to claim that the value of human rights lies in their consequences does not entail that judging rights requires only a trip out into the world to add up the good and bad in a simple calculus – not only are the consequences of rights more than simply observable effects, as it includes consideration of how rights shape our social world, but the act of judging consequences requires more than addition and subtraction.

There is a related problem with more personal weight to consider as well. What does this work contribute to the work of people like Ms Lee? What relationship am I presuming in looking to the work of activists fighting for justice in order to inform my own intellectual project? This requires consideration. I do not intend or want to reveal the truth behind the work of Ms Lee and others, nor do I want to simply use their experience as material for my ruminations. Yet this text is not a political polemic nor a guide for activists, but rather it aims to be part of a critical praxis, a philosophical reflection on what rights mean and what they do, which seeks to further particular ends by clarifying how rights might be used as a democratising ethos. This book is not disconnected from the work done with rights, but it is also not aimed at contributing to particular struggles directly – though I do hope it has value to the people engaged in human rights work, from whom I draw inspiration throughout the book. In essence I want to include new sources and speak to new audiences than traditional philosophical work on human rights does, but at the same time this is an intellectual and philosophical text, and therefore brings those resources to bear on the question of what can be made of human rights.

A final difficulty I want to consider with the approach taken here is how the philosophical and practical are balanced. The majority of this book is an engagement with philosophical thinking on human rights, but this is problematic if I want to claim that rights must judged by their consequences. This claim implies that the consequences of rights should be at the centre of the work, yet here they are mostly peripheral. The reason for this is that this book is about reconstructing human rights as an idea, not as a practice. It begins from the confusions and impasses that our philosophies of rights have been mired in, rather than from

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30 It is important to note that bringing in the reflections of a community activist to a philosophical discussion of the meaning of human rights is difficult and awkward. The disruption of placing Virginia in a kind of dialogue with Ignatieff and Rorty reveals the privileges accorded to particular voices and experiences in academic work, especially those that are not properly “trained” or are too directly engaged in “politics” – though Virginia is hardly less qualified to speak about the meaning of human rights and is certainly no more political than Ignatieff or Rorty. For this reason her contribution is vital to the project here – but this raises a reciprocal question for me. What contribution does the work done here make to her, her community and their struggle? This concern will re-emerge in later chapters but an initial hope is that this study is an attempt at a working/fighting philosophy for human rights as a democratising politics, which be of use to folks like Virginia Lee.

31 Though one should consider whether academic tools might be hindrances as much resources to achieving this end.
the problems of human rights as a political practice. I do not intend to suggest starting directly from the practice is illegitimate or less valuable – if anything, it might even be a better place to start. Nonetheless, I am beginning with conceptual problems and arguing that we can get past them by altering how we think about rights, and focusing on what we can do with them. Here I am attempting to make some conceptual clarifications that may help us to connect philosophy and practice, but this fuller work can only be done in a further study. In this book the consequences of human rights practice are used to illustrate the potential and danger of human rights, and to show the different ways rights are used. My aim here is general and concerned with generating a broader account of human rights. However, a consequence of the approach I am taking is that the general account offered requires contextualisation to know its value and what measure of truth it might have, but again that would be a different work and a different phase in the process of reconstructing rights. Though this work will include examples, particularly drawn from the movement for the human rights to housing in the United State, here those examples are part of the support for the argument rather than the focus of the study.

1.2 Points of Departure

Underlying both my criticism of conventional understandings of rights and the call to consider their value and meaning in terms of their consequences is a particular philosophical starting point. The work here is grounded in two related but distinct ideas. The first is a situationist ethics developed from the work of John Dewey, and the second, is an agonistic politics, in particular as developed in relation to pluralism in the work of William E. Connolly and Bonnie Honig. These starting points are not the only places where one could begin to reconstruct human rights as a critical practice – feminist and post-colonial scholars have done similar work that I draw on in later sections. Yet we all must start somewhere and the most that can be asked is that we explain why we have set off from that specific point.

32 There has been important work that looks at human rights as at least in part a tool made by and for those fighting against oppression, much of it attuned to the contestability and ambiguity of human rights – the best of this work comes out of feminist and post-colonial traditions. As indicated, I draw from this work in what follows but those starting points are not my own. I do not want to suggest that a pragmatic and pluralist approach is the only way to reach a similar account of rights, but that this approach is distinctly valuable. Important works that share much in orientation if not underlying approach are: Brooke A. Ackerly, *Universal Human Rights in a World of Difference* (Cambridge: Cambridge University Press, 2008); Baxi, *The Future of Human Rights*; Niamh Reilly, “Cosmopolitan Feminism and Human Rights,” *Hypatia* 22, no. 4 (2007): 180–98; Randall Williams, *The Divided World: Human Rights and Its Violence* (Minneapolis, MN: University of Minnesota Press, 2010).
I begin with Dewey’s critical ethics because he offered a fundamentally different approach to ethics, beginning with the question of how our ethical ideas and practices can enrich and improve human experience. Good and bad cease to be rules or conventions that constrain our action, but rather they express our evaluations of how far our given ethics help us to cope with and flourish in the world. In line with Dewey’s ethical experimentalism my call to reconstruct human rights is a speculative project that defends the value of rights by appealing to what rights can do rather than discovering what they are or should be. The method here is not the one we usually see in philosophical work on human rights. I do not begin with a defence of fundamental premises; the question is not, "what are human rights?" I begin from the premise that human rights exist as an ethical ideal, within political institutions and as a set of diverse social practices. No amount of philosophical critique will ensure their continued existence or result in their disappearance. The argument developed in the book suggests that Dewey's ethical thinking provides a vital tool for reconstructing human rights, altering the task of inquiry from justifying rights to understanding their consequences and reconstructing them to serve democratising ends. At the root of Dewey’s situationist ethics is his radical critique of philosophy as the pursuit of transcendent truth, which he seeks to reconstruct as a process of improving our capacity for intelligent action in the everyday world. In his ethics Dewey was not concerned with principles that would command our will or constrain our desires with a transcendent power. In his view this sort of power did not exist in some kind of independent ethical truth, rather we should aim to use our intelligence to free our ethics from prejudice and convention, while also reconstructing ethics as an always on-going process of aspiring to the good, critiquing what is thought to be good, and reconstructing our sense of the good – with no end and no guarantees beyond the improvement of our experience in this world. The end goal is not to know what is good and thus to submit to its authority, but to reflect on what we can do to improve our condition.

A fact known does not operate the same as a fact unperceived. When it is known it comes into contact with the flame of desire and the cold bath of antipathy. Knowledge of the conditions that breed incapacity may fit into some desire to maintain others in that state while averting it for one’s self. Or it may fall in with a character which finds itself blocked by such facts, and therefore strives to use knowledge of causes to make a change in effects. Morality begins at this point of use of knowledge of natural law, a use varying

with the active system of dispositions and desires. Intelligent action is not concerned with the bare consequences of the thing known, but with consequences to be brought into existence by action conditioned on that knowledge.\textsuperscript{34} A Deweyan method of reconstruction requires that ethical inquiry must be an inquiry into existing conditions and the possibility of further action to improve our experience. Ethics reflect our desire to be good, to be better; it is a matter of action and of choice, especially the choice to always interrogate ethical authority – even the authority we find in our own evaluations and actions.

Along with his critique of philosophy as the search for transcendent truth, a more specific critical element in Dewey’s ethics that I take forward is his rejection of the quest for certainty. In \textit{The Quest for Certainty}, Dewey attacked the presumption that ethics finds its authority in principles removed from contestation and change, made secure by the techniques of ethical theorising. He rejected the notion that the good or the right are secured by principles that exert their authority over and above everyday human experience.\textsuperscript{35}

\begin{quotation}
If one stops to consider the matter, is there not something strange in the fact that men should consider loyalty to “laws”, principles, standards, ideals to be an inherent virtue, accounted unto them for righteousness? It is as if they were making up for some secret sense of weakness by rigidity and intensity of insistent attachment. A moral law, like a law in physics, is not something to swear by and stick to at all hazards; it is a formula of the way to respond when specified conditions present themselves. Its soundness and pertinence are tested by what happens when it is acted upon. Its claim or authority rests finally upon the imperativeness of the situation that has to be dealt with, not upon its own intrinsic nature – as any tool achieves dignity in the measure of the needs served by it.\textsuperscript{36}
\end{quotation}

If we approach ethics from this Deweyan perspective it becomes clear that the quest for certainty in ethics lingers, long after our belief in rational postulates and divine commands was first shaken. Further, a Deweyan approach suggests that rather than continuing to defend the transcendent authority of ethics in ever more qualified and complex terms, we can liberate


\textsuperscript{35} He also rejected the idea that certainty could be achieved in tradition – as the point was rather to inquiry into how to be good in conditions of uncertainty

our ethical thought by focusing on ethics as a kind of critical intelligence, the authority of which is based on the capacity of our ends to improve our experience.

Along with the question of how we conduct ethical inquiry, the reconstruction of human rights I have outlined also raises questions about the nature of the relationship between ethics and political authority. The quest for certainty in ethics that Dewey criticised is partly inspired by the role ethics are presumed to play in giving legitimacy to political authorities. Authority makes demands of us; it forces and constrains us, always raising the question of why we should accept the force of an external will. Conventionally, ethics provides a way of legitimatising authority by suggesting that authority is necessary to the achievement of the right or the good. Thus the force that shapes our will becomes just and reasonable. Dewey challenges this equation and instead places the always-contingent authority of ethics in the capacity of a principle or good to serve the demands of a given situation, a particular problem. This, however, leaves us with the question of who defines the problems that are most pressing, along with what ends we should pursue and how do we know that a particular idea or practice is doing the good work demanded by the situation. In chapter four I examine how Dewey’s ethical thinking addresses these issues, but for now it should be noted that there is a limitation in Dewey’s ethics here. The ethical situation is also a political situation, and therefore the authority of ethics is also always political and contains in eradicable element of force and violence.

Turning from Dewey’s situationist ethics to an agonistic and pluralist account of politics allows us to focus on this issue. Rejecting an ethics of certainty, built on abstract general law-like principles, undermines the capacity of ethics to justify political power. This loss generates panic in some and cynicism in others, but it also creates space to recognise the limits imposed on us through ethical principles and to see that politics is always on-going part of ethics. As Bonnie Honig argues, understanding ‘rights and law as part of political contest rather than as the instruments of its closure’, and ‘that attempts to shut down’ contestation ‘perpetually fail’ means ‘that the best (or worst) they do is to displace politics onto other sites and topics, where the struggle of identity and difference, resistance and closure is then repeated’. 37 This insight provides a starting point for critiquing contemporary accounts of human rights that seek to use them as a cornerstone for developing a final and legitimate account of political order without lapsing into a critical cynicism.

William Connolly develops up this approach as well, arguing that an agonistic pluralism does not render ethics irrelevant to politics because it refuses to subsume politics to ethics. Agonistic pluralism does ‘not take the politics out of ethics, nor’ does it ‘rise above politics’. Instead it gives ‘an ethical dimension to the experience of identity, the practice of faith, the promotions of self-interest, and the engagements of politics.’38 This reorientation in the relationship between ethics and politics also grounds agonistic pluralism as a democratic conception of politics. As agonism suggests that politics is always on-going, that contestation is not closed down by force of arms or the weight of reason, so it encourages a democratisation of both politics and ethics. As we are made aware of the way ethics reflect political power, ethical claims can in turn be part of the call for contestation and change. Further, once we abandon the notion that a singular and authoritative ethics is possible or desirable we introduce a profound pluralism into ethics, such that we must recognise that human beings pursue many divergent goods and we lack the capacity to authoritatively adjudicate between them – and in time we may learn to give up the desire to do so as well, accepting that the good consists in living well in a world of deep pluralism and on-going contestation. The question of ethics is no longer what rule should we follow to be good, but rather how should we act in particular moments to honour the goods we hold, while also leaving scope for difference that challenges our own view. Drawing Dewey’s situationist ethics together with Connolly and Honig’s agonistic pluralism, I want to suggest that reconstructing human rights based on an understanding of what they do and might yet achieve in the world also needs to be tied to an understanding of the relationship of ethics and politics that both recognises and strives to cope with the persistence of violence and force in our ethics. On this reading, the move to define a particular problematic situation or to suggest human rights meet the demands of that situation is a political move – it claims a kind of authority over the problem to be faced and the ends we pursue in resolving it. An agonistic and pluralist view attends to the reality that we may see different problems and pursue many ends to resolve them, and it helps us to deal more consciously with the force that is inevitably asserted when we pursue the good.

This then is my starting point for reconstruction. I begin with the claim that human rights are an idea and practice in need of critique and reconstruction. That work follows a pragmatic and agonistic method that tries to make sense of the many ways human rights are used in order to discern what in them is valuable. I offer no singular or simple evaluations,

however, the conclusion of the reconstruction attempted here is that human rights can be and
do many things. One of the things that human rights can do, though, is to cultivate a
democratising ethos that puts the idea of humanity to work to ensure that everyone counts
and each of us has a place in making our common life. Human rights, at their best, are used to
challenge exclusion, deprivation and cruelty by building the power of the oppressed to alter
the order of things.

1.3 The Plan of Approach

The first step in my argument is to examine and critique contemporary philosophical
justifications of human rights. Therefore, in the next chapter I argue that justifications of
human rights remain caught up in the quest for certainty that Dewey identifies, as authors
seek to justify universal moral principles, expressed as individual rights, so that they are
rendered as certain and secure as possible – rationally acceptable and necessarily applicable
to all human beings. My contention is not only that the thinkers on this quest are unsuccessful
in their own terms, but also that the quest they are on is highly problematic. Yet, despite the
difficulties and dangers, the quest for certain ethical principles continues with great fervour in
the literature on human rights, suggesting an alternative ethical approach to human rights is
difficult to articulate successfully. This dynamic can be seen in critical approaches to human
rights that reject conventional justifications but make ambivalent gestures toward the
continued potential of rights. A large part of this difficulty is that human rights play an
important political role in justifying contemporary theories of legitimate order, whether
nationalist or cosmopolitan in character. Therefore, the next step of the argument looks to the
way human rights are used politically in order to separate out their potential as democratising
ethos from their function as justifications for political authority – and its attendant violence
and force.

In chapter three, I examine how human rights are fundamental to accounts of
legitimate authority and community in world politics, whether nationalist or cosmopolitan in
orientation. World politics is generally analysed in light of two opposed but highly idealised
frames: on one hand the nation is the authoritative political community, the independence and
sanctity of which provides legitimacy; while on the other, there is presumed to be a universal
source of authority, which calls for the transformation of world politics towards a
cosmopolitan global order. In contemporary human rights thinking, the individual rights-holder is thrust into the centre of discussions of legitimate sovereignty, as political power must serve and protect the fundamental moral rights of the individual member of the political community, whether that community is a national or cosmopolitan one. Thus human rights serve to either sanctify the nationalist project by giving the state ethical purpose, or they evoke an epochal transformation to a global political order. These contrasting visions of world politics, however, are built upon a shared conception of the relationship between ethics and politics, in which ethical principles redeem political orders that inevitably use coercion and violence. Nationalist and cosmopolitan political orders are both grounded on idealisations of the political subject and community, which require a disregard for their contingency as identities and social formations. Thus they are always at risk of being undermined by plurality or undone by contingency. The quest for certainty, of both ethical principles and political ideals, intensifies when we are addressing questions of global scope and considering legitimate authority in world politics, as the diversity and pluralism we find between individuals and communities at this level increases the anxiety that is the source of our desire for certainty.

The conclusion of this inquiry into contemporary accounts of human rights is that because of how we think about these rights, they tend to be expressed as certain moral principles intended to grant universal legitimacy to idealised visions of world politics. This is the case whether we conceive of the human rights-holder as a minimal or more substantive political subject, and whether the ideal political community is an exclusive nation-state, or an inclusive cosmopolitan order. Moving beyond this understanding of rights, then, requires both an alternative approach to global ethics that can embrace rather than seek to overcome plurality and contingency, as well as a different understanding of politics, one not dependent upon idealised subjects and communities to account for legitimate authority. In chapters two and three I also look at those critiques of human rights that focus on their role in upholding an imperial order. While these criticisms are vital for countering dominant liberal narratives of human rights as progressive liberal ideology, they also share in the tendency to frame politics in idealised terms, painting the political consequence of human rights in a single dark shade as the relationship between ethics and politics is inverted – with human rights becoming a tool for the expression and expansion of power.

Moving from critique to reconstruction, in the second section of the book I develop the idea of human rights as a democratising ethos. First, I turn to the work of John Dewey, whose ethical theory and account of democracy as a form of social intelligence provide central supports to my reconstruction of human rights. By building on Dewey’s ethical theory I offer a way of thinking about ethical questions that does not replay the quest for certainty. By conceptualising ethical judgement as a form of active intelligence exercised under conditions of uncertainty and pluralism, in which the goods demanded by our situation are not only unclear, but also potentially multiple, it is possible to refocus our political ethics. This suggests that we need to understand the social and psychological function of ethics, importantly including the way that ideals function as guides to future action and the way in which rights are social customs that institutionalise political relationships based on given (and contested) ethical ideals. This analysis, however, is dynamic. A Deweyan ethic does not provide a defence of any singular ethical ideal or set program of rights; instead it pushes us to affirm the plurality of ideals we hold in ethical life and the constancy of change. In place of this quest for certainty we are able to pursue the reconstruction of practical reason as, what Dewey termed, critical intelligence.

Dewey’s ethics start with the idea that ethical judgements are required by problematic experiences, which are those moments when our customary and habitual ways of acting fail us, when the correctness of our values is in doubt. The important ethical work is done, then, not in abstractions that guarantee certainty, but in the specific situation where judgements and action are required. This account of practical reason relocates the source of ethical authority from the universal and abstract to the specific and practical, resulting in a view of ethics as an always-on-going process of judgement in action, as the application of critical intelligence. This is important for thinking about human rights and their place in world politics because the central ideals of human rights are opened up as sites of contestation rather than closed down as sites of authority. This reveals that basing a particular human rights claim on the ethical significance of our common human identity affirms some aspects of what being human can mean over others. Rather than suggesting that this is necessarily illegitimate, Dewey’s alternative ethic focuses on the situated nature of all such claims. It is in responding to particular situations that the appeal to a universal but ambiguous status, like humanity, dislocates established political ideals and can upset given programs of rights. A situationist ethics, then, reveals that human rights can open up, rather than close down, a contest over the basis of legitimate political authority as well as the ethical significance of our shared humanity. The basis of legitimate authority is exposed to contestation through human rights.
because they are rights claims that appeal to a non-exclusive political identity (humanity) that anyone can take up and use to undermine any particular institutionalisation of the authoritative political community.\textsuperscript{40} This feature of human rights, I argue, is potentially democratising because it enables fundamental challenges to idealised conceptions of world politics, including nationalist accounts based on the enclosed moral community and cosmopolitan accounts based on a universal individual.

My account of Dewey's ethical theory emphasises the importance of pluralism in his thinking, a reading of his work that draws on critical literature that has sought to reinterpret him as a thinker more attuned to the importance of conflict and difference than critics like Sheldon Wolin, or supporters like Rorty, have portrayed him to be. For that reason, I use Dewey to introduce and think through the importance of value pluralism, a phrase most commonly associated with Isaiah Berlin. The basic premise of value pluralism is that our values are plural and incommensurable, rather than singular or ordinal. This account of values contrasts with trends in ethical theory that seek to place some central value in a privileged position when defending human rights, such that true human rights protect our autonomy\textsuperscript{41} or guarantee our basic needs for subsistence and security.\textsuperscript{42} Further still, pluralism undermines rationalist attempts to guarantee moral values through a privileged procedure or form of insight, suggesting that affirming the importance of any particular value is a political act that involves a form of existential commitment.

Elements of this pluralist sensibility are shared by many contemporary thinkers: including liberal theorists like John Rawls who try to overcome the fact of diversity as far as possible\textsuperscript{43} as well as postmodern thinkers like Jacques Derrida who affirm difference and contestability.\textsuperscript{44} The kind of deep pluralism that I suggest is needed in developing an anti-foundationalist ethics, denies privilege to any particular ethical value while maintaining that we can still distinguish between what is and is not valuable in terms of what we actively value in particular situations. Yet, the objectivity that our judgments may have does not allow us to authoritatively or finally settle disputes because conditions are always changing and

\textsuperscript{40} In a similar vein, Honig highlights the importance to democracy of founding figures that exist outside of the established community and forms of identity. While the logic I argue for in relation to the productive ambiguity of humanity, as a political identity, is not tied to foreignness, it does respond to the same difficulty created by the presumed closure of political community. Bonnie Honig, \textit{Democracy and the Foreigner} (Princeton, NJ: Princeton University Press, 2003).

\textsuperscript{41} For a contemporary example of this approach to justifying human rights, see Griffin, \textit{On Human Rights}.


each judgement is contested and partial – even within ourselves we feel the conflict in affirming one value over another. Instead our situational, non-subjective but non-foundational values provide a basis for understanding diverse ethical commitments and judgements across the differences that divide human beings. This understanding can be developed to improve our ability to exercise critical intelligence in our contemporary global condition and encourage a more profound respect for difference.

In chapter five I use Connolly’s work on agonism to complement the situationist ethics worked out in chapter four, in particular attending more directly to the sources of difference and the consequences of placing contestation at the heart of ethics. Further, Connolly provides a way to expand on Dewey’s account of democratic politics by focusing on the disagreement and contestation rather than the problem solving and collective intelligence, which presume a problematic social harmony. The two key points that come out of this chapter are, first, a clearer account of what human rights as a democratising ethos entail, and, second, a reconsideration of the political consequences of pursuing this reconstruction of human rights. In the first case, a democratising ethos of human rights is shown to help reveal the violence inherent in attempts to eliminate ambiguity and uncertainty from political life. The disciplinary forces that construct the normal individual or the liberal nation-state as regulative ideals, including the construction of reasonable or limited forms of diversity, runs counter to the deep ambiguity of humanity as an identity. Adopting a democratising ethos responds to this sort of ambiguity with a call to support the virtue of agonistic respect, which makes room for difference without desiring to convert it into otherness. Given the power of human rights to impose a conception of humanity upon diverse groups, this is a vital reconstruction that reorients human rights away from the normalisation of identity and toward its on-going contestation. Along with respect, a democratising account of human rights also requires an awareness of the exclusions generated by the values and identities we affirm in the name of humanity and which are implemented on a global scale. These virtues are argued to be important basic commitments for the account of human rights defended here.

The second contribution I take from agonistic democratic theory is to rethink the basis for legitimate authority. If we are critical of both national and cosmopolitan accounts of sovereign authority, we must defend a form of democracy that does not depend upon an ideal of national communities or a universal individual, and instead focus on the contingent nature of social and political relationships. This focus then enables new claims to authority that exceed the nation-state or visions of a singular cosmopolis. In relation to human rights, this implies that we should not hope for or expect a single human rights regime, leading to a more
comprehensive global system of cosmopolitan governance, nor should the democratic nation-state be granted exclusive privilege as a sight of authority. A democratising account of human rights would be institutionalised in plural ways, as well as being subject to on-going change, resulting in diverse human rights publics or a human rights assemblage.45

The reconstruction of human rights developed in this work does not issue in a definitive account of the universal values that justify a set programme of rights that should be institutionalised. Instead, what is developed is a way of thinking about human rights, as they are analysed as claims that challenge fundamental political relationships defining both the individual and collective political subject. Along with this analysis, I defend the idea of human rights as a democratising ethos that should call for respect for difference and an awareness of exclusion and vulnerability, without sacrificing a commitment to the substantive goals of democratic inclusion and equal care for individuals. This ethos, however, is only a particular democratising sensibility, one of many that could be infused into human rights, as an ideal and practice. The implication of the reconstruction pursued here is that there will be many accounts of human rights that are affirmed. For this reason, human rights will not definitively support any one vision of legitimacy in world politics; they grant no final or special privilege to particular ends, nor to nationalist or cosmopolitan orders, which leads to the suggestion that we think of human rights as a plural discursive field of contestation rather than a regime or singular movement.

I develop this account of rights further by turning to the practice of human rights in chapter six focusing on the contestation of what human rights have meant historically and how they are used in contemporary political struggles. Therefore, the final section of the book considers two aspects of human rights practice. First, I consider the role of founding documents in the contemporary human rights practice, arguing that they are sites of plurality and contestation rather than consensus and closure. Second, I look to how human rights are used by social movements to democratise political authority and subvert existing forms of community – in contrast to an understanding of human rights practice that focuses on the consolidation of global ethical and legal authority in pursuit of a cosmopolitan political order. These are very different accounts of what human rights mean in practice, as one is an account of rights as tools that enable reconstruction of the social order in a myriad of ways, while the other treats them as certain principles that justify authoritative institutions.46

45 These terms are taken from Dewey and Connolly and their meaning will be elaborated in Chapter 5.
46 In chapter six the use of human rights in social movements is focused on the struggle for a human right to housing in the US. This is a limited examination for two reasons. First, as outlined above this work is
In the concluding chapter, I discuss the different levels of argumentation present throughout the book. At the base of my reconstruction of human rights is an analysis of how humanity is mobilised as a political identity to challenge or privilege particular political orders. In light of that analysis, I argue that human rights are an ambiguous ethical practice characterised by plurality and contestation, but broadly supportive of individuals and groups seeking to challenge existing power and institutions – and not always in democratic or progressive ways. More controversially, I make the case that we should develop human rights in a way that is radically democratic and concerned with transforming social structures in a fundamental way – that the best we can do with human rights is to use them to ensure that everyone counts, both as vulnerable individuals worthy of concern and care, and as creative and equal members of the many communities we inhabit and with whom we share the task of living justly.