

I Legalism and Loyalism: European, African, and Human “Rights”

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Jurists and moral philosophers sometimes turn to anthropologists for perspectives on rights. They ask whether all peoples or cultures have concepts of rights, and whether everyone thinks about these things the same way. An answer to this question, some hope, will help them with another one, less relativist and more absolutist in aim: do all people actually have rights?

These questions are hotly debated. Some, both inside and outside the academy, feel that all humans have basic or natural rights and that it therefore becomes the duty of others everywhere to guarantee them against, for instance, ethnic persecution, genital mutilation, or toxic waste dumping. Others feel that to pitch social, economic, or political discourse in terms of “rights” is to impose one people’s ideas on another and to place rights in the province of lawyers and state actors who have too much power already.

Rights are an idea, or a family of ideas, with a long intellectual pedigree. One of the problems in examining this idea’s origins and distribution is that it was written about in some parts of the world before it was in others—and by only certain kinds of people. This makes it tempting, but maybe misleading, to infer that it was *thought* about in some parts of the world before others, or that some people or peoples have a superior claim on it. A more basic problem is that to ask whether all people think in terms of rights, one needs to use the word in English or some other language, and doing so itself is likely to bias the discussion in favor of one people’s tradition or another’s from the word go.¹

Who, then, calls what a “right?” If rights may be a culture-specific idea, then who is included in that culture? If the idea has spread, then can one call the spread an imposition of one culture or civilization on another, or perhaps a sign of a growing need for the idea among those

turning to it? Alternatively, are rights a tool that some borrow from others only when it's handy—for instance, to defend themselves against precisely the kinds of people (lawyers, missionaries, humanitarian activists) who propound them?

With questions like these in mind, this brief essay offers a few preliminary remarks on the concept of “rights” as understood in western European intellectual tradition and in parts of Africa south of the Sahara where some have attempted to apply it. This is done from the position of one who is neither European nor African (but who has had the good fortune to live and study in more than one part of each continent) and might thus hope to offer a perspective more neutral than some.

A canonical European tradition of thought on rights focuses most closely on the individual and on universals, as in the notion of human rights and the duties these imply. I trace the use of these notions since the seventeenth century by a few social and political philosophers who represent some of the most influential ways of thinking about rights and duties in Europe and overseas. Individualism and universalism, I suggest, reinforce each other in an idealized cultural self-image, really a self-caricature. Seventeenth- and eighteenth-century ideas about the solitary “natural man” and the “social contract” undergird the concept of human rights, and this concept has been turned and applied in ways that tend to legitimize nation-states (and bodies composed of their representatives) and laws as the natural or proper defenders of those rights. The ethnographic and historical foundations of the “natural man” and “social contract” ideas are shaky, I shall argue, and ideas of human rights should no longer rest upon them. No less important, if “rights” are needed, is to recognize a premise and a human right of connectedness, which may form a basis of other rights or interests.

While the idea of individual and universal human rights is well understood and accepted by many African people, it does not translate well into, or accurately reflect, the most common African understandings of morality. It can appear unnatural to minds more accustomed to considering moral issues by reference to intimacy, position, or actual circumstance, and more oriented toward particular loyalties. Individual freedoms may mean less than connectedness—to both the living and the dead—which may be construed as a right in itself; indeed, individuals may not even be recognized without connection to others. Nation-states as defenders of universal rights may also appear suspect where they were imposed under foreign power in the first place, have earned little loyalty, and remain subject to sudden takeovers and pol-

icy shifts. People in control of national and multinational agencies in Africa, sometimes acting in the name of aid or development, have participated in varied human rights abuses, sometimes unwittingly or with benign intentions. If the two-edged ideal of individual and universal human rights is to be invoked as a versatile tool in Africa's culturally diverse settings—for the defense of others or for African people's own self-defense—it may need some culturally sensitive rethinking.

Anthropology's Engagement with Rights

Edward Evans-Pritchard is said once to have quipped about anthropology that “the comparative method is all we have, and that is impossible.” Any comparison worth making yields both similarities and differences, and where translating is involved, some ambiguity too. Seldom is it clear just what “a culture” is, or where one culture or language ends and another picks up. Comparing cultures can produce extreme conclusions—that people are all alike or all different. Most anthropologists would say that how people think about rights, or whether they do at all, depends on context, translation, or interpretation. Many would seek to divide human societies up somehow: by time or place, by ethnic group, by age or sex, by class or caste. Some would sort ideal from real, thought from deed, and norm from habit. Many of the world's real people identify with more than one culture. It becomes easy thus to hide behind seemingly safe conclusions like “it's complex.” However, debates about whether to lump or split never end, and what seems like a safe conclusion for an intellectual purpose may be riskier for a practical one.

Anthropology's recent emergence from a period of self-examination and self-criticism has prompted questions both new and old at once. Whereas in the 1980s and early 1990s the emphasis was on comparing “the self” and “the other,” it seems lately to have re-occurred to anthropologists that it might be worthwhile also to compare the other with the *other* other. The delicate work of comparing regions (and of comparing periods within them) begins to pick up the threads where it left off, but with heightened sensitivity to issues of position and power, the dynamics of transcultural contact, and the intricacy of cultural mixture and overlay.

Moving back to the forefront of anthropology's concerns are possibilities of practical action and political advocacy. There seems to have been a sea change. An earnest idealism about the usefulness of social research to influence lives—an attitude that seemed to wash away in the aftermath of the Euro-American social upheavals of the 1960s and

early 1970s—was likely, in the 1980s and early 1990s, to bring smiles and eye-rolling among anthropologists, as though the notion of committed engagement were naive beyond the pale. By the turn of the millennium all this had changed. In an era of state collapses, ethnic purges, and racially charged conflicts over migration, anthropologists were forced to think again about their own usefulness. Relevance was coming back in.

To those wishing to take on theoretical challenges but also put their cultural insights to use, no idea has been more central than rights. If people have rights, then others have duties to see that they are realized and respected—scholars included.² Action and advocacy, for anthropologists, have usually meant trying to work in behalf of the more neglected, misunderstood, or threatened people(s): traditionally, the people in “the field.” Indigenous ethnic minorities, together with refugees and other migrants, are the people most vulnerable to forced resettlement, land dispossession, and so on. Since few with power over them speak their tongues, these peoples have had few allies besides anthropologists, missionaries, and humanitarian aid workers (three sets of people with more in common than they sometimes let on). Convincing others to listen may take strong words like “rights.”³ So who, among the peoples who seem so wronged in such varied ways, has rights to begin with? Who gets to define them? And why should anyone care?

Rights (. . . and Duties?)

Rights, in English, take their place at the upper end of a continuum something like this:

right
 entitlement
 claim
 aspiration
 pretension

Rights carry not only legal but also ethical or religious connotations: the word implies something ultimate—something sacred. To defend rights is something like engaging in a crusade, carrying both the connotation of deadly seriousness and the risk of dismissal as fanaticism.

Clearly, in conventional usage the word *rights* has ambiguity, or polyvalence, like most sacred signs and symbols. Therefore, we look it

up. In the *Oxford English Dictionary*, without the *Supplement*, the term fills eight pages—more than any other word but one. For our purposes, the definition most relevant is this one (no. II): “Justifiable claim, on legal or moral grounds, to have or obtain something, or to act in a certain way.”⁴ Rights are assumed to be about getting and keeping, it seems, rather than about sharing or giving. As such, they describe only a piece of human interaction, always begging the question of what duties or obligations are attached. If rights imply duties, these may be perceived as duties of the right holder, to compensate for or justify the right; or as duties of others to respect the right, perhaps in return for enjoying rights of their own.

Anglophones, like all people, think and communicate with metaphors. Contemporary English terminology surrounding rights and duties has a way of inclining a speaker into economic idiom. Owning, owing, possessing, paying and repaying, compensating . . . it is hard to think long about rights and duties in English without eventually alluding to property, exchange, or money. Debts and duties, property and liberty . . . where not etymologically related, the ideas can subtly slide together as if by magnetism.

Rights and Social Contract Theory

Terms such as *rights* or *entitlements* on the one hand and *duties* or *obligations* on the other smuggle their own freight into discourse. In the most revered texts in Anglo-American political and legal theory, they are usually found in discussions of the individual and of the body politic as a whole: a small social unit projected onto a large one. It is largely to English and French social contract theorists of the seventeenth and eighteenth centuries—among others, Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and their followers—that contemporary thinkers owe much of their received wisdom about individual rights.

Singling out just a few “dead white European men” for naming and comment requires a disclaimer or two. Here they are chosen only because of their universally acknowledged influence over philosophical and juro-political history. These three thinkers, so different in the compass of their interests but overlapping on the topic of individual and universal human rights and on the social contract, did not, of course, invent those ideas. Variants of these notions extend millennia earlier into history and literature (and not just to the Greeks or Romans or to the Judeo-Christians) and cannot be pinned to particular names.⁵ Nor were the ideas of these men altogether unique in their times: others who

aren't read today, and still others who didn't or couldn't write, surely shared many of them. Individual and universal rights are *not* an exclusively European or "Western" idea. Nevertheless, they are typically so, and they have become part of a cultural self-image of those who deem themselves Western.

Hobbes, Locke, and Rousseau were undeniably instrumental in raising individual rights to the semisacred position they have recently occupied in public political, legal, and religious culture, and no longer just in Europe and North America. When these authors wrote of rights and duties, they wrote of subjects and sovereigns: of individual enfranchised subjects and often-unnamed individual rulers. Their phrases continue to be penned into constitutions and law texts, served up in speeches, and pondered by pundits.

The theories of these men derived not just from their particular cultural backgrounds—something that has been widely noted—but also from unusual and identifiable personal experiences in their own lives and readings. A brief, simplified sketch of the relevant contributions of Hobbes, Locke, and Rousseau—to take them in the chronological order of their most influential writings on rights and duties—suggests how the notion of individual rights became so salient a feature of the juro-political philosophies influenced by their works. To each, there was a particular image of the "natural man" or savage in the background, a fragmentary image based largely, and perforce, on imagination.

We can learn something, I suggest, about the nature of society and about ideas of rights and duties by comparing these influential old notions of the "natural man" with what anthropologists now know (or at least think they know) about some of the world's more peripheral peoples. By this I mean people far from the biggest centers of wealth, power, and technological prestige: not necessarily the better or worse for it—not noble or ignoble savages—just people in what the rest of the world deems the backwaters.⁶ These are the kinds of people the social contract theorists seem to have had in mind when they wrote of the natural man.

Individuals, Sovereigns, and the Hobbesian Vision of Chaos

Thomas Hobbes was a product of turbulent times. Born in 1588, as England was struggling against Spain's Armada, he grew up with the constant threat and anxiety of a protracted war. He matured in an era in which churchmen and secular monarchs vied for political sovereignty and in which the English monarchy (to which he was exposed as a tutor to the aristocratic Cavendish family and to the future Charles II

as Prince of Wales) was engaging in a struggle that would amount to a governmental and social revolution. Hobbes lived through the English civil war, observing it from the safe distance of self-exile across the Channel, and his *Leviathan* appeared in 1651, just two years after Charles I was executed, the House of Lords abolished, and England declared a commonwealth. Hobbes scorned what some deemed the divine right of kings, but he was also terrified of anarchy and its threat to what he deemed the personal rights of subjects.

A key formative experience for Hobbes had been translating Thucydides' unique account of the Peloponnesian War. From this remarkable historian, whose whereabouts during the war remain unknown (apart from briefly noted episodes of plague, military duty, and exile), Hobbes had learned of the horrors of social collapse; it seems to have been the descriptions of violent anarchy in the Athenian plague and the Corcyrean civil war that affected him most. Here the most frightening facet of human nature—to Hobbes the most central—was revealed.

So that in the first place, I put for a generall inclination of all mankind, a perpetuall and restlesse desire of Power after power, that ceaseth onely in Death. . . .

Competition of Riches, Honor, Command, or other power enclineth to Contention, Enmity, and War: Because the way of one Competitor, to the attaining of his desire, is to kill, subdue, supplant, or repell the other. (Hobbes [1651] 1950, pt. 1, chap. 11, pp. 79, 80)

A timid man with a dark, rather cynical outlook and a keen interest in mathematics, Hobbes seems to have valued tranquillity and order above all else. He was willing to suggest a permanent collective sacrifice of individual liberties to a chosen secular sovereign in order to guarantee these. “[W]ithout a common Power to keep them all in awe,” he wrote in another oft-quoted passage, men “are in that condition which is called Warre, and such a warre, as is of every man against every man” (chap. 13, p. 103), a phrase he repeats and repeats with only slight alteration (e.g., on pp. 104–5, 107, 113, and 210).⁷ In such a condition, wrote Hobbes,

there is no place for Industry, because the fruit thereof is uncertain: and consequently no Culture of the Earth, no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the

Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short. (Chap. 13, p. 104)

This savage, anarchic, atomized condition was one that Hobbes deemed typical of human prehistory and of many parts of the earth in his time (he mentioned parts of America). Humans should submit to almost anything to avoid it, and they have therefore properly appointed their sovereigns by “contract” or (if the delivery of what is promised is to be delayed) by “covenant.”

In so doing, they surrendered basic rights or liberties. They gave up, for example, free access to all land and material goods. Whereas in the state of nature there is “no Propriety, no Dominion, no *Mine* and *Thine* distinct, but onely that to be every mans, that he can get; and for so long, as he can keep it” (chap. 13, p. 106), the organized body politic under a sovereign power and civil law guarantees men separate rights to “propriety” (property), among them rights of exclusion (chap. 24, pp. 209–11).⁸ Moreover, the sovereign does the dividing up of property and sets the rules of exchange. Hobbes supposes that this is done in the interest of “Equity, and the Common Good” and says that men should not have the right to protest against such actions of their sovereign, “because they have authorised all his actions, and in bestowing the Sovereign power, made them their own” (212). And sovereign rights extend to conqueror’s rights (211).

However, Hobbes did not go so far as to suggest that anyone should sacrifice to the sovereign his or her right to life. This was to Hobbes, and probably to many of his English contemporaries, more sacred still than political solidarity.

THE RIGHT OF NATURE, which writers commonly call *Jus Naturale*, is the Liberty each man hath, to use his own power, as he will himselfe, for the preservation of his own Nature, that is to say, of his own Life. (Chap. 14, p. 106)⁹

For Hobbes’s natural man was ultimately alone. It is the solitude of the natural, stateless man that anthropological knowledge from Africa and elsewhere leads us to question—a point to which we will return.

John Locke’s Twist

Strongly influenced by *Leviathan* several decades after its publication, John Locke carried on Hobbes’s dual tradition of individualism and

statism and gave each a new form, with a curious blend of economic conservatism and political radicalism.

Locke, a lawyer's son and land heir from a devout Anglican Somerset family, had all the advantages of Westminster and Oxford training, and he served as medic, adviser, and confidant to the Chancellor of the Exchequer. He was (either because of or despite all this) a man of lively imagination. Having served in the early 1670s as secretary to the council for trade and plantations, Locke had an interest in England's colonies and in their native peoples long before he wrote his *Second Treatise of Government* around 1689.

From these dealings at a distance with the colonies, among other things, Locke had derived a passing acquaintance with travelers' reports on the native peoples of North America—the people that he, like Hobbes, seems to have deemed most representative of man's natural condition. Now, most of these reports came from persons who had no real knowledge of the languages or cultures they were studying. Some were based on little more than casually observing an individual hunter, gatherer, or farmer walking through a forest; others were based on haphazard encounters in trade or war. Like the people any seasoned ethnographer remembers as his or her first informants, many were marginal to their own communities. The reports from these encounters left much to fill in. They were a canvas with large blanks, onto which social theorists of all kinds could paint their own images.

And this John Locke was willing to do. From Hobbes and others he borrowed the concepts of natural rights (like self-preservation), natural law, and the solitary savage or natural man. But Locke invented his own story about the natural man, with a God-given right to his body, annexing to it (at first by labor) the land he worked and the fruits of his labor, and finally his money. The individual was the starting point. Wrote Locke,

The state of nature has a Law of Nature to govern it, which obliges every *one*: And Reason, which is that Law, teaches all Mankind . . . that being all equal and independent, no *one* ought to harm another in *his* life, health, liberty, or possessions. (Locke [1689] 1976, sec. 6, ll. 6–10, emphasis added)

Locke's belief in individual rights bore directly on his views of state sovereignty. By the time he wrote the *Second Treatise*, Locke had come to reject the divine right of monarchs, as Hobbes had done. But unlike Hobbes, Locke opined that if the subjects didn't find their rulers or system of government ("constitution") to their liking after fair experience,

they had the right to replace them—even replacing their government with one differently constituted. For they together, not the ruler(s), were the real sovereign.

This is, of course, the work from which Thomas Jefferson cribbed most directly in penning the Declaration of Independence, adjusting phrases as he went, to come up with formulations like “life, liberty, and the pursuit of happiness.” (A further mutation would appear in the UN’s Universal Declaration of Human Rights in 1948, as “life, liberty, and security of persons,” along with property and a standard of living adequate for health and well-being, among other specified rights.) The liberty phrase, for both men, concealed a wrinkle. Jefferson, like Locke, was tolerant of slavery in practice if not altogether happy with it in theory; to them both (as to so many of their intellectual forebears—notably including Aristotle), the sacredness of private property extended to property in persons. That the right of property could vie with the right to one’s own body may have been a private concern, but not one expressed in print. On this particular issue, at least, it was clearly the authors’ own social position and the happenstance of their birth that determined which of these competing ideas they would inscribe into their tradition.

John Locke’s philosophy of rights, and of property rights in particular, may not find ready support in parts of the world where it is not so clear that one’s body is one’s own to begin with. In the kinds of African settings where a person may be born into servitude for another and may be taught, growing up, that it is normal and natural to be so (as among some Mauritanian Tukulor), where one person may be pledged in marriage to pay the famine debts of another (as in Kenyan Luoland), or where an individual’s will or testament about body disposal may be overridden by the superior claims of senior kin (as might happen in many places in between), a superstructure of ideas based on bodily self-possession may not seem to follow as naturally as night follows day.

Rousseau and Rights Inside Out

The third European political theorist most in vogue during the American and French revolutions and the American constitution-writing period, when rights were so much in the air, was Jean-Jacques Rousseau. Rousseau was, in some respects, more of a maverick than either Hobbes or Locke. Rejecting the “Enlightenment’s” celebration of reason and rationality and focusing instead on passion and morality (which he deemed the root of reason), Rousseau opposed and ridiculed

John Locke's notion of natural individual property rights acquired through a God-given right to the body, then through labor, and later through monetary exchange and investment. Rousseau's early "Discours sur l'origine et les fondements de l'inégalité parmi les hommes" (Discourse on the Origin and Foundations of Inequality among Men), traced the moral corruption of society back to an imagined time when, in the very beginnings of human society, a man, becoming aware of differences between himself and his neighbor, said of the land around him, "this is mine" (Rousseau [1755] 1967, pt. 2, p. 211). This was, to Rousseau, a kind of original sin that gradually led to the fall into what he saw as all the social ills of his time: general moral turpitude, competition, elitism, and hypocrisy.

Humanity started out without any of that, wrote Rousseau:

Let us conclude that savage man, wandering about in the forests, without industry, without speech, without any fixed residence, and equal stranger to war and every social tie, without any need of his fellows, as well as without any desire of hurting them, and perhaps even without ever distinguishing them individually one from the other, subject to few passions, and finding in himself all he wants, let us, I say, conclude that savage man had no knowledge or feelings but such as were proper to that situation. (Pt. 1, pp. 207–8)

Rousseau seems to have concocted his beguiling model of pre-social man from several sources. He apparently took it from western Swiss mountain canton communities remembered from his childhood, compounded with secondhand reports from authors like Tacitus (whom he partially translated), who wrote about a Germany that, for all we know today, the latter had never visited.¹⁰ He took it from Defoe's *Robinson Crusoe*, a favorite novel of his youth. And he took it from travelers in the Americas and the Caribbean, many of whom, as noted earlier, wrote tall tales home, and few of whom spoke the tongues of their subjects. Most importantly, it seems, he cooked it up out of projections from his own peripatetic, socially confused, and lonely life. Whatever the quality of his sources—and ethnographically speaking, Tacitus, writing in about A.D. 98, was probably the best of them—by the time Rousseau finished with the picture, it was mostly made up.

On property rights, Rousseau's expressed sentiments were more egalitarian than Locke's. (His critique of private property later inspired Karl Marx and his followers, whereas Locke's *Second Treatise*

has more often inspired free marketeers.)¹¹ But Rousseau shared an important idea with Locke: they both started out their discussions of property rights by focusing on individuals, not aggregations. Both, like Hobbes before them, envisaged the social contract as something arising from the voluntary agreement of originally autonomous, free-willed persons. The natural man, the foil for the civilized man, was all alone.

By the time he wrote *The Social Contract* in about 1762, Rousseau had decided that such a contract, if reformed along moral lines, was a good idea, not least to level men out. Here Rousseau turns upside down Hobbes's notion that humans are created basically equal in physical and mental ability:

[I]nstead of destroying natural inequality, the fundamental pact, on the contrary, substitutes a moral and lawful equality for the physical inequality which nature imposed on men, so that, though unequal in strength or intellect, they all become equal by convention and legal right. (Rousseau [1762] 1967, bk. 1, chap. 9, p. 26)

And again,

By whatever path we return to our principle we always arrive at the same conclusion, viz., that the social compact establishes among the citizens such an equality that they all pledge themselves under the same conditions and ought all to enjoy the same rights. (Bk. 2, chap. 4, p. 34)

The right of the strongest is a false right, replaced by a more genuine right—a social right, an equal right.

Rousseau's fervent individualism, turned inside out yet left intact, reappears as his fervent hope for a strong social contract and a strong sovereign. To him, in his later writings like *The Social Contract*, the ideal is to fuse the wills of the many into one collective will—the *volonté générale*—which restrains the individual and by so doing also liberates the individual for self-fulfillment.¹² The social contract depends on individual free will, and this depends in turn on the contract. Because of their ambiguities and seeming contradictions, Rousseau's ideas can be used by just about anyone for just about any cause: libertarian, totalitarian, populist, elitist . . . Rousseau has been accused, at some time or another, of being the father of just about every ideology. (And—self-absorbed loner that he was—he would

have loved the attention.) Together, his earlier and later work lends itself readily to both individualism and statism.

By now it should be clear that the leading proponents of social contract theory relied on scanty secondhand reports and their own imaginations in concocting their image of the solitary natural man and natural law that served as their foil for civilization. In devising their origin stories for the rights and duties of the contract or covenant—stories that would become popular origin myths in their societies and others—these men relied largely on imagery that they had happened to come across, in whatever way and for whatever reason, early in their intellectual lives. Hobbes had come up with his image of the natural man by translating Thucydides' war stories (themselves possibly secondhand) and by hearing stories about the English civil war from across the Channel. Locke had come up with his image by clerking in a bureau in charge of colonial plantations and by reading travelers' tales from the Americas. Rousseau had cooked up his images by recalling childhood vacations in Swiss mountain villages, by translating Tacitus's secondhand reports on tribal Germany, and perhaps by projecting his own solitary wanderings onto humanity as a whole. All of them filled in large gaps in the canvas with their own brushes. And, of course, they learned in succession from each other.

"Rights" in Relief: A Skeptical Voice

The social contract theorists themselves had a foil, a skeptical thinker who, by solely voicing disbelief in the social contract, showed just how conventional this idea was in his generation. This was David Hume. A sometime friend and host of Rousseau's whom the latter finally alienated (as he did nearly everyone in his life), Hume put political loyalty down not to an original covenant, but to coercion and to blind habit. Political power, in Hume's eyes, usually began as conquest or usurpation, and what men took to be sovereign "rights" was merely a process whereby people lulled themselves, over time (even if it took generations), into acquiescing to their rulers and taking them for granted. The nation-state and its leaders and borders were not as sacred to Hume as to other contemporaries. Hume refused to accept that individuals had ever consented to hand over their rights to a sovereign (or to the collectivity that he, she, or it represented) in any social contract. But Hume's political philosophy seems to have enjoyed less influence in world affairs than the philosophies of the social contract theorists. In its sobering portrait of human coercion and the resignation of many

conquered people over time, it revealed facets of human life that it is more comforting to forget. It was perhaps too realistic.

Of all the thinkers mentioned so far, it is Hume whose understanding of rights and duties might resonate best with the experience of African people in postcolonial states, where despotic rulers have ruthlessly pursued a winner-take-all politics (or might have resonated had not Hume himself, like many others of his time and place, written various passages scornful of African “races”).¹³ To Hume the skeptic, usurpation of power and tyrannical behavior in African settings at the turn of the millennium might look like the normal, familiar course of human affairs—no breach of any original contract.

Rights and Evolution

While evolutionist notions of right were clearly evident in the work of the social contract theorists such as Hobbes, Locke, and Rousseau, they were nowhere plainer than in the moral philosophy of Adam Smith, and here the notions of right, individual property, and states to guarantee them are woven together from the outset. Smith’s opening lecture on jurisprudence was transcribed as follows:

The first and chief design of all civill governments, is . . . to preserve justice amongst the members of the state and prevent encroachments on the individuals in it, from others in the same society. [That is, to maintain each individual in his perfect rights.] (Smith [1762] 1982, Lec. 1, p. 7 [ms p. 9]; the bracketed explanation is a verso note.)

Rights are violated by injury to a person (body), his reputation, or his estate. Smith divided rights into two types: “real rights” (to things) and “personall rights” (to one’s person). Humans have rights as men and as members of families and communities (or societies or states). The first real right, to Smith, is dominium, or the full right of property. “By this a man has the sole claim to a subject, exclusive of all others, but can use it himself as he thinks fit, and if he pleases abuse or destroy it” (Lec. 1, p. 10 [ms pp. 16–17]). Smith illustrated most of his writing on rights by reference to individuals. He placed these in each of four ages: the age of hunters, the age of shepherds, the age of agriculture, and the age of commerce. He does sometimes lecture about the “age of the hunter” (e.g., among “savage nations of America”) as an age of “independent families, no otherwise connected than as they live together in the same town or village and speak the same language” (Lec. 4, p. 201 [ms p. 4]). But even in these discussions, he keeps returning most often to individ-

uals, and he says that the community interferes in family matters only “to preserve the public quiet and the safety of the individualls” (Lec. 4, p. 201 [ms pp. 4–5]).

Hence, Smith’s rights, and disputes about them, began with an individual: an apple picker, a hunter, a herder, and so on. Rights and disputes multiplied at each stage with increasing interdependency, division of labor, and productive efficiency.¹⁴ In this evolution, the “age of shepherds” was the beginning of property, disputes, wealth inequalities, and government (Lec. 4, pp. 202–3 [ms pp. 7–10])—all causes or effects of rights. “And it is at this time too that men become in any considerable degree dependent on others.” So here, too, as with the social contract theorists, the natural, primitive man is a solitary man, a family man at most.

Adam Smith might be surprised to see how many people in Africa today live in the “age of shepherds”—or, more to the point, how practical and adaptive this way of life has proved in landlocked countries with poor soils and unreliable rains. When trade and specialized labor fail African people (as they have done so often in the past half century as a result of integration into commodity markets whose pricing lies beyond their control), farming, herding, and even hunting have often been the only ways to survive. And these are most often cooperative, not solitary, ventures.

Spencer, Rights, and Empire

By about 1850, when Herbert Spencer in England began writing his all-embracing evolutionist philosophy just ahead of Darwin, most of these same themes surrounding rights—will, freedom, rationality, property, contract, state, individualism, universal law—would be enshrined in English philosophy too as accepted hallmarks of a highly evolved civilization. Spencer’s “natural” human being was an individual whose supreme rights were individual rights. Like Adam Smith before him, Spencer divided the rise of civilization into stages, beginning with hunting, herding, and farming (and in Spencer’s mind, moving from the military to the industrial), and traced the rise of property rights through the stages (1876–96). The value of private property as an aspect of socially guaranteed individual rights was a central part of Spencer’s vision. As Spencer (along with Darwin) became a leading proponent of evolutionism in the social studies and philosophy, individualism became almost synonymous with human advancement.

It was a feature of German philosophy too; the tradition most influentially expressed by Immanuel Kant in the late eighteenth cen-

ture and Georg Hegel in the early nineteenth tended to package together all these things: right, duty, reason, free will, individualism, universalism, property, and contract.¹⁵ Like Kant and Hegel, Spencer saw the individual and society as mutually dependent, but whereas Kant had emphasized the constraints on the individual, Hegel and Spencer both emphasized the freedoms.

Spencer had his political misgivings about state government and his moral misgivings about British and European imperial expansion. But at the time of the European powers' scramble for Africa in the latter half of the 1800s, a teleology of state-guaranteed private property and individual liberty as evolved civilization was already a vision for export.

A Continuing Legacy

The natural, solitary man and the social contract are not dead. People who believe in them, or say they do, are still in power in parts of western Europe and a number of its former colonies. To be sure, not everything that Hobbes, Locke, Rousseau, and other social contract theorists prescribed about the mutual rights and duties of rulers and subjects has made it into British common law, or into the Napoleonic *Code civile*, or into the many other state blueprints onto which these have been copied in colonial and former colonial territories. But new variants of the social contract keep appearing in the political and legal philosophies of postcolonial states.¹⁶ Rights and duties remain the twin pillars of legal and jurisprudential discourse.¹⁷ And up until our times, the heavy emphasis on the individual and the nation as units of social aggregation, mutually supporting each other, has remained a salient feature of western European and North American juro-political tradition.¹⁸ But what in African traditions corresponds to rights? And how well have European variants of the concept transplanted to that continent?

A Real "Natural Man"? An Ethnographic Corrective

The solitary natural man—so central a part of the formation of seventeenth- and eighteenth-century social contract theory, of eighteenth- and nineteenth-century evolutionism, and of twentieth-century statism and doctrines of universal human rights—was, I have suggested, largely a result of secondhand tales from travelers and imaginative embellishments. Now let us place the natural man in the cold light of anthropological knowledge at the turn of the millennium and ask who, in the world we live in, corresponds to that long-familiar image.

In probably no known era, and in no known region of the world,

have most humans lived as individuals on their own in the wilderness. There is little evidence—ethnographic, archaeological, or paleontological—for what Jean-Jacques Rousseau, say, imagined as the “natural man.” There is little to support the image of the atomized, each-on-his-own, Robinson Crusoesque existence that Rousseau’s writing so influentially spread to his countless readers as the picture of the origins of human society.¹⁹ Not among the native Americans and Caribbeans, from whom the social contract theorists drew so much of their inspiration. Not in highland New Guinea. Not among the San (or Sarwa or “Bushmen”) of the Kalahari; not among the Hadza of the East African wooded savannah, nor the Efe “Pygmies” in the Ituri Forest, nor the Twareg in the Sahara, nor the Dinka near the upper-middle Nile.

The nearest conditions we find, in many of the smaller societies or more sparsely settled areas, are periods of ostracism for persons who have violated important norms. Persons who would in some larger or denser societies be incarcerated are sent out to live on their own for a while or for good (if they are not executed in either place). We also find individuals or very small groups isolated temporarily in rites of passage: in Amazonian or New Guinean initiation huts, in Australian walkabouts, in American Indian shamanic spirit quests, and so on. Rather than being evidence of some original condition of isolated individuals, these internal or external seclusions are instead *the exceptions that prove the rule* of normal social life. They are the isolations that emphasize and dramatize, in relief, the intense sociability of everyday existence. Rites of passage are the periods of reflection and intense celebration that allow kin, neighbors, and acquaintances to readjust to changed social roles, with respect to the parties directly undergoing the rites and to each other as well. The ritual liminals, like mythical man-monsters, put into perspective the norms of interdependent living that the intense emotions surrounding rituals can themselves help transmit and embed (even while leading some to question or flout those norms).

We can scarcely even become Robinson Crusoes when we try. When Americans or Europeans have attempted to go off and live on their own, they seem almost as likely to make news headlines as to vanish from public awareness. Henry David Thoreau shackled at Walden for less than two years (in fact keeping occasional contact with town merchants for food, nails, etc.) yet made world news for it and ensured that his journal would be pored over by puzzled students ever after. Persons who withdraw into backwoods Montana cabins, with a gun or two to keep out society, seem less likely to end up surrounded by peace and quiet than by flashbulbs and police dogs.

No. The natural human is a social being. This is what Aristotle called a political animal, one fit in its fullest development for the polis or city-state. The idea of the human as a basically social animal is not new in Africa either: it can be found, for instance, in ibn Khaldûn's *Muqaddimah*, written in about 1377.²⁰ But if the human is a social animal, do all humans recognize human rights?

Rights in Translation

Ideas about rights don't necessarily translate across languages. Many lexicons of African tongues simply list no word corresponding to *right* in the *Oxford English Dictionary* definition noted above (or corresponding meanings for terms like the French *droit* or German *Recht*). Others translate the term with a distinctive twist. Take, for instance, an example from Pulaar (or Fulfulde, the language of Fulbe or Fulani in West Africa). Some bilingual dictionaries list under *right* words such as the Pulaar term *baawal* (or *baawfe*), which itself translates into "power of the chief, authority," as if to imply that might—not some abstract ethic—makes right.²¹

In English usage, the concept of rights has both a moral and a jural element, but some African languages split the jural and moral elements into separate words. In Kiswahili, for instance, jural right is *haki* (as in *haki za binadamu*, "human rights"), whereas moral right (in the sense of correctness) translates as *adabu* (as in *adabu njema*, "good correctness" or "propriety").²² The normative aspect of the English word lends itself readily to political rhetoric and polemic: as often as not, the term *rights* is a loaded one in English. Sometimes, even when the basic idea translates, the overtones don't. Not everyone tends to think of rights as involving or alluding to property or money. These are some of the reasons why the concepts of rights and duties are so hard to define and why they translate so poorly.

Human Rights, Positive and Negative

Candidates for universal human rights aren't hard to dream up: life, health, food, water, shelter, and sleep, for example. Or something just as cherished but less easily demonstrable: dignity.²³ Again, though, some of these rights are hard to translate across languages. For example, in the Nilotic Luo tongue spoken in the Lake Victoria Basin of Africa, life and death are not spoken of as only an either-or proposition; one commonly speaks of a fat or healthy person as being more alive than a thin or sickly person. Or take the concept of family. A Luo term translated as "family"—*dhoot*, which means "doorway" (literally,

“mouth of house”)—can mean one woman and her offspring; or, in a telescoping way, it can signify a descent group as big as a clan of thousands. Rights to religious freedom are hard to translate into Luo, a language that does not have special terms for religion, since religion is not deemed something separate from the rest of life. Clearly, then, as soon as we begin to specify positive rights and try to translate them, we encounter major lexical and classificatory snags.

It may be easier to accept rights in the negative. If it is hard to agree on a positive universal human right, it may be easier to agree on a condition under which no human should have to live, at least not for long: war, terror, torture, nausea . . . But to spell these out too precisely begs the question of the ones unnamed or unnameable. Adverse conditions not always easy to specify include different kinds of subtle persecution, spatiotemporal disorientation, disconnectedness from kin or nurturing surrogates—any of which may contribute to trauma or post-traumatic depression, existential angst, hauntedness, or anomie (a normless, structureless condition unnameable by its very etymology and definition). The more thorough and precise the list of unacceptable living conditions, the easier it becomes to build a case allowing the one left unmentioned. A little vagueness isn't always a bad thing.

If there is a universal positive human right, perhaps it contains an irony. The American Anthropological Association's Task Force on Human Rights has lately agreed on a seemingly paradoxical idea: a *universal* human right to *difference*.²⁴ This formula is clever, and probably wise. But it isn't perfect: one can imagine plenty of ways of being miserable and different.

African Universalism?

Rights are born of hardship. The most fervent believers in universal human rights in Africa are mostly either in jail or just out.²⁵ But this isn't the only way to become a believer or knower. Some do it by growing up in, or converting to, Islam or Christianity.²⁶ Some do it by emulating Europeans or North Americans.²⁷ Rights were a rhetorical lever that Africans used most skillfully to pry their countries free from Europe in the decade and a half after the UN's Universal Declaration of Human Rights in 1948, in something like the way that the American colonies had used rights to pry themselves away from England in the late eighteenth century.

There are, to be sure, indigenous universalist traditions, too; it would be surprising if there were none in a continent of Africa's size. Some are traceable to visionaries and have been at the foundation of

nativistic, messianic, or other revitalization movements.²⁸ Some derive from independent churches that spring partly out of European or American roots—sometimes as revitalization movements themselves. But whether internal or external in their origins, these movements have something of the flavor of radicalism in Africa. They challenge a more widespread premise that humans are not fundamentally equal.²⁹

African States as Guarantors?

The question of who should guarantee human rights, if they exist, seems particularly apt in the world today. Whereas the European intellectual traditions of the social contract theorists, the German legalist philosophers, and the imperial evolutionists tend to look to the nation-state as a potential guarantor of human rights and liberties, evidence from many parts of Africa south of the Sahara suggests that national entities are often among the ones denying them.³⁰ Ogoni-speaking people in Nigeria, Dinka in southern Sudan, and Jola (Diola) of Casamance in Senegal, for instance, have all, with their different grievances, lately claimed to be victims of the nations to which they have belonged. More broadly, mobile people (transhumant and nomadic herders, migrant share contractors, refugees, et al.), people who live dispersed or far from capital cities, people with simple technology, and people with social structures deemed egalitarian or “acephalous” have historically been victims of state-sponsored discrimination and violence in Africa. Even among more densely settled agrarian and industrial populations, people representing groups out of power have argued that their people have been systematically denied basic services, political representation, or access to jobs and school places while being taxed, conscripted, or edged off their lands.³¹ It is little coincidence, then, that a number of the African nation-states have proved brittle in civil wars or, where remaining intact, have changed regimes regularly in coups d'état.

African Test Cases for the “Warre of Every Man against Every Man”

When a national government dissolves, as happened in Somalia, Rwanda, and Sierra Leone as the turn of the millennium approached, what follows is *not* an atomized society, a “warre of every man against every man” such as Hobbes imagined from his reading of Thucydides. It is a different sort of chaos instead. It is a war not just of individuals, but also shifting combinations of friendships of convenience, kin groups such as clans or pseudo-clans, ethnic groups (or what are hastily constituted or reconstituted as such), cliques, gangs, factions,

sodalities, and ad hoc coalitions. Some male youths band together in violent groups, while other people—younger, older, female—variously serve, subvert, hide from, or endure them. In Somalia, as the national government melted down in the early 1990s, people pressed their interests not just (or even mainly) as individuals, but rather as clans, classes, ethnic groups, and gangs (Simons 1995; Besteman and Cassanelli 1996). Research conducted in Rwandan refugee camps since that country dissolved into genocide in 1994 has shown that children cut off from their families hastily formed their own new ones there, a process that lowered the marriage age of both sexes (not just women) into the mid-teens (Smedt 1998). A study of Sierra Leonean youth combatants—a category lately both visible and powerful—sums up their attachments this way: “The combat group substitutes for lost family and friends” (Peters and Richards 1998, 187).

If African ethnography shows anything, it is that humankind—in peace and war, with or without states—is *not* at base just individualistic, even in extreme conditions. We are individuals, *and* we are members of bigger groupings that shift and vary in kind and size.

Rounding Out Rights

Rights need not refer to individuals, and this is something that recent scholarship has increasingly pointed out. Giving the ideas of rights and duties more leeway so that they can refer to social units other than individuals and sovereign states may make them more palatable to partisans of a wider range of political ideologies. This shift in thinking is increasingly reflected in policy documents of the UN (statist as it is by name and constitution) and of academic bodies such as the American Anthropological Association.

So what besides individuals may rights and duties refer to? Humans belong, I suggest, to three kinds of real or imputed sets:

Groups, such as nations, chiefdoms, clans, lineages, clubs, and households.

Networks, such as patron-client webs, affinal kin chains, and friends of friends.

Open Categories, such as genders, “races,” age-grades, castes, classes, and occupations or modes of livelihood.

These tags—groups, networks, and open categories—are not mutually exclusive; a set of people such as a trade guild or union can be both a category and a group, while its members partake of their own networks inside and outside of it. Humans are not more basically “individual”

than any of these other units of aggregation, including indigenous peoples. Any of these can have rights and duties if individuals can.

Some African Perspectives on Relative Rights

That rights and duties, as moral-jural absolutes, do not easily translate into many African tongues is a clue that Africans south of the Sahara may have other ways of thinking about them than the ways that western Europeans have favored in the past. Some of these African ways of thinking emphasize practical action and particular people more than abstract or universal principles. Some emphasize not so much the polarity of individual and society as the groups, networks, and categories in between—intermediaries that in Africa take myriad forms, many unnamed in English.³² Some combine elements of law, politics, and religion in ways that do not fit western European ideals of compartmentalized institutions. So axioms like the following, which I have sometimes heard suggested or implied in local discourse in settings as far apart as inland western Kenya and upriver Gambia, may sometimes strike outsiders as alien, puzzling, or frightening.³³

What your rights are depends on who you are in the first place.

Who you are may depend on your ascribed or achieved social roles—positions entered by birth or by agreement.

Individuals do not have rights independently of kin groups or other enduring entities. One could phrase it this way: rights are relative, and relatives have rights. The enduring social entities may also be constituted according to principles other than kinship, such as age grading, territory or voluntary association.

Some people are more human than others. Humanity has to do with socialization and with moral achievement, not just with biological speciation.

Individuals are accountable for the actions of other members of their kin groups or wider communities.

Autochthons may naturally enjoy more rights or privileges than immigrants.

Elders have more rights than juniors. Their status, prestige, and power rest on experience, wisdom, wealth, or reproductive success, or on their nearness to ancestors and ancestorhood.

Rich have more rights than poor—for instance, to speak out in public meetings. *Rich* may mean wealthy not just in money, but in people, animals, or other things.

Rights are realized only in practice, and with the inclusion and support of other people.

It is the positional, personalized, and relative nature of rights, not their distance or abstraction, that is most striking in indigenous African cultures south of the Sahara. Whereas rights in European understandings seem based most often on *legalism*, African rights seem more often based on *loyalism*.

Particularly hard for some non-Africans to grasp is the concept that one may not be recognized as a real person without being demonstrably connected to other people. Among the Fulbe (Fulani) of western Africa, one is not deemed properly Fula—properly human—without having acquired from others a diverse package of social and moral qualities called *pulaaku* (see Riesman 1977). Maasai in Kenya and Tanzania sometimes express a comparable idea: one isn't born a Maasai but rather grows into (and is initiated into) Maasaihood, which is proper, socialized personhood. Among Akan peoples in Ghana, as Kwame Gyekye notes in a discussion of the term *onipa* (socialized person), “an individual can be a human being without being a person” (1997, 49). Many comparable findings are reported elsewhere on the continent (Dieterlen 1973, Karp 1997). Participation makes the person. This much a Europeanist might find familiar: in English, too, one speaks of cruel or antisocial individuals as being “beastly” or “inhuman.” But a characteristically African understanding extends the idea by requiring specific personal contacts. Cohen and Atieno Odhiambo (1989, 27) put it this way: “In Siaya the individual is synonymous with the stranger, an alien, possibly an enemy . . . you do not in an important sense exist until you reveal your networks and, more importantly, until this network can be verified by your interrogators.”³⁴

It would be quite wrong, of course, to generalize that people in Africa south of the Sahara recognize no rights but positional or personalized ones, or that principles like kinship and seniority wholly govern African moral thought. It would be equally wrong to say that North Americans recognize only individualistic or universalistic principles of ethics, or that they manage to live out these ideals in daily life.³⁵ Instead, these are merely themes that recur often enough to be seen as being among the prevailing currents in these peoples' respective traditions and images of themselves. In lived experience, legalism and loyalism more often twist, turn, and trade places.

A Human Right of Connectedness?

The ideal of reproducing and leaving a living legacy is one that some people in Africa deem second to none in importance.³⁶ It can be inter-

preted as a right to be part of something bigger and longer-lasting than oneself, or as a claim to a kind of immortality. And all of this might be subsumed under a right of connectedness. This may mean a right to be part of a network of persons obligated to each other through marriage, marriage payments, and alliances. Or it can mean the right to partake of connections between the living and the dead, ties that are maintained by invocation, prayer, or sacrifice. Sometimes it means both. In the Luo country, for instance, one who dies without being properly married because of lack of access to bridewealth is deemed likely to return as a *jachien*, a troublesome spirit, to haunt the kin who denied the person the means to marry. This assumption is based on something like a right of connectedness among the living and a duty to appease the wronged after their death.

A right to connectedness may be taken to imply a duty of connectedness, too. In the Luo country, as in many other parts of Africa south of the Sahara, family members are held partly responsible for the deeds and misdeeds of other members. Debts are heritable, and at a Luo funeral, creditors will come forth to pronounce their judgments about whether standing obligations are to be forgiven or will carry through to the next generation.

Indigenous, African conceptions of rights and duties of connectedness contrast with the heavy emphasis on personal freedoms in European doctrines of rights. It is not that individual freedoms and rights are categorically absent from African minds,³⁷ but rather that they are not necessarily sacred, and they are not the beginning or the end.

Persons and Property

These seemingly abstract issues of personhood become quite concrete in contests over space, place, and property rights. As people in varied African settings under colonialism and in independent, postcolonial states have attempted to resist confinement into labor reserves, forced terracing, or resettlement caused by dam projects and the like, the question of who has what rights or access to land by virtue of what memberships, and who has the authority to guarantee these rights, has become paramount. Similarly, when bodies outside Africa attempt to transform land tenure to systems of individual ownership under state title, it matters who has the authority to set the rules, and whom they bind.

Observers from outside (and inside) Africa have often stereotyped traditional African modes of landholding as collective tenure, in order to trace an evolution toward individual tenure and justify such a

reform. The truth is, however, that most African ways of relating to land have never been one or the other but are characterized by seasonal and local variation.³⁸ But attachments to land are nonetheless reckoned as, and through, attachments to people, both living and dead. Where kin groups are identified with particular spots on the landscape, and where graves justify the bonds of living descendants to the land (as among the Luo, Luhya, and Gusii in Kenya, the Chagga in Tanzania, and the Tiv in Nigeria), rights to land can be tantamount to rights to live in a place, or among a people, with a certain standing: that is, tantamount to a social right to be. In Luo tradition, for instance, people living on the land of their own lineage may speak up prominently at public meetings or erect an *osuri*, a sharpened vertical pinnacle pole (a proud symbol of maleness and dominion) atop their houses. But people living on borrowed land may not.

Conflict over land in such places—for instance, in the “ethnic cleansing” campaigns between “Kalenjins” and intersettled groups in Kenya in the 1990s and into the new century—is more than just a struggle for resources. It is a struggle for sovereignty, and for a symbolic spatial anchor for kin groups and ethnic groups that help give personal lives their justification and meaning. When a ruling regime sanctions or actively foments such ethnic violence within its borders, as Kenya’s government has been accused of doing (Nowrojee 1993), it jeopardizes its own claim to legitimacy—whether by European or African understanding. In such a context, individuals can hardly justify rights to land by reference to titles provided by the state. They usually have, as Moore (1998, see also 1986) notes, no neutral forum for redress of any “rights.” If they are to defend their interests, they need their own groups and networks, just as they have always known.

Units of Aggregation: The Possibility of Shared Sovereignty

Students of Africa everywhere have wondered about the artificial nature of nations and nationalism south of the Sahara; they have asked whether the territories and boundaries so arbitrarily imposed by Europeans in the 1884–85 Berlin Conference can make sense as bases for contemporary civil governments that purport to guarantee rights. Skeptics argue that the unit of the nation-state never fit Africa south of the Sahara in the first place (most of the boundaries followed no pre-existing ethnic, linguistic, or religious divisions) and that few will ever respect the nation very deeply.

While this question cannot be resolved here, it is worth remembering three things. First, it would be incorrect to say that African people

south of the Sahara generally think of themselves as members (whether citizens or subjects) of nations first and foremost.³⁹ Instead, national allegiances compete with loyalties to other entities smaller or larger in scale, from individual to global; as noted, these include not only transnational ethnolinguistic groups and “races,” but also ostensibly global communities of worship in Christianity and Islam. Second, if Europeans have imposed states on Africans, they have done so on other Europeans, too. Welsh people in Great Britain, Bretons and Corsicans in France, Basques and Catalonians in Spain, and Venetians and Calabrians in Italy sometimes voice sentiments reminiscent of those of Luo in Kenya or Jola in Senegal about their marginal, subjectlike status in the nations that claim them within their borders, and their partisans have sometimes expressed their claims in terms of basic rights. Finally, some of the supranational entities that purport to defend human rights against national actions (such as the UN or the World Bank Group) are, of course, made up explicitly of and by nations themselves. In policing the acts of their member states, these organizations may only reinforce the power and authority of nation-states in general.

The hard question here is what, if anything, ought to replace the nation-states—or, more basically, whether *any* single sort of human aggregation ought to claim sovereignty, including the right to commit or regulate violence. If nation-states and their governments were somehow to wither away and their borders melt, would whatever filled the power vacuum be any more benign than what it replaced?

Possibly, but not likely. The danger, it would seem, lies in attempts by any one kind of entity to monopolize control of human allegiances and in public overdependence on any one unit for order, so that when that entity weakens or dissolves (as in Somalia, Rwanda, and Sierra Leone toward the turn of the millennium), genocidal chaos ensues, and no one seems to have any place whatsoever to claim rights. This is a plea for a kind of pluralism and for the spirit of tolerance that can come with it. Kin groups, nations, and religions are three kinds of human aggregations unlikely to go away. The second and third, which are sometimes explicitly modeled on the first, have long vied for ascendancy in Africa, sometimes cooperating and sometimes competing. All three will continue to hold their own claims to sovereignty in decisions about human rights.

Rights without the Old Baggage

The western European intellectual and juristic tradition of “rights” sometimes seems like an express train that runs from the individual to

the universal—its two grand terminals—making only a few stops in between and skipping many others. It stops regularly for family, community, and nation. But it doesn't often stop for clan or age-set, for neighborhood or subchiefdom, for gang, club, or network. So there are parts of the world where people usually seek their livelihood, peace, and dignity by their own means, or by other terms; and many of these parts are in Africa.

That nations are so often metaphorically spoken of as projections of human bodies or families would seem to suggest widespread recurring tendencies of imagination. Humans need multiple affiliations, and we sometimes spin one kind out of another. We need stories and histories to dignify our social creations, and we have sometimes done this with origin myths about the “natural man,” whom we make up if need be. This dummy serves as a foil for whatever we fancy we have become, and for the social contracts by which we may think we live.

But the figments of the natural man and the social contract may not be so necessary if we remember that all humans need crisscrossing social ties to fulfill their sense of belonging: ties of group, network, and open category. All humans need a mix of freedom and connectedness, but one people can scarcely prescribe the precise mix for another. By considering African understandings of rights (and duties) together with European ones—and remembering that many related ideas do not easily translate—we can round out an important humanitarian tradition that seems sometimes too individualist, sometimes too statist to fit the contexts where it may be most in need.

Notes

I thank Bartholomew Dean and Jerome Levi for their invitation to the symposium on which this volume is based, and for their comments on an earlier draft of this essay. My anthropology and core-curriculum students at Boston University have also offered valuable insights.

1. Philosophers sometimes divide themselves into the camps of “realists” (in the Aristotelian tradition, for instance) and “nominalists” (as in the Wittgensteinian tradition). Basically, a realist would hold that rights (or truth or justice) exist in nature, or as real principles or things, independently of what they are called; a nominalist would hold that a right is real only insofar as something is *called* a right. Where translation between languages is concerned, the difference in perspectives becomes crucial.

2. See Merry 1992; Messer 1993; and Wilson 1997 for summaries of anthropological literature on human rights.

3. Bibliographic searches on “human rights” turn up far more sources by people who assume or argue that such rights exist than by people who do not.

4. One might add to this list a claim to “be.” A right to be may imply a duty or obligation on someone else’s part to *let* be.

5. For a discussion of the history of the notion of human rights in Judeo-Christian tradition, see Stackhouse 1984, esp. chap. 2. Stackhouse considers that “the deepest roots of human rights are found in the biblical conception of life” (31), though this conception is not formed in such terms. He points to the concept of a divine, righteous reality outside and above the human, a concept that eventually incorporated some Greek ideas about universal moral law. Two key turning points in the establishment of universal rights, in his opinion, were the rise of Islam with its ostensibly universal law, and the religious reforms under Hildebrand’s papacy as Gregory VII (1073–85), which established a “right of resistance” to unjust feudal rule by appeal to a centralized ecclesiastical government (43).

6. While the notion of the “noble savage” is often attributed to Rousseau, and while some of his work strongly hints at it, no such phrase is to be found in his writings.

7. For Hobbes, the state of war included the periods of tension and uncertainty between actual fighting.

8. Hobbes is not as specific on property rights, however, as he is on rights to life or to peace.

9. To Hobbes, rights and laws are distinct in kind. A right is a liberty to act or not to act, whereas a law is an obligation to do so (Hobbes [1651] 1950, chap. 14, p. 107).

10. Tacitus [c. A.D. 98] 1942. In Tacitus’s time, “Germania” included part of present-day Switzerland.

11. Rousseau was a social and pedagogic revolutionary—not an economic revolutionary. He did not believe a permanent return to the state of nature possible. But he did express hope for a general reform of society and the implementation of a social contract along moral lines.

12. This idea, expressed in *The Social Contract*, is perhaps Rousseau’s hardest nut to crack, the deepest and most influential of the writer’s many ironies, contradictions, and enigmas. He never clearly explained just what he meant, but volumes of exegesis have since been written by people who have thought they knew. Note the influence of Rousseau’s individualist-collectivist way of thinking (the group makes the man) on the work of Karl Marx, Emile Durkheim, and, somewhat less directly, Claude Lévi-Strauss and structuralists.

13. Some, perhaps most, African philosophers trained in the European canon find the social contract theorists, as well as Hume, Kant, Hegel, and others who carried on some of their traditions, to be objectionably racist and ethnocentric. (See, for instance, the essays in Eze 1997.) While the criticism of these thinkers is well founded by latter-day standards of politics and scholarship (if it is fair to judge them for living in their times), it is their views of humanity in general and of Europeans in particular, rather than of Africans, that are the subject here.

14. The proper arbiter of rights, to Smith, was another individual: the “impartial spectator” who witnessed a theft, dispute, etc., as a silent third party. The impartial spectator, like the invisible hand, is a quasi-religious image in Smith’s work. Smith deemed that third party necessary because, like Aristotle before him, he considered it normal and natural for humans to favor disproportionately their own near and dear (Smith [1759] 1984, part 3, ch. 3).

15. Particularly in Kant’s *Critique of Practical Reason*, where he sets out his moral-legal “categorical imperative” (“So act that the maxim of your will could always hold at the same time as a principle establishing universal law”) (Kant [1788] 1956, pt. 1, bk. 1, chap. 1, sec. 7), and in his earlier essays (e.g., Kant [1795] 1983, 119); and in Hegel’s *Philosophy of Right*, where he posits, among other things, that freedom embodies itself in the right of property ownership and that “in the state duty and right are united in one and the same relation” (Hegel [1821] 1967, pt. 3, chap. 3, para. 261).

16. Prominent among late-twentieth-century variants is John Rawls’s idea of the “original position,” elaborated in *A Theory of Justice* (1972). This involves a hypothetical collection of ordinary, rational, self-interested individuals (though ones ignorant of their own characters) who come together to form a social contract and must inevitably decide on mutually assured liberty and on limitations to inequality. See Dworkin 1977, chap. 6, for a critique; see also Donnelly 1990.

17. Dworkin (1977, 169–73) proposes a tripartite taxonomy of political theories of law as goal-based, right-based, and duty-based. He supposes that the social contract makes the most sense in a theory that assumes natural rights.

18. The only other units of aggregation that come close to the sanctity of “individual” and “country” (nation) in North American juro-political ideology—taken here as a kind of lowest common denominator, as in election-campaign rhetoric—are “family” and, lower on the scale, “community.” Note how much more legitimacy these concepts are publicly accorded than, say, lineage, clan, or age-set (let alone network or gang, or even indigenous tribe or nation).

19. Rousseau [1755] 1967. My remarks are not meant to suggest that Rousseau’s essay does not have its own original brilliance of narrative, polemic, and style, or that anthropologists aren’t still profoundly influenced by it. On the contrary, see the conclusion of Lévi-Strauss’s *Totemism* (1963) for one resounding endorsement of the essay.

20. Ibn Khaldûn, the Tunisian-born sage who so admired Saharan nomads for their valor and toughness, considered this idea important enough to place on the first page of his multivolume introduction to world history. Ibn Khaldûn was familiar with and admired at least some of Aristotle’s work.

21. Eguchi 1986; Eldridge 1970. Of course, the moral or jural concepts of the translators may sometimes color translations, too.

22. I am grateful to the lexicographer Chege wa Githioru for consultation on this point.

23. Some anglophone African writers have argued for human rights to political self-determination and socioeconomic development. Both of these

figure prominently in Shepherd and Anikpo (1990, *passim*). See also Welch 1995 for discussions of nongovernmental organizations' activities in support of these principles.

24. See also Eriksen 1997, 51–52, on Mauritius; and other essays in Wilson 1997.

25. The scholarly literature on human rights in Africa and other concepts that translate roughly thereto is still sparse, though see An-Na'im and Deng 1990; Cohen, Hyden, and Nagan 1993; Eriksen 1997; Messer 1993; Moore 1998; Shepherd and Anikpo 1990; Wilson 1997; and other sources they cite.

26. Tibi (1990, 119–20) summarizes the twenty-three Principles of the Universal Islamic Declaration of Human Rights (*al-bayan al-'alami 'an huquq al-insan fi al-islam*) as follows: the right to live in dignity; the right to freedom, equality, and justice; the right to lawful and just treatment in courts; the right to protection from the arbitrariness of political rule; the right to protection from torture; the right of the individual to protect his honor and his reputation; the right to political asylum; the rights of minorities; the right of participation; the freedom of thought, of conviction, and of speech; the right to freedom of religious thought; the right to campaign for and disseminate one's own beliefs; economic rights; the right of private property; the right of labor; the right to satisfy basic human needs; the right to build a family; the rights of wives (e.g., to ask for divorce); the right to education; the right to privacy; and the right to travel (freedom of movement) and choice of residence. As Tibi notes, these principles are heavily influenced by non-Muslim culture and law, and some are not deeply grounded in Islamic history or tradition.

27. An example of an African rights agreement heavily influenced by Euro-American tradition (through the UN's 1948 Universal Declaration of Human Rights and the two 1966 covenants that became the International Bill of Human Rights) is the International African Charter on Human and Peoples' Rights (Banjul Charter), adopted by African states in 1981.

28. Kenya presents several striking examples of revitalization movements, including the Mumbo "cult" among Gusii and Luo of the early 1910s, the Diniya Msambwa movement among Bukusu (Luhya) and Pokot (Kalenjin) of Kenya in the early 1940s, and the Mau Mau movement among Gikuyu in the early 1950s.

29. See Maquet 1961 on human inequality as a "given" in precolonial and colonial Rwanda. This "premise" has been a focal point of debates about the causes of genocidal war between Hutu and Tutsi—episodic violence traceable in part to Belgian colonial favoritism based on similar presumptions of natural ethnic hierarchy.

30. Dictators sometimes raise objections about universal human rights: that rights of collectivities supersede the rights of individuals; that rulers have the duty to uplift their subjects, no matter what these wish or say; and that majority groups are *as indigenous as minorities* and should enjoy at least as much of whatever is to be called a right (on East Asian variants of these views,

see Kirk Endicott's essay in this volume). Such arguments on the part of leaders underline the point that one's philosophy about who has rights, or ought to have them, is sometimes heavily conditioned by who one is in society to begin with. They also suggest once again that individualism and universalism tend to appear together: in the case of these arguments, they are both just about absent.

31. Periodic surveys of such cases may be found in *Cultural Survival Quarterly*. It isn't that national governments in Africa cannot defend human rights (however defined), but rather that they have not done so consistently and have in fact often been among the prime human rights offenders. Scott (1998) discusses the role of what he calls "high modernist" ideology and aesthetics behind state bureaucratic coercion, for instance in resettlement schemes in Tanzania and Ethiopia.

32. Take, for instance, the Gambian Mandinko *kafoo*, a multipurpose, village-level men's, women's, or youth association and quasi-government; *sinkiro* and *dabada*, two family units that do not precisely correspond to the concept of a household; or *daara*, a tight hearthside circle consisting of a Qur'anic master and his disciples that grows into a widespread network later in life.

33. The following impressions—which are no more than that—are drawn mainly from my own experiences in western Kenya between 1980 and 1983 and on briefer visits since that time; in the Gambia in 1986, 1987, and 1991 (about eight months); and in a few other parts of Africa.

34. Cohen and Atieno Odhiambo take care to point out that the Luo social universe is not confined to Luoland; for many, it stretches internationally and intercontinentally. See also Deng 1990 and Hutchinson 1996 on related Dinka and Nuer in Sudan. Shack and Skinner (1979) discuss the role of the stranger in Africa. On the importance of crisscrossing social ties (or, seen another way, crisscrossing schisms) in holding societies together, see Dyson-Hudson 1966, McIntosh 1998.

35. See Carrier's discussion (1995) of "occidentalism," the counterpart to Edward Said's influential idea of "orientalism." Occidentalism means stereotyping "the West" as individualistic, materialistic, rational, market-oriented, and so on, and thus as fundamentally different from "the rest," who are presumed to operate by different principles.

36. Deng (1990, 264–66) notes that immortality through procreation and through respect by one's progeny is an ideal and "overriding goal" of Dinka in Sudan; on this point he could almost be writing on Africa south of the Sahara in general.

37. Indeed, one Ghanaian philosopher, Kwame Gyekye, faults both African and European communitarian philosophers for the "short shrift given to individual rights" (Gyekye 1997, 62). He argues that regard for human dignity should give rise to regard for personal rights in a community. For Gyekye, "rights belong primarily and irreducibly to the individual" (67), although indi-

vidual rights must be matched by social duties, and the common good can trump individual rights (66). This view is not so different from Rousseau's later writings or Kant's writings on the subject.

38. Anthropological literature on landholding in Africa is reviewed in Goheen and Shipton 1992; and Shipton 1994.

39. Mamdani (1996) provocatively distinguishes between citizen and subject in Africa, arguing that colonialism treated people on that continent as one or the other in a way that profoundly affected their self-image.

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