

Part One

# Exploring the Territory

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## Chapter 1

# *Understanding Human Rights*

In recent years there has been a surge of popular and academic interest in the subject of human rights (Churchill 2006; Donnelly 2003; Dunn and Wheeler 1999; Gewirth 1998; Li 2006; Nickel 2007; Orend 2002). Media reports on human rights and their violations appear on a daily basis and there are literally hundreds of books published each year on this topic and even more scholarly articles. The claim that every human being has intrinsic value has ignited the international political community, and countries are increasingly eager to publicize their human rights successes and to hide their failures (Donnelly 2003; Dunn and Wheeler 1999). Different nations have become galvanized by the idea of human rights and are prepared to monitor its abuses and to intervene to stop violations elsewhere. Of course, there are limits to the willingness of individual states to fight on behalf of the victims of abuses of human rights and it is clear that they modulate their responses to violations depending on their own economic and political interests (Freeman 2002; Morris 2006). Nevertheless, the topic of human rights has become a moral cause and declarations such as the United Nations Universal Declaration of Human Rights (UDHR), (United Nations 1948) and the two associated United Nations covenants are increasingly utilized in the evaluation of international and national laws and political processes (Donnelly 2003; Orend 2002).

People respond passionately to issues related to human rights, partly because they frame our expectations of fair treatment, equity and justice. How we respect the rights of others can determine how harmoniously we live together. It can also influence feelings of equality or discrimination. Increasingly, work within the human services is influenced by rights-based discourses. Decisions concerning how best to educate, protect and care for children, and how to resolve conflicts among individuals, are crucially dependent upon underlying assumptions about human rights and moral status. It is only because we take the interests of other people seriously that we bother to debate and explicitly consider what action to take in a given set of circumstances. In other words, knowledge about the nature and scope of human rights and their attendant moral assumptions are essential theoretical resources for human service workers faced with the complexities of practice in a post-industrial world.

In this first section of the book we want to build a foundation of rights-based ideas from which we can then explore the nature and impact of

rights in practice. After briefly considering the concept of moral status and its connection with moral rights, we will then develop a model that derives core human rights values such as freedom, equality and well-being from the requirements of human agency, and link those values with the human rights listed in documents such as the Universal Declaration of Human Rights. It will not be our intention to provide an in-depth analysis of human rights. Rather we will provide what we consider to be the fundamentals necessary for understanding human rights, and in doing so clarify their relevance for practitioners. For a more in-depth discussion about the origins of human rights, analyses and justifications, we encourage readers to consult some of the excellent texts available, such as Donnelly (2003), Freeman (2002), Nickel (2007) and Orend (2002).

## Moral status and rights

In this book we argue that human rights serve an important function for practitioners. They serve to orientate workers to the necessary conditions for a minimally worthwhile life for service users – the prerequisites for a life of dignity and a chance at happiness. Respecting a person's human rights will not guarantee that they will actually have a fulfilling life or behave in an ethical manner. However, it will ensure that those individuals have the space to formulate their own beliefs, and are able to incorporate into their life plans, cherished values and goals. *Moral rights* are a more extensive category than human rights as this category includes human rights as well as other less essential moral claims: human rights are a subset of moral rights and should not be confused with broader ethical ideals.

The concept of *moral status* enables people to identify who has moral standing in a particular situation. The application of multiple criteria such as sentience (capacity to experience pleasure or pain), agency (capacity to act in pursuit of personal goals), and relatedness (connectedness between individuals and their social/ecological environment) can be used to distinguish between individuals who have moral status and those who do not (Warren 1997). Those with moral status in a particular situation are able to make moral claims upon others. So moral status clarifies who are the relevant moral agents and what kind of obligations they have to each other. In contrast, human rights zero in on the most fundamental needs that human beings possess – needs which if not met are likely to result in lives of desperation and misery.

Adapting the words of Mary Anne Warren from her important book which discusses the wider theoretical criteria used to identify entities which possess moral status (1997, p.3):

to have moral status is to have moral standing. It is to be an [individual] towards whom moral agents have moral obligations. If an [individual] has moral status, then we may not treat [him or her] in just any way we please; we are morally obliged to give weight in our deliberations to [their] needs, interests, or well-being. Furthermore, we are morally obliged to do this not merely

because protecting [them] may benefit ourselves or other persons, but because the [individual's] needs have moral importance in their own right.

Hence the concept of moral status is the basis of a broad set of moral claims that people (and other entities) can make upon each other in their daily lives. It helps us to identify the individuals toward whom we have obligations and duties; that is, to determine who has moral standing and whose interests and concerns ought to be factored into the decision-making of a community, family or individual. Moral imperatives, such as respecting the feelings of others, behaving in a sensitive manner, being a responsible and loving parent, and behaving in a considerate way toward your partner, reflect the fact that morality is directly designed to facilitate social cooperation. While failure to meet such moral claims may cause offence and some small degree of harm it will not typically cause people to suffer radically impoverished lives.

## Human rights versus moral claims

Human rights are strong claims that individuals can make for the provision of a fundamental set of conditions that if not realized result in the experience of great harm to the persons concerned. Individuals possess moral status in specific situations and are able to make moral claims on each other and can expect certain entitlements, but in addition, all human beings are also the holders of the significant entitlements guaranteed by human rights. In our daily lives typically we are content to assert these lesser rights (moral claims) and do not need to assert our human rights. It is only when our fundamental interests (i.e. our welfare is severely threatened) are at stake that the issue of human rights arises. The two concepts are not always well distinguished and sometimes practitioners respond to situations as if they involved human rights when they are really (less fundamental) matters of lower urgency involving moral claims. In a sense it is a question of establishing different moral thresholds. A moral claim (lesser right) requires a lower threshold for what constitutes unacceptable behaviour and is concerned with regulating the day-to-day conduct of human beings toward each other. However, human rights, which are strong claims, require a higher threshold to be reached if they are to be activated and result in corrective action. In such cases it is a question of protecting the core interests of human beings and may indeed directly reflect matters of life and death, for example, access to adequate medical care. We will discuss this in greater depth later in this chapter.

The concept of human rights provides a way of reaching across the deep divisions of country, ethnicity, gender, class, and conduct in a search for what is common to all people of the world (Churchill 2006; Donnelly 2003; Gewirth 1998; Li 2006; Orend 2002).

It is an important insight of liberal democracies that people speak with different voices and thus have distinct conceptions of what constitutes a 'good life'. By the term 'good life' we mean a life that is lived in accordance with an

individual's fundamental beliefs about what is important and valuable, in which they are able to formulate their own plans and realize them. Living a good life gives individuals a sense of identity and purpose.

In this book we also use the term 'good' and its plural 'goods'. Human goods refer to prudential goods that enhance human well-being. Thus *goods* are states of affairs, states of mind, personal characteristics, activities or experiences that are sought for their own sake and are likely to increase psychological well-being if achieved (Kekes 1989; Ward and Stewart 2003). That is, they have intrinsic value and represent the fundamental purposes and ultimate ends of human behaviour.

## The nature of human rights

Human rights can create a protective zone around people and allow them the opportunity to further their own conception of a 'good life' without interference from others. They are important devices for safeguarding the judgments of individuals concerning what beliefs, values and practices they endorse and wish to participate in.

Human rights are devices that facilitate individuals' pursuit of their own goals, and as such, defend their own interests and the interests of others. Summarising the key properties of human rights, Nickel (2007) asserts that human rights:

- are universal and extend to all peoples of the world
- are moral norms that provide strong reasons for granting individual significant benefits
- exert normative force through both national and international institutions
- are evident in both specific lists of rights and at the level of abstract values
- set minimum standards of living rather than depicting an ideal world.

The realization of human rights will not guarantee that people will live fulfilling lives but rather facilitates the possession of the basic capabilities required for individuals to advance their own projects and dreams. In other words, human rights are intended to ensure that individuals have the essential equipment they need to have a chance at happiness. Human rights give the individuals in question considerable moral status and mean that other people, including practitioners, must consider their interests when pursuing outcomes that are likely to harm or benefit those individuals. As we have already indicated, human rights represent a subset of moral rights, those that function to protect the fundamental interests of individuals. Lesser or general moral rights also represent claims people can make against each other but they are ones that ultimately involve a lesser degree of harm if violated. It is human rights that underpin basic human dignity and set out the conditions required for a minimally worthwhile life.

## Definition of rights

Defining rights is a complex endeavour, but it is helpful if we begin with an exploration of the concept of a *right*. A right is basically an entitlement – something that we can rightfully claim. According to the seminal analysis by Hohfeld (1919), there are essentially four kinds of rights: claim rights (somebody has a duty to you), liberty rights (absence of personal duties, freedom to act), power rights (institutional authority to act), and immunity rights (freedom from obligations that generally hold, for example police officers are allowed to exert force on others to make an arrest).

It is the notion of a right as a claim that is most relevant to the discussion of human rights (Orend 2002). In this sense of the term, a right is a claim asserted by an individual for something that is owed to him or her by another person or institution (e.g. the state). The claim could be for specific goods such as essential materials for survival or against other people to allow the claimant to engage in certain actions (i.e. non-interference in the rights-holder's affairs). Thus a claim right has a number of elements: the *rights-holder* (the moral agent who makes the claim), the assertion of a *claim*, the *object* of the claim (for example, free speech or liberty), the *recipient* of the claim (the duty-bearer), and the *grounds* for the claim. Rights in this sense are viewed as entitlements to non-interference from others in the affairs of the agent or to the provision of specific human goods that are seen as being owed to the person concerned. Rights necessarily involve duties or obligation; the recipient of the claim therefore has a duty to provide the claimant with the object in question. It is clear that a right is a robust moral concept and is thought to typically trump other moral considerations (Gewirth 1981; Orend 2002; Talbott 2005). It is a particularly powerful claim against other individuals obliging them to act in certain ways and/or to allow the rights-holder to pursue the goals that they desire as long as the rights of other people are not infringed. Because of their overriding moral status, rights are considered to be underpinned by additional moral concepts such as the dignity of persons and their significant interests.

A right can be moral (based on a moral theory or principle), legal (prescribed by particular laws), or social (guaranteed by a social institution, such as the right to speak for a group organization). Human rights are typically viewed as moral rights that are often legally instantiated as well. As noted by Orend (2002, p.24), 'A right is an entitlement that endures even when the right holder is not actually making a verbal claim'. In the absence of being asserted it still remains a justified claim and the rights-holder is entitled to receive certain actions, services or goods depending on the right concerned.

Rights theorists typically make a distinction between negative and positive rights (Churchill 2006; Freedman 1991; Orend 2002; Rasmussen and Den Uyl 2005). A *negative right* is one that imposes a duty of inaction on the duty-bearer and simply requires that the entity concerned (a person or institution) refrains from acting. A good example is the duty to respect an individual's right to free speech; the claim is for the duty-bearer to desist from suppressing the

rights-holder's expression of his or her views. A *positive right* is one that imposes an obligation on the duty-bearer to act in certain ways in order to provide the rights-holder with a specific good. An example is a claim against the state to provide unemployed individuals with financial support or prisoners with recreational activities.

## Definition of human rights

What then are human rights? A human right is a *claim right* held by individuals by virtue of the fact that they are human beings. Human rights are not tied to a particular social class, professional group, cultural collective, racial group, gender, or any other exclusive category. Individuals hold human rights simply because they are members of the human race and as such are considered to be moral agents or have the status of moral agents if unable to exercise agency (e.g. infants). Moral agents are individuals who are capable of initiating their own personal projects and seeking ways of realizing them in their day-to-day lives. That is, agents are able to deliberate about what is in their own best interests and act accordingly to secure it.

The relationship between human rights and the attributes required for agency is well described by Michael Freedon (1991, p.7) who argues:

a human right is a conceptual device, expressed in linguistic form, that assigns priority to certain human or social attributes regarded as essential to the adequate functioning of a human being; that is intended to serve as a protective capsule for those attributes; and that appeals for deliberate action to ensure such protection.

Freedon's definition usefully points to the fact that human rights are intended to function as a *protective capsule* – to provide a kind of defensive zone around each individual so that they can get on with the business of leading a worthwhile life. This means a life that is chosen by them and that involves the unfolding of personal projects embodying their particular goals in life (for an interesting discussion of the relationship between personal projects and human rights see Lomasky 1987). Theorists argue that human rights defend what are considered to be essential attributes of human beings: needs, capacities and interests that if met or safeguarded will ensure that their dignity as persons is respected, but if unmet or violated will result in lives of desperation and diminishment. The violation of human rights occurs when individuals are treated as objects, simply as means to other people's ends rather than as ends in themselves (Banks 2006; Churchill 2006; Freedon 1991; Freeman 2002; Gearty 2006; Gewirth 1981, 1996, 1998; Lomasky 1987; Nussbaum 2006; Orend 2002; Talbott 2005; United Nations 1948). In brief, human rights create a protective space within which individuals can lead at least minimally worthwhile lives that allow them to maintain a basic sense of human dignity.

Rights and human rights have a relatively recent history although it is possible to trace their conceptual precursors back to ancient civilizations such

as the Greek and Indian (Ishay 2004). Donnelly argues that the concept of individual rights was only formulated in a recognizably modern form in the seventeenth and eighteenth centuries by thinkers such as Hobbes, Locke, and other natural law theorists. These theorists attempted to justify the ascription of natural rights to all people by appeals to universal features of human nature such as rationality or prosocial sentiments. In other words, the presence of a certain universal attribute was hypothesized to justify all humans being afforded specific kinds of entitlements irrespective of the actual customs, norms or laws prevailing in a given society. Donnelly argues that elements of the contemporary conceptualization of human rights are evident in early rights documents such as the American Bill of Rights and the French Declaration of the Rights of Man and Citizen (Donnelly 2003).

The affirmation of the rights of individuals to liberty, property, equality and protection is apparent in the rights discourse of these periods and served to justify massive social and cultural changes in a number of European countries. However, the notion of natural rights was not without its critics and became the subject of withering attacks from thinkers such as Marx and Bentham in the eighteenth and nineteenth centuries and was really only revived to any significant degree following World War II (Freeman 2002; Ishay 2004). The horrors of World War II and the atrocities committed by the Nazis motivated Allied governments to enshrine human rights and ensure that such catastrophic events never occurred again. It focused the attention of the United Nations on the idea of human rights of individuals and resulted in the publication of the Universal Declaration of Human Rights in 1948 (United Nations 1948). In the UN document the concept of natural rights was effectively transformed into that of human rights, a key difference being that the latter was grounded in the dignity of human beings rather than human nature (Donnelly 2003; Orend 2002). Furthermore, contemporary views of human rights were less individualistic, more concerned with social, cultural, and economic benefits, more internationally oriented, and egalitarian in nature (Nickel 2007). Effectively this meant including positive as well as negative rights and the stipulation that governments were required to provide services and goods to their citizens as opposed to simply ensuring they were not subject to arbitrary violence or unjustified restrictions of liberty.

The Universal Declaration of Human Rights consists of a preamble asserting the dignity of human beings followed by 30 articles outlining specific rights to objects such as freedom from torture, security of the person, a fair trial and due process, property ownership, freedom to and from discrimination, freedom to marry, access to work, religious freedom, and so on. The first 21 articles of the UDHR are concerned primarily with civil and political rights and in this respect resemble bills of rights developed during the Enlightenment and even earlier periods of history. Examples of this type of rights include the right to own property (article 17.1), freedom from discrimination (articles 2, 7), opportunities to vote in periodic elections (article 21.3), freedom of assembly

and association (article 20), freedom of movement and residence (article 13), and freedom of thought, religion and conscience (article 18). In contrast, articles 22 to 27 outline entitlements to social, cultural and economic benefits, such as an adequate standard of living (article 25), reasonable health care (article 25), social security (article 22), a just wage for workers (article 23.3), special care for children and mothers (article 25.1), rest and leisure (article 24), and at least an elementary education (article 26).

The UDHR was followed by two international covenants in 1966 (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) that provided more detail on the various articles outlined in the original UN declaration (Freeman 2002; Nickel 2007). Since the ratification of the UDHR and its associated covenants by nearly all states several other UN treaties have been developed. These include the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child (UNCROC), and the International Convention on the Elimination of All Forms of Racial Discrimination. For more detailed discussion of these see Donnelly (2003), Freeman (2002), Nickel (2007), Orend (2002).

## Values underlying human rights

The objects of human rights are linked to values and as such reflect judgments concerning the experiences, activities, and situations that benefit human beings and make their lives more positive. A value judgment assigns a value, either positive or negative, to specific qualities that characterize aspects of people or the world (Kekes 1993; Rescher 1993). For example caring relationships are positively valued and corporal punishment negatively valued. Value judgments reveal what the individual in question considers to be of worth (and beneficial to self or others), or of disvalue (and therefore harmful to self or others). In essence, value judgments reflect what overarching ends are considered good and worth seeking, all things being equal. We propose that values have an objective dimension in the sense that individuals can be mistaken about what experiences and situations *actually do* benefit or harm them. That is, sometimes people behave in ways that they believe will improve their lives but that in fact diminish their level of well-being (e.g. extreme sexual risk-taking). Human nature is such that we all require certain kinds of goods in order for our lives to go well. We are biologically embodied beings and therefore require goods such as adequate nutrition, water, physical comfort, good health, security and intimate relationships. These goods, that enhance the quality of our lives, are linked to the core values that human rights function to protect, values that if violated result in undignified and wretched lives (see below).

A number of theorists have articulated what they consider to be the core values that underlie the UDHR, and its justification. For example, Nickel (2007) argues that freedom from suffering, pain and death, autonomy and

dignity are core values that can be used to justify human rights and also to account for the various articles of the UDHR. He proposes that these core values can be incorporated into four principles or grounds of human rights:

- the secure claim to have a life – protection against unjustified infliction of violence resulting in death, and having one’s physical needs met
- the secure claim to lead one’s own life – defending the autonomy of human beings and their entitlement to ‘evaluate, choose, deliberate, and plan’ aspects of their life (p.63)
- the secure claim against severely cruel or degrading treatment – the right not to be tortured, enslaved or raped
- the secure claim against severely unfair treatment – the right not to be discriminated against and treated in an unjust way.

Nickel asserts that ‘all four principles can be thought of as requirements of human dignity’ (p.66) and represent an interpretation of the basic ideas underpinning the UDHR.

While we like the way Nickel has attempted to derive core values and principles from the UDHR and think his argument is plausible, we prefer the analysis of Orend (2002) because of its greater breadth and tighter linkage to the themes contained in the UDHR (but we note that the two lists of core values overlap somewhat). Following Orend we suggest that it is possible to group the various rights contained in the UDHR into five clusters, each cluster associated with a basic object (i.e. activity, experience, situation, etc.):

- personal freedom
- material subsistence
- physical security
- elemental equality
- social recognition.

The object *personal freedom* refers to a subset of objects such as freedom of speech, assembly, movement, association, conscience, religion, and is associated with a number of specific rights contained in the UDHR. Furthermore, it is directly linked to the right of individuals to rely on their own judgment when deciding how to live their lives.

The object *material subsistence* refers to a subset of objects including rights to basic levels of physical health, food, water and education.

The object *physical security* concerns the physical safety and welfare of individuals and includes more fine-grained objects such as freedom from torture, violence, due process rights in law, and the right to seek asylum.

The object *elemental equality* denotes goods such as equality before the law, and freedom from discrimination on the grounds of religion, gender, disability,

age, or some other feature considered to be irrelevant for the holding of human rights.

Finally, the object *social recognition* is essentially concerned with acknowledging the rights of individuals to direct the course of their own lives and to be treated in a dignified and respectful manner in accordance with their status as autonomous agents. The goods of self-respect and self-esteem are aspects of this category of goods and point to the importance of enabling individuals to possess positive attitudes toward themselves and their own lives (in a sense, this is the internal component of human dignity).

Thus, according to the UDHR and the two associated covenants, human rights are universal entitlements to certain goods that if obtained will result in at least minimally decent and dignified human lives.

Orend argues that the five core objects evident in the UDHR correspond to basic human needs and interests and that:

Not having any one of these five core elements does real damage – verifiable harm – to one’s functioning as a human being. This is perhaps clearest with physical security and material subsistence, but it does not take much imagination to realize that lacking the other elements also harms human functioning: why else, for example, would we make the deprivation of liberty, the core ingredient in human punishment? Similarly, it is clear that there are no acceptable substitutes for any one of these five core elements of vital human need... Such goods are beyond price and measure... all five elements together appear necessary for living a minimally good life in the modern world (pp.64–65).

We suggest that human rights are arguably in the first instance *moral rights* and can be utilized to evaluate critically existing laws and customs. If a law or policy denies individuals the entitlements stipulated by human rights then they are immoral and should be modified. In fact, it is the duty of moral agents within these situations to assert pressure on the relevant authorities to change the law or policies in question. However, human rights are frequently also legal rights and those states which have signed declarations such as the UNDR are legally bound by the articles contained within them to act as prescribed. Even in the absence of a legal commitment, however, theorists have argued that states and citizens are still morally obligated to act in accordance with human rights and if they fail to do so ought to be held morally accountable (e.g. Freeman 2002; Gewirth 1996; Li 2006; Lippke 2002; Nickel 2007; Orend 2002; Talbott 2005).

## Justification of human rights

Theorists such as Freedman (1991), Orend (2002) and Nickel (2007) have attempted to justify human rights in part by referring to the relevance of human rights for establishing basic human dignity and living a minimally worthwhile life. While we accept the general tenor of these arguments, we consider it important to provide a more rigorous justification of human rights and expla-

nation of their link to human dignity. In particular, it is incumbent upon defenders of human rights to provide a justification that would prove acceptable to individuals with varying political, philosophical and cultural commitments. Human rights are accepted as having universal scope and therefore apply to individuals from different cultures, ethnic origins, social classes, genders and so on. Quite simply, human rights apply to everyone who qualifies by virtue of being human, but this immediately raises problems concerning the validity of the concept of human rights when applied to certain cultures (Li 2006). The argument has been raised by a number of thinkers that human rights are a Western invention protecting Western ideas and therefore distort values of other societies, such as Asian values (Donnelly 2003; Li 2006). In particular, the concept of human rights and their implementation in various covenants and treaties have been criticized for placing far too much emphasis on the value of individuals and not enough on the rights of communities. While there is an element of truth in this criticism, Ishay (2004) has convincingly shown that the ideas and values contained in human rights treaties and documents can be found in the religious and ethical writings of numerous cultures, sometimes going back several thousand years.

Two questions need to be answered when considering the issue of the justification of universal human rights. First, what kind of features must the holders of rights possess? Second, why does the possession of those features justify holding those rights?

The answer to the first question concerning the necessary and sufficient features that qualify individuals to be rights-holders needs to be suitably inclusive to apply to all individuals whom people intuitively believe are examples of rights-holders – such as the mentally disabled, healthy adults, offenders, children including infants, as well as the old and infirm (see Orend 2002; Talbott 2005; Warren 1997). In other words, what are the necessary attributes that a bearer of human rights must possess? This is not necessarily an easy question to answer but theorists have formulated a range of criteria that can help us to identify rights-holders (Donnelly 2003; Gewirth 1981; Orend 2002; Warren 1997). Relevant attributes include rational agency, sentience, emotional responsiveness, having an interest in living a good life, belonging to a human community, and being biologically human. We do not have the space here to examine the arguments for and against each of these proposed attributes but we agree with Warren (1997) that no single feature can serve as the single criterion that determines the moral status necessary to be a human rights-holder. (The issue of whether offenders forfeit some or all of their human rights or have them simply curtailed will be discussed in Chapter 5.) Therefore, we think that Orend's formulation (2002, p.65) serves our purposes as an approximate set of criteria:

To hold human rights, one must be biologically human, one must avoid violating another's rights, and one must have fundamental interests in, or vital needs for, living a life of minimal value.

This formulation is pretty much in keeping with our earlier discussion of moral status and stresses the important link between human rights and basic human needs and interests. Moral status refers to the moral standing an individual has and covers all moral obligations, entitlements and so on, while human rights serve to identify only those internal and external conditions required to function in the world as a purposive agent. In other words, these are the conditions necessary to be able to promote one's fundamental concerns in such a way as to bestow a sense of human dignity (i.e. a life of at least minimal value) upon the individual.

The second question that needs to be addressed concerns the justification of human rights: given that a rights-holder is biologically human and has fundamental interests that need to be met, why *should* we respect those rights? What reasons can be given for the duty to guarantee individuals' rights to personal freedom, material subsistence, physical security, elemental equality and social recognition? Why should the state and citizens have a duty either to provide goods to rights-holders or not to interfere in their activities? The justificatory task is to elucidate the premises or core principle(s) that support the claim that individuals who meet Orend's criteria should be accorded human rights and enjoy the benefits of their elevated moral status.

The justifications for human rights have ranged from appeals to human nature, the common conditions in which all human beings live, social contracts that provide each individual with the goods necessary for a worthwhile life, and human dignity (see Churchill 2006; Donnelly 2003; Freedon 1991; Freeman 2002; Gearty 2006; Gewirth 1996; Li 2006; Nickel 2007; Orend 2002; Rescher 1993; Talbott 2005; Warren 1997). The reasoning used to justify human rights basically involves two distinct approaches, a consequential and a deontological (intrinsic) justification.

The *consequential* justification appeals to the benefits (i.e. utility) to individuals and society of respecting human rights, such as increased human well-being, reduced suffering, fewer wars, less crime and so on. One problem noted with this approach to the justification of human rights is that on its own it appears to sanction the suspension of human rights of individuals if the utility calculations indicate that this move will result in a greater amount of the value in question (happiness, well-being, peace, security, etc.). For example, a utilitarian could well argue that denying people the right to vote in some situations will result in higher levels of personal security and greater levels of happiness overall. In this situation, basic civil liberties have been traded off for the maximization of utility.

The *deontological* justification appeals to the intrinsic dignity of human beings and argues that it is never appropriate to violate human rights, that is, the state and citizens have a duty to recognize the intrinsic value and worth of rights-holders. From this perspective people are moral agents with intrinsic value and should always be allowed to decide for themselves what kind of life they wish to pursue, providing their actions do not violate the human rights of

others. The basic ability to formulate goals and act upon the basis of personal judgment is what gives human beings their sense of dignity and ultimately grounds the deontological perspective. Thus, individuals are regarded as having their own ends and cannot be simply instruments or means through which others seek their own goals.

While it is inevitably debatable which of these two approaches is likely to yield the best defence of human rights, we are inclined to think that both are required. Fortunately for us, the moral philosopher Alan Gewirth has provided a powerful analysis of human rights based on the requirements of human agency (ability to act) and human dignity that utilizes both consequential and deontological methods. We will now briefly summarize his sophisticated and complex agency theory of human rights, and recommend interested readers to view Gewirth's original sources (1981, 1996, 1998) for a more detailed description of the theory.

There are two steps in Gewirth's theoretical justification of human rights. First he seeks to establish that every agent has to accept that as an individual they have rights to well-being and freedom (Churchill 2006). Second, once this is accepted then it follows as a matter of logic that every agent must accept that other people have the same rights to freedom and well-being. This second step means that every agent must accept the existence of *human* rights and the fact that they apply to all prospective agents.

Gewirth argues that the concept of human agency provides a culturally neutral essential foundation for any moral or political theory concerned with specifying and justifying individual entitlements and duties. This is because ultimately the aim of such theories is to identify correct and incorrect, right and wrong, *actions*. Ethics is fundamentally about establishing principles for coordinating human interests and resolving conflicts between people with incompatible aims. In other words, rights and duties are ethical concepts designed to help regulate the way people pursue their personal projects in the world. In fact, according to Gewirth, the *dignity* of human beings resides in their capacity as prospective agents to formulate and pursue their own interests in the world by virtue of their own judgment and actions.

Gewirth asks prospective agents to consider the value of the goals of their potential actions. On reflection it is clear that any ends a person intentionally aims to achieve must have value for them or otherwise they would not bother to seek them. Furthermore, it follows that a prospective agent must also accept that any conditions that are required to accomplish their goals will be viewed as *necessary* goods. That is, the conditions needed to attain the agent's goals will also be viewed as having value because of the necessary relationship to their ends. Gewirth argues that an agent has rights to whatever is necessary to achieve the purposes of their actions because without such guarantees they may not be able to function effectively and it may become impossible to realize their goals successfully. In light of these considerations, Gewirth asserts that *freedom* and *well-being* are necessary conditions for the attainment of aims and therefore

an agent has rights to these goods. This follows because if these conditions were denied to individuals concerned they would be unable to achieve their valued objectives; if freedom and well-being are necessary conditions then it follows they must be protected and should be considered to constitute entitlements. Gewirth concludes that an agent's prudential (focused on own interests) actions are necessarily linked to prudential rights.

Freedom involves the ability to act upon the basis of a person's particular intentions. This means being able to have access to the relevant information needed to make a decision, consider the possible options, formulate a plan and then to implement the plan without interference from other people.

Well-being is constituted by three types of goods: *basic*, *non-subtractive*, and *additive*. Basic goods are those essential for a person to act and include those necessary for life, physical integrity, mental equilibrium, and the capacity to think and formulate plans. Without access to basic goods people would not be able to function in the world at all. Non-subtractive goods are those that maintain a person's current way of living and the various projects engaged in (e.g. income, relationships). Additive goods are those required to implement and develop new projects and include access to information, work, medical care, education and self-esteem (Churchill 2006; Gewirth 1998). In a nutshell, basic goods enable people to act, non-subtractive goods sustain their current level of achievements, and additive goods are necessary to increase well-being and advance various interests. These categories of goods can be considered to constitute a hierarchy with the most fundamental being basic goods, then non-subtractive goods, and finally additive goods (see Figure 1.1).

When there are competing rights claims this hierarchy can be utilized to decide how best to act: priority must be given to basic goods, then non-subtractive goods, and finally to additive goods. If a person is starving then they have a right to be provided with food by the state or fellow citizens, even if this means others are taxed more and therefore are not able to use their additional income to pursue valued recreational interests (additive goods). Individuals have the right to be provided with the goods necessary to pursue their purposes and to have the freedom to be able to do so. Both sets of rights have positive and negative aspects to them.

The second step in Gewirth's argument represents the transition from prudential to moral (human) rights (Orend 2002). Once the prudential argument has been accepted, Gewirth asserts that if you grant these rights to yourself, then because of the principle of universality you must also grant them to other prospective agents. Other people share your need for freedom and well-being if they are to attain their desired objectives. They are also prospective agents who value their own goals and require the goods of freedom and well-being to be able to act in pursuit of those ends. The denial of the rights to freedom and well-being to other people amounts to a denial of their dignity and worth as agents. The dignity of human beings resides in their capacity to act in accordance with their conception of a good life. The various life projects that people

engage in reflect their significant values and express their identity and sense of purpose. It is also *irrational* to deny the rights of others: if a person claims that the successful pursuit of their own goals requires the conditions of freedom and well-being, then they cannot consistently deny other people the same rights. For example, if someone claims that in order to pursue his goals he requires a minimal wage, he cannot consistently deny other people access to same level of income. This is because other people are in exactly the same position and as prospective agents require identical necessary conditions if they are able to act effectively in pursuit of their goals. The common feature shared by nearly all human beings is the attribute of agency. Therefore, all agents have the rights to freedom and well-being in order to be able to accomplish their purposes in life; as such they constitute *human rights* and ground the dignity of human beings because of their necessary connection to agency.

The respect for human agency and (thus) dignity is a deontological justification (relating to intrinsic moral worth). It is simply the case that we should respect a human being's capacity to act in accordance with their favoured conception of a good life. We value our own goals – this is simply a basic feature of human action – and all things being equal, we should accept other people's desire to act in the service of their own goals as well. Furthermore, denial of human rights to freedom and well-being is irrational because it effectively says that on the one hand people value their goals and necessarily require certain conditions to achieve them, but on the other hand states that these conditions are not necessary (they can be suppressed). That is, the (irrational) claim is that they are both necessary (required for personal effective action) and yet unnecessary because they can be removed from or not provided for others. The only rational alternative, according to Gewirth, is to accept the claim that individuals should act in accordance with the human rights of others and also their own (Gewirth 1981).

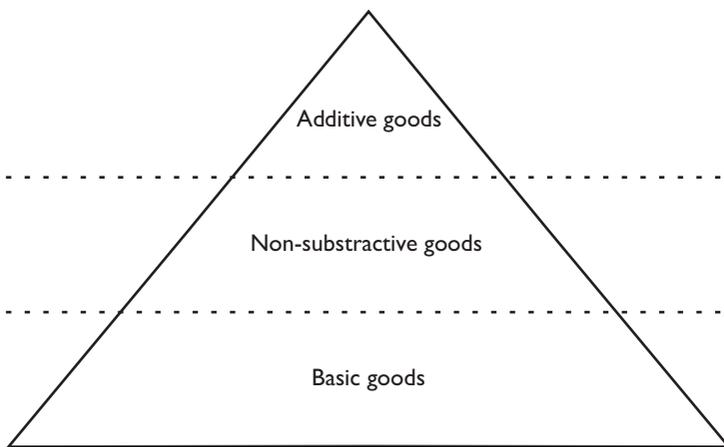


Figure 1.1 Hierarchy of types of human rights goods

Thus we should respect each individual's judgment of what is in their best interests even though we might think they are morally wrong. For example, political and religious beliefs can legitimately vary, although opponents may regard each other as seriously misguided in their choice of commitments. Of course, when people lack freedom or have diminished levels of well-being it may be that they lack the basic goods required to function as agents at all. In these situations we are obligated to intervene in order to ensure their welfare (e.g. in the case of mental illness). This may mean supplying them with specific goods required to function effectively as an independent agent, for example, food, shelter, education, income and so on. Gewirth stipulates that children, mentally disabled individuals and infirm adults possess human rights to the *degree* they have the requirements for agency. This can only be ascertained by considering the nature of the decision task in question and should not be decided in an a priori or all-or-nothing manner. We have an obligation to provide the resources that will enable them either to function as purposive agents on their own (following a period of training, etc.) or else to continually scaffold their agency attempts. For example, with intellectually disabled people the state and other adults are obligated to supply the degree of supports necessary for those individuals to live the most independent lives they are capable of. The support may need to be provided on a permanent basis (e.g. sheltered living) or on a temporary basis (sustained and intensive education and skills training). One caveat is that other citizens are only expected to provide the goods they can realistically manage without unduly lowering their own level of well-being. In other words, it is unethical to require people to enhance the well-being of others by reducing their own level of well-being to a point lower than that of those they are trying to help. The consequential method is apparent in Gewirth's identification of the requisite levels of well-being required to act in certain contexts. The relevant thresholds required for the provision of different goods are established by various types of empirical research and social consensus. Later in this book we will directly consider the human rights issues associated with children (Chapters 4 and 7) and intellectually disabled individuals (Chapter 6).

## Structure of human rights

In this chapter we have used somewhat abstract notions as we have sought to define and justify human rights. We would now like to consider more explicitly the structure of human rights and unpack the abstract notions of agency and freedom in a more concrete way, thereby clarifying their relevance to practitioners. To help us in this process we will be drawing directly upon the work of Rescher (1993), Orend (2002) and Li (2006).

In our view it is useful to distinguish between the core values protected by humans rights and their ultimate articulation in the more specific rights evident in documents such as the Universal Declaration of Human Rights (see Figure

1.2). The movement from core values to specific ones is one of decreasing abstraction, from extremely abstract values and rights to quite specific rights, such as the entitlement to paid holidays. In our model there are three layers to human rights: the core values of freedom and well-being, which are protected by rights and validated by a justificatory theory (Gewirth, 1981, 1996, 1998), their unpacking into a number of basic objects or goods, and finally the elaboration of those objects into human rights policies as outlined in documents such as the UDHR. The critical issue is to make sure that the rights specified in covenants and declarations are always approached in the light of those core values and basic goods. Failure to do so will make the various lists of human rights appear to be arbitrary and overly specific and prescriptive. It goes without saying that corresponding to each of the three layers of the concentric human rights 'circles' are corresponding duties that we all have to respect the stated rights of others. Interestingly, advancement outward from abstract to more specific human rights is likely to be associated with legal enforcement (alongside moral and social legitimacy) with the inner circles tending to reflect primarily moral legitimacy. This is due to the essential nature of the core values and their corresponding vagueness. That is, abstract values can be interpreted in a number of ways, a fact not lost on cultural critics of the UDHR (see Li 2006). An additional point is that the less the degree of human rights specification, the more it is necessary to reflect on the relevant contexts and circumstances of the individuals concerned.

The inner circle of the human rights model represents the core values. In our analysis we have agreed with Gewirth that freedom and well-being constitute the two core values required for individuals to be able to function as purposive agents and therefore to have human dignity. These are complex values and on closer inspection can be broken down into a number of components. Freedom will involve situations in which coercion is absent as well as involving internal capabilities such as the capacity to formulate intentions, to imagine possible actions, and to form and implement personal valued projects (Lomasky 1987). As noted above, well-being can be further broken down into the various types of basic, non-subtractive and additive goods. The state and citizens who are the recipients of human rights claims have a duty to provide the necessary goods associated with these rights and to refrain from interfering with the enjoyment of these rights by individuals, assuming of course that the rights-holders in question are not currently violating the rights of others.

The middle circle of our human rights model involves the elaboration of the two primary core values of freedom and well-being. In our view these two values are able to be unpacked into the five basic human rights objects formulated by Orend (2002) in the following way. The objects of personal security, material subsistence, and elemental equality unfold out of the core value of well-being, while social recognition and personal freedom unfold out of the core value of freedom. This matching process is not exact and we are not wedded to the allocation sketched out above, but at the very least, we propose

that all five basic human rights objects can easily be derived from the two abstract core values. According to our analysis there are rights associated with all five objects and corresponding duties by others to ensure these rights are able to be exercised.

The outer circle of the human rights model encompasses human rights policies. This involves the codification of the more abstract rights objects into specific lists of human rights. Declarations of human rights such as the UDHR are excellent examples of such lists and provide normative guidance to the state, agencies and individuals concerning their duties to human beings within their country and in other parts of the world. This will include the specific rights and goods requirements of groups such as the intellectually or physically disabled, the mentally ill, children, refugees, members of minority groups, the elderly, offenders and ordinary citizens. For example, the human rights relevant to offenders as stated in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) provide concrete examples of areas requiring policy responses.

A key insight of our human rights model is that the moral justification and basis for the ascription of human rights resides in the core values and their justifying theory. In our case, this is Alan Gewirth's agency theory and the attendant notion of human dignity. Another important implication of our approach is that there are rights and duties associated with each of the three levels but they become increasingly prescribed as you move outwards from the inner circle. That is, there is less room for individual judgment and interpretation of the specific rights and their concomitant duties at the more concrete level – the level of declarations, conventions, government policies and so on. It must be noted, however, that this is not entirely the case and arguably it is possible to meet one's obligations legitimately to human rights declarations in more than one way (Li 2006). We suspect this is especially pertinent when applying lists

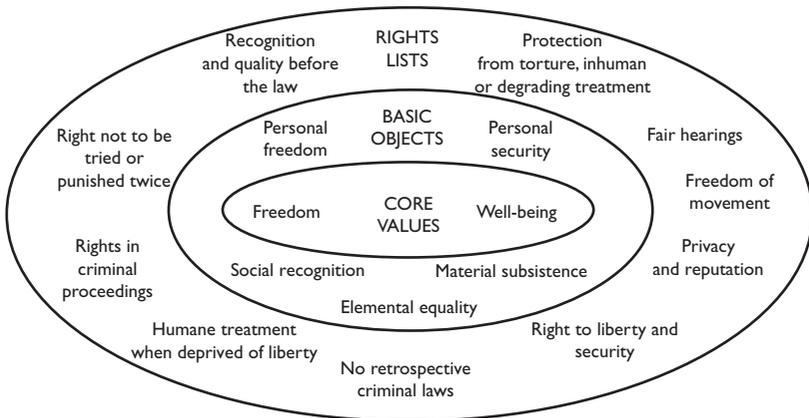


Figure 1.2 A model of the structure of human rights

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of human rights such as the UDHR and its associated covenants to different cultural and ethnic groups (see Chapter 2).

Once it has been ascertained that a practice matter does indeed involve a human rights issue, then our model can be used to guide the assessment and intervention components of practice. The first step is to decide whether or not the case is covered by an existing treaty or protocol, and if so, whether the relevant article is specific enough to give clear guidance. If this is not the case then the next step is to fall back on the basic objects in the middle circle of our model and use them to decide what are the relevant obligations of practitioners, the state/institution, and the individuals involved. In addition, Gewirth's theory can be used if a clinician is required to provide a theoretical justification of his or her intervention plan.

It is clear that the use of judgment is crucial to the success of our human rights approach and we are deeply sceptical of any moves to make ethical decision-making entirely dependent upon lists of rights or duties. In our view, the complexities of practice and the rather general language used to formulate human rights mean that it is always incumbent on individuals to use their own judgment to decide (a) what the problem or issue at stake is, (b) whether or not it is a human rights matter, and (c) if so, what is the optimal way to proceed. Judgment resides at the heart of practice and cannot be eradicated; it functions to identify both values and facts, the twin strands of effective practice plans.

## Practice implications

The application of human rights ideas to the practice domain needs to occur at all three levels of abstraction outlined earlier. Starting from the outer concrete level, countries legally bound by the UDHR, the two associated covenants, and other treaties concerning the rights of clients should ensure that the management or treatment of individuals complies with these requirements. In the case of children and their rights this is likely to be reflected in the incorporation of UNCROC (the Convention on the Rights of the Child) principles within child welfare legislation, policy and practice frameworks. In the case of offenders this is likely to be reflected in specific policies regulating the running of correctional agencies and community correctional services, such as disciplinary procedures, home leave entitlements, access to medical care, work opportunities, adequate living conditions, educational resources and so on.

We propose that a human rights perspective constitutes a valuable ethical and therapeutic resource for practitioners in that it facilitates the process of rehabilitation/treatment and directs attention to the conditions required for individuals to live socially acceptable and personally meaningful lives. The key point is that by focusing on the requirements of effective agency (freedom and well-being) practitioners are able to integrate the values and skills aspects of therapy. The aim is to ensure clients acquire the capabilities to identify important personal values and projects, to implement them in the environments they

are likely to be living in, and in the process, grasp the necessity of respecting the rights of others. In a nutshell, a human rights perspective provides an ethical core for the delivery of skills-oriented human service programmes. It connects values and skills in a useful and simple way.

In this book we will provide a range of examples of the ways in which a human rights perspective is relevant to practice. To illustrate briefly the way in which our model of the structure of human rights (see Figure 1.2) relates to practice, however, we will use the illuminating example of practice with sexual offenders.

A key aspect of applying a human rights perspective to work with sexual offenders is to comprehend that they are both rights-holders and duty-bearers. From the point of view of being rights-holders, the history of sex offenders often includes severe neglect, abuse and inadequate socialization, which means they are ill-equipped to achieve important goals in socially acceptable ways. This lack of the fundamental capabilities needed to function adequately in the community essentially hinders individuals and makes it more likely that they will experience a range of psychological and social problems. Thus arguably the state and correctional practitioners have a duty to provide offenders with specific goods related to well-being and freedom that are necessary for them to function as purposive agents who can make their own decisions about their lives. The skills aspects of treatment can do this.

Because sex offenders are also *duty-bearers* (i.e. they are obliged to respect others' rights), this means ensuring that treatment focuses on providing them with the learning experiences and resources to develop a regard for the interests and rights of others. Practitioners need to concentrate on increasing offenders' empathy skills, improving their ability to problem solve, locating them in supportive social networks, and enhancing their intimacy skills. We hypothesize that equipping sex offenders with the capabilities necessary both to secure their own rights and to acknowledge those of others will also reduce their criminogenic needs (i.e. dynamic risk factors) and hence risk of re-offending.

In our view the concept of human rights is particularly useful for clinical practice with sex offenders because of its dual focus on (a) the values that ought to guide treatment and (b) the capability building aspect of therapy. It beautifully combines values (what *ought* to be the case, e.g. empathy) and facts (what *is* the case, e.g. egocentrism). How does this work? The inner circles of our model are concerned with the core values underpinning human rights and their elaboration into the five basic objects or goods. The outer circle concerns the codification of these fundamental values and objects into specific norms, for example those contained in the UDHR. The assessment and treatment process should therefore respect these values and the status of sex offenders as human rights-holders. Furthermore, the actual content of a treatment plan should take into account the core values associated with human rights and ensure that the training required to engage with them is built into it or at least, if already present, reinforces them. In addition, we have found it useful explicitly to teach

offenders – as part of social skills modules – their rights and worth as individuals, as well as the rights of other individuals in the community.

Thus human rights can serve a dual purpose when working with service users. First, they can be used as a guiding framework for examining our own interactions and responses to the people we work with. Second, they can be used as a clinical tool to increase service-user awareness and help with the design and delivery of therapy and practice.

## Conclusions

In this chapter we have analyzed the concept of human rights and attempted to justify such rights in terms of the essential conditions for human agency. In our view Gewirth's theory is useful because it does not beg any important theoretical questions concerning the nature of human beings and thereby run the risk of alienating people who do not share such commitments. Rather, it works from a generic conception of agency that should in principle be acceptable to practitioners with diverse theoretical commitments. In the next chapter we will explore the relationship between human rights and culture and discover that the universal nature of human rights discourse provides a powerful antidote to strong relativistic concepts of morality while still allowing for differences in the way human rights norms are interpreted and practised.

## Chapter 2

# *Human Rights and Culture*

The concept of human rights is a universal one and the Universal Declaration of Human Rights and the various conventions it has inspired have been endorsed by a majority of countries around the world (Nickel 2007). However, despite broad agreement at an abstract level about the relevance of human rights for all cultures, there have been a number of criticisms about its cross-cultural applicability (Ife 2001; Kymlicka 1996; Li 2006; Nickel 2007; Parehk 2006; Wong 2006). A common concern has been that the fleshing out of the broad values enshrined in the human rights declaration and covenants necessarily requires attention to the nuances of individual cultures. More radical critiques include the assertion that comparisons across cultures and critiques of other cultures are meaningless and that it is simply not possible to evaluate the practices of one culture objectively from the perspective of another (Li 2006).

The determination to protect core human interests across different cultures is evident in what are called second and third generation human rights (Ife 2001; Nickel 2007). In brief, *first generation rights* are concerned with the protection of civil and political rights such as the right to vote, freedom of speech, and the right to a fair trial. *Second generation rights* refer to the economic, social and cultural entitlements of individuals, such as rights to employment, a fair wage, education, health care, and participation in the cultural life of the community. Finally, *third generation rights* involve rights at a collective or group level and reflect group entitlements to goods such as economic development, an unpolluted environment, and self-determination for colonized peoples. Group rights are held by indigenous people, ethnic groups, women, the disabled and children rather than individuals, and are intended to supplement rather than replace the rights held by individuals. The basic idea is that considerations of equality or historical agreements mean that it is important to modify social and state institutions to allow certain groups greater access to resources such as education or special representation on decision-making bodies.

In this chapter we will focus on the implications of multiculturalism for human rights and will consider the mediating role of culture when determining the entitlements of individuals from minority ethnic groups (or groups such as the Amish in the USA who arguably have their own culture). First, we will briefly examine the concept of culture and the various ways in which it impacts on human rights issues. Second, the major culturally based objections to the

idea of human rights will be outlined and responded to. Third, we will outline procedures for utilizing human rights ideas in a culturally sensitive and rationally defensible manner that will help practitioners address possible human rights violations in different ethnic groups. Our analysis will be based on the model of human rights outlined in Chapter 1, supplemented by some extremely useful suggestions from Li (2006), Parekh (2006) and Wong (2006).

## What is culture?

A key issue when examining the implications of cultural diversity is to ascertain the particular level at which it is evident within a country as well as contemplating differences between cultures located in different countries. It is typically the cultural challenges within a given society that are likely to prove most taxing for practitioners in the course of their day-to-day duties. With respect to intra-community diversity, Parekh (2006) argues that there are three common ways in which the influence of culture is experienced within a society. First, there is *sub-cultural diversity* where different groups within a society share a set of common values and practices but differ with respect to certain lifestyle choices. For example, groups such as gays or lesbians may have quite distinct sexual, political, personal and relationship preferences that manifest themselves in relatively unique ways of living. Second, *perspectival diversity* is evident when certain groups within a society are deeply critical of the values of the dominant culture and agitate to reform it along alternate lines. A good example of this is the complaint by strongly religious groups that society is materialistic and overly secular in its orientation to important moral and social issues. Third, *communal diversity* is apparent when societies 'include several self-conscious and more or less well-organized communities entertaining and living by their own different systems of beliefs and practices' (Parekh 2006, p.3). The kind of groups Parekh has in mind are newly arrived immigrants, established religious communities such as the Amish in the United States, and indigenous people, for example, Maori in Aotearoa New Zealand or Native American Indians. Parekh persuasively argues that it is the third kind of diversity that is most appropriately referred to by the term 'multiculturalism'. He further states that contemporary multicultural societies are characterized by the fact that ethnic minorities actively seek to have their voices heard and resist any suggestion of inferior status. Moreover, culture is increasingly accepted as a politically relevant category in liberal democracies and can provide a focus for intense debate over fundamental moral and social values. The widespread penetration of diverse cultural ideas within modern societies also means that frequently there are multiple perspectives on important social issues and subsequently fierce debates over issues such as education, health and gender relationships. The pluralist nature of modern societies points to a need to look more deeply at the cultural underpinnings of social institutions and to consider carefully the viewpoints of minority groups. Additionally, it is wise to look beyond simplistic

nature-versus-nurture dichotomies when evaluating diverse social practices and forms of human flourishing. Parekh makes this point nicely when he says:

Neither naturalism nor culturalism gives a coherent account of human life and helps us theorise multicultural societies. One stresses the undeniable fact of shared humanity, but ignores the equally obvious fact that human nature is culturally mediated and reconstituted and cannot by itself provide a transcendental basis for a cross-culturally valid vision of the good life; the other makes the opposite mistake...human beings are at once both natural and cultural (Parekh 2006, p.11)

All cultures are comprised of individuals with common psychological, social and physical needs but cultures provide diverse ways of realizing these needs. Furthermore, human beings are inevitably confronted with living conditions that place constraints on the kinds of cultural solutions and meanings that can be constructed. The presence of factors such as changing climatic conditions, diseases and ill health, political and social change and so on all present challenges to human survival and demand creative responses. Thus we argue that the goods protected by human rights reflect universal requirements as well as some inherited needs and capacities. This conclusion leads us into a consideration of the nature of culture.

## The nature of culture

Culture has been usefully defined as ‘a socially transmitted or socially constructed constellation consisting of such things as practices, competencies, ideas, schemas, symbols, values, norms, institutions, goals, constitutive rules, artefacts, and modifications of the physical environment’ (Fiske 2002, p.85). Fiske argues that these components are causally related to each other and, in some cases, mutually constitutive in that the presence of one factor is entirely due to the existence of another (Fiske, 2002). Additionally, Kitayama (2002) states that culture is a dynamic system that exists ‘not just in the head’ but also ‘out there in the form of external realities and collective patterns of behaviour’ (p.92). Kitayama and Markus (1999) offer the following thoughtful description of culture:

Everyone is born into a culture consisting of a set of practices and meanings, which have been laid out by generations of people who have created, carried, maintained, and altered them. To engage in culturally patterned relationships and practices and to become mature, well-functioning adults in the society, new members of the culture must come to coordinate their responses to their particular social milieu. That is, people must come to think, feel, and act with reference to local practices, relationships, institutions and artefacts; to do so they must use the local cultural models, which consequently become an integral part of their psychological systems. Each person actively seeks to behave adaptively in the attendant cultural context, and in the process different persons develop their own unique set of response tendencies, cognitive

orientations, emotional preparedness, and structures of goals and values. (pp.250–251)

The central message communicated by these definitions is that culture is a dynamic system consisting of a combination of interrelated components that develop to work coherently together. In sum, culture is something that greatly influences what we do and how we do it. Culture is distinct from social structures, as well as political and economic institutions, and is essentially concerned with the creation of *meaning* and prioritizing the range of values existing in a society. The kinds of priorities and meanings settled on will be evident in cultural practices such as ways of eating, types of religious rituals and services, relationship norms, marriage rituals, preferred occupations, ethical systems, and the type of apparel worn. In a real sense, the ability to formulate and pursue a conception of a good life is shaped by the possibilities and resources made available to an individual by their culture (Kymlicka 1996).

We favour the more recent conceptualization of culture by anthropologists as an open and dynamic entity rather than a closed, homogeneous monolithic structure that is relatively impervious to change (Li 2006). A problem with the idea that cultures are self-contained and impervious to change is its inconsistency with empirical research. Li (2006) captures this well when she states that ‘culture may consist of ancient, local, as well as new and globally portable norms, ideals, perspectives and views. Culture need not be predominantly associated with “roots”, with the past’ (p.11). In other words, culture appears to be a collection of diverse beliefs and practices derived from a variety of sources. The fact is that today very few people live in isolated environments and the combination of globalization and rapid development has resulted in the exposure of individuals to an array of ethnic and cultural influences. While certain groups have managed to minimize the influence of external cultural ideas and live a relatively self-contained life (e.g. the Amish) even they are unable to insulate themselves completely from some degree of exposure. There has been a ‘creolization of diverse views and practices’ (Li 2006, p.11). By ‘creolization’ Li refers to the incorporation of diverse, sometimes conflicting, cultural beliefs and practices from other cultures into a particular culture. For example, western ethical and political values promoting the idea of equality between genders or amongst different social classes have been relatively recently integrated into Indian culture alongside traditional beliefs concerning the perceived superiority of some castes over others and men over women (Nussbaum 2000).

A major implication of a dynamic, ‘creole’ view of culture is that a particular cultural group may be comprised of multiple, somewhat paradoxical elements. That is, despite the presence of dominant views on issues such as gender relationships and education, there will also be dissenting voices. In authoritarian societies these voices might be relatively mute, but they exist all the same and are likely to be evident in some form (e.g. underground religious rituals, subversive newspapers, etc.). An example of an internally complex

society is the Yanomami, a South American tribe, whose glorification of violence is not shared by some members of the tribe, particularly the females who are frequently the victims of rape and other forms of violence (Li 2006).

The paradoxes or internal tensions in a culture can be usefully categorized in the following way (Li 2006): (a) uniqueness versus similarity with other cultures, (b) common heritage and uniformity versus internal heterogeneity, and (c) continuity and identity conservation versus a focus on renewal and self-critique. Li's point is that all cultures contain these paradoxes in some form, and collectively they create a dynamic tension that enables them to adapt to new challenges. From the perspective of human rights, a view of cultures as being internally complex and dynamic entities means that simple culturally based criticisms such as the incompatibility of western and Asian values are likely to be mistaken (see below). In fact, the existence of overlapping values and beliefs opens up the possibility of inter-cultural communication over some controversial practices (e.g. female circumcision).

In summary, following Li (2006) we define culture in the following manner:

A culture is a body of informal knowledge that is historically inherited and transformed, embodied and contested in traditions, incorporated and innovated in practices, and transmitted and altered through social learning in a community of evolving and porous boundaries. (p.18)

On a final note, in our view cultural explanations of individual actions can only be weakly predictive and on their own will not be able to illuminate the reasons why people behave in certain ways. The reason for this is that first of all cultures are internally complex and therefore individuals will be subject to a number of, possibly conflicting, influences. Second, while certain character traits may be culturally mediated, the complexity of the relationship between individuals and cultural influences, and the fact that culture is not the only causal factor that impacts on behaviour, means that any satisfactory account of human behaviour will need to consider biological, social, circumstantial as well as cultural variables. Third, the ability of human agents to reflect critically on their basic values and their associated practices further complicates matters and indicates that to some degree human nature is plastic and formed through a process which involves individual judgment and social facilitation (i.e. subject to the constraints of agency).

## Cultural critiques of human rights

In this section we will briefly consider some of the major cultural challenges to the concept of human rights. We will first outline each criticism and then briefly indicate a plausible response for practitioners to consider. Following this we will apply our model of human rights to cultural issues and, drawing upon some of the excellent work by human rights theorists, formulate a number of strategies that practitioners can utilise when addressing human rights

disputes between cultures. The four major criticisms of the applicability of human rights in different cultures that are typically made include: (a) the assertion that it is wrong to evaluate the beliefs and practices of a culture from the perspective of another; (b) a related complaint is that the western concept of human rights is too individualistic and precludes a group or community focus; (c) human rights are too abstract to be practically useful; and (d) human rights ignore the rights of minority groups.

### *Cultural relativism*

The criticism that it is wrong to evaluate the practices and beliefs of a culture from the perspective of another is frequently tied to the thesis of normative cultural relativism (Li 2006; Wong 2006). While it is clearly the case that cultures have diverse ways of acting and possess different sets of beliefs this does not of itself exclude the possibility of intercultural debate. However, the strong relativist thesis maintains that because cultures are independent, capsulated systems of meaning they resist entry from outsiders. The only way it is possible to understand and criticize a culture, the argument runs, is from the inside. It is claimed that people from one culture cannot understand the meanings of the views or practices of those from another; it is as if they speak different languages without the possibility of an easy translation. That is, it is asserted that distinct cultures are incommensurable – unable mutually to understand each other. Thus, it is thought to be presumptuous for feminists from a western culture to criticize the practice of female circumcision found in middle eastern and African countries (Parekh 2006), or indeed for westerners to criticize the male/female power dynamics across differing cultural experiences. While critics may think they grasp the meaning of the practices and what rests behind them, they are simply mistaken. It is argued by proponents of this view that these practices serve a valuable cultural function and if banned would undermine the cultural integrity of the group in question.

An initial response would be to contest the assumption that cultures are homogeneous and inaccessible to individuals from other cultures. First, cultures are constructed by human beings and partially represent systems of meaning designed to meet common human needs and interests. Human nature is shared by all human beings and therefore there will be common elements in all cultures. Second, the human condition is such that all cultures are faced with similar problems of reproduction, survival, and overcoming disease and environmental challenges. The fact that all cultures are confronted by these problems also points to a degree of commonality. Third, anthropological research indicates that cultures are dynamic and internally complex, and contain points of tension around which different groups within the society conduct debates. Cultures are not homogeneous and tend to overlap with others by virtue of shared ethnicity, religion or simply due to the rapid development and globalization of the modern world. All these responses undermine

the claim that differences between cultures prevent meaningful dialogue over human rights issues. Finally, unless we are capable of understanding the attractiveness of the way of life provided by another culture it seems unlikely that we would consider it to be a rival to our own (see Wong 2006).

### *Collectivism versus individualism*

Human rights are frequently criticized for being excessively individualistic and neglecting the interests of the community in favour of those of individuals. A related complaint is that the emphasis of human rights and their accompanying treaties and theoretical justifications is on the value of *autonomy* at the expense of *relatedness*. One form this criticism has taken is that Asian values are said to be incompatible with human rights because of their strong inclination to stress the good of the community and family and to downplay the specific needs and interests of individuals. The major target of this critique has been first generation political and civic human rights.

A first response to the complaint that human rights are too individualistic and contrast with non-western values is to point to the internal complexity of rights-supporting cultures. For example, Wong (2006) has persuasively argued that the presence of 'the value of community is nevertheless real' (p.22) in the United States and has served as a counterpoint to that of autonomy for many years. He points out that the strength of the family and the greater good of the community is evident in western cultures although they have been underemphasized at times. The critical point is that a morality centred on the good of individuals need not exclude that of the community, but rather points to a need to attend to the value of both.

Second, it can be argued that certain liberty and civic rights are necessary preconditions for the enjoyment of cultural rights (Li 2006). Thus, the rights to freedom of association, expression, assembly, conscience and religion are arguably necessary for the exercise and enjoyment of a minority group's cultural practices. Failure to guarantee these rights may result in the oppression of the minority group and/or its valued practices and traditions. Therefore, the presence of individual human rights can protect the collective interests of cultural groups rather than necessarily undermine them.

Third, according to Gewirth, individuals require two sets of conditions for them to be able to advance their personal conception of a good life: freedom and well-being goods. Well-being goods necessarily involve the provision of social and community services such as education, health, a sense of belonging and so on. Furthermore, the argument for protecting the interests of individuals also necessarily applies to other agents and their interests. Thus, from the perspective of our conception of human rights, what results from the application of human rights is a community of rights-holders rather than a collection of selfish individuals jostling for supremacy.

## *Abstractness of human rights*

There are two strands to the general criticism that human rights are overly abstract in nature. One is that the values protected by human rights are simply too abstract and, while inspiring at a general level, cannot be easily applied in concrete situations. They are theoretically *thin* concepts and have relatively little content to them. For example, equality, justice, liberty and well-being are all core values associated with human rights but on their own are relatively uninformative. Just what counts as *equality* arguably depends on the context and also a specification of whether the term is referring to outcomes, procedures or status (as in equal moral status). Second, a related point is that the failure to incorporate the contextual features of moral situations means that the application of human rights to other cultures can sometimes seem dogmatic and intolerant. For example, the decision not to allow Muslim girls to wear head scarves (hijabs) to school in France was based on the secular nature of French society and a reluctance to allow the display of religious symbols (Parekh 2006). Additional reasons given for the ban were that the wearing of head scarves signified the (alleged) inferior status of females in Muslim society and also that the girls were under pressure by parents to take the stance they did. The abstract human rights values of equality, freedom and autonomy were arguably interpreted in a culturally insensitive way that only served to alienate individuals who may have otherwise been receptive to the notion of human rights – appropriately interpreted. Indeed, the whole issue of the proper interpretation of human rights by non-western cultures continues to be a thorny problem for the United Nations and western countries.

A first response for practitioners is simply to acknowledge that the core values protected by human rights (well-being, freedom, equality, social recognition and so on) are abstract and rather thin concepts. However, it is arguably this very abstractness that gives human rights the immense moral significance they possess as they provide a common focus for cultures with markedly different political traditions and ethical systems. In Chapter 1 we developed a three-layered model of human rights that linked core abstract values with the more specific rights contained in various rights treaties and covenants. Furthermore, we argued that even greater specification was required in the day-to-day practice of individuals because lists of rights are unlikely to cover every possible contingency. Thus our argument was really a reminder that in order to apply human rights it is necessary to take relevant *contextual* factors into account. For example, in the case of the ban on head scarves in French schools, there is a need to understand exactly what was at stake for the Muslim school girls, their families and culture, and for the French educational authorities. A closer analysis of the contextual factors may have revealed important similarities between religious symbols such as the Christian cross and the hijab and, given the permissibility of wearing the former, may have persuaded the government to allow the girls to wear the latter. As long as the girls did not attempt to convert their fellow students or make a great show of religious zeal during

school hours then it is hard to see what harm was being perpetrated by wearing the hijab in schools.

A second response is to agree that a failure to engage in a dialogue like the one sketched out above is arrogant and runs the risk of failing to appreciate the different perspectives and values of members of minority cultures. But the recommendation that individuals should be willing to examine diverse cultural viewpoints does not necessarily mean that permission should automatically be given for cultural-based differences in behaviour (Parekh 2006). A first step is to ascertain the significance of the practice in question for a particular group, and the social and psychological implications of it being banned. If it turns out that the impact of banning it would be significant for the members of a minority group, and it is clear that no harm is being perpetrated (to the wider community and to the members of the minority culture itself) by allowing it to persist then we would argue its allowance. This kind of procedure may allow practices such as Sikhs wearing turbans instead of motorcycle helmets, or Moslem women wearing the hijab in public institutions, but is unlikely to permit female circumcision or forced marriages – an issue we will come back to later in the chapter. Sometimes, therefore, it is appropriate to be intolerant of certain things in our society because of their threat to the fundamental human rights of particular individuals while still embracing an ethnically diverse pluralistic society (Kymlicka 1996).

### *Minority group rights*

A relatively common criticism of the concept of human rights and its application to non-western cultures is that it fails to promote group rights adequately and therefore does not address some fundamental problems faced by minority groups such as indigenous people and the disabled community (Donnelly 2003; Freedman 1991; Kymlicka 1996; Li 2007; Nickel 2007; Orend 2002; Parekh 2006). It makes sense to claim that colonized indigenous peoples require additional rights if they are to retain their language and customs and not be swamped by a dominant culture. The danger is that without additional resources such as language schools, guaranteed political representation, provision for working different days, etc., then members of those minority groups may be unable to keep their culture alive. Positive examples of this type of special treatment is the funding of Te Reo Maori schools for young Maori children and the existence of designated seats in the national parliament for Maori in New Zealand (Kymlicka 1996). The existence of reserved lands for indigenous people is another example evident in many countries throughout the world where there has been colonization (Li 2006).

Despite the existence of these provisions the concept of group rights has seemed to some theorists to violate the very idea of human rights and the equality of all human beings. It has been argued that the specific entitlements of some minority groups amounts to the provision of unwarranted benefits and

that this clearly cuts across the idea of the fundamental equality of all individuals. Furthermore, conservative liberals have argued that it is nonsense to say that a *group* can have rights. Given that rights function to protect the agency requirements of individuals, and given that individuals within a group act on behalf of the group, a group cannot be a rights-holder.

A quick response to the second criticism is first of all to agree that it is indeed individuals that hold rights. But individuals are members of a group and they share important features in common with other members of the group, such as language, beliefs and cultural practices. Thus to say a group has rights is simply a short-hand way of stating that some individuals' fundamental interests as members of a culture are protected by granting group rights. That is, their human rights as individuals are facilitated by virtue of their group membership and its privileges.

With respect to the claim that group rights violate the equality assumption of human rights, our response is to emphasize the issue of redress. The purpose of granting additional entitlements to specific groups is to ensure that they find themselves on a level playing field in which to advance their own interests within a country and to pursue their conception of a good life. In view of the important role played by culture in providing individuals with opportunities to pursue valued activities it makes sense to invest the resources needed to keep the culture viable and alive, especially if it is subject to demonstrable threats. Failure to do so may leave people feeling socially alienated and without a sense of purpose or meaning to their lives. Of course, this does not mean that every minority group is entitled to special treatment – only those that can present an argument on the basis of achieving equality or by appealing to an historical agreement of some kind, for example, a pre-existing treaty such as the Treaty of Waitangi in New Zealand. The equality argument needs to demonstrate that failure to grant additional entitlements or special rights may result in members of the culture experiencing significant difficulty in exercising their human rights (Li 2006; Parekh 2006). This may occur because of gross deprivation, lack of education, social exclusion, or extreme alienation. Li (2006) captures the role of special rights in promoting equality nicely when she states that 'unequal and partial rights (privileges and exemptions) for disadvantageously situated, unequally treated, persons can level the playing field so they could equally exercise impartial and universally granted equal rights' (p.84).

Therefore we conclude that human rights are not necessarily inconsistent with the notion of culturally based group rights and that their existence is justified in some situations, and functions to redress problems of inequality and disadvantage experienced by minority nations or ethnic minorities. Cultural membership rights differ from other types of social group rights, such as those relating to sexuality or gender, and function to protect things such as language and traditional ways of life (Li 2006). Ensuring equality involves taking into account relevant personal, social, financial and cultural deficits when allocating resources.

## Validating human rights

In the last section we examined a number of criticisms revolving around the claim that the concept of human rights was inapplicable to non-western cultures. In addition we also debated the charge that the notion of cultural membership rights was incoherent and unjustified. Rather than being a western notion we concluded that it was possible in principle to assert the essential human rights of all human beings in every country of the world. While human beings are profoundly shaped by their culture, the combination of biologically based needs and shared living conditions entails that all human beings have certain interests in common. The function of human rights is to protect the necessary conditions universally required for a minimally worthwhile life, and this means ensuring that each person (as a prospective agent) has the capabilities and freedom to realise their beliefs concerning the kind of life they would like to live, and also possesses the necessary well-being goods (e.g. education, health care, adequate living conditions, freedom from physical pain, etc.).

Human rights spell out the basic conditions of a life of minimal dignity, a life that is recognizably human. The basic rights to freedom, security, equality, recognition and subsistence should enable individuals to acquire the basic goods necessary to advance their own conception of a good life. It is through the advancement of personal projects that people obtain a sense of meaning and identity, and stamp their individuality upon the fabric of the world. The model of human rights presented in Chapter 1 is sensitive to social and cultural differences. The very notions of well-being and the various goods that constitute it will vary according to local conceptions and norms (Wong 2006). For example, in one culture education may involve a secular scientific education while in another it may also involve instruction in traditional cultural beliefs and practices. In other words, the meanings of core values of freedom and well-being are shaped somewhat by local interpretations of the component goods. Of course, as stated earlier, common human needs and interests derived from a shared human nature should also be taken into account when considering individuals' claims for well-being goods (Buss 1999). The capabilities necessary to realize the two conditions of freedom and well-being are wide ranging and depend on the availability of social and cultural resources of one kind or another.

We would now like to offer some concrete suggestions for incorporating cultural differences into practitioners' decision-making concerning human rights: working with the internal dynamics of a culture, uncovering core functions, ruling out corrupt judgments, and building cultural capital. In our view human rights are universal and apply to all people around the world. However, their application requires careful attention to local values and practices and to the various priorities of a given culture. In the majority of cases the different groups will coexist within a mainstream culture and will share a number of values in common with members of the dominant culture.

### *Internal dynamics of a culture*

We have argued that in the modern world cultures tend to be multi-textured and dynamic. They typically contain different, sometimes conflicting views on sensitive issues and have traditions of debate. This is apparent in the topic of female circumcision where it seems that there are a variety of positions within societies that practise it, from conservative religious figures claiming that it is consistent with the Koran to dissenters arguing that it represents an outdated and offensive practice (Li 2006; Parekh 2006). Furthermore, advocates of female circumcision claim that it promotes important community values such as self-discipline, control of sexuality and hygiene (Parkeh 2006). In reply, those opposed to the removal of female genitalia rebut these arguments stating that individuals' rights to control their own sexuality and not have their bodies unnecessarily mutilated is of paramount importance and overrides the views of a conservative clergy.

In situations where a cultural practice is clearly in conflict with basic human rights it is important that practitioners obtain detailed knowledge of the ethnic group and/or culture concerned. They need to ascertain the history of the practice, its relationship to the culture's other social and moral beliefs and practices, the justifications offered and their location in revered texts or authorities, whether or not there are opposing viewpoints, and if so what kind, and so on. It may then be possible to work with opponents of the objectionable practice in question to persuade other members of the group to change their attitudes.

Of course, in some instances there may, in fact, be no clash with human rights protocols or values at all. An examination of the relevant facts and the benefits and harms associated with the practice could reveal that on balance it is the dominant culture that should change rather than the minority group. A good example of this is the recent case in the UK of Sikhs finally being allowed to wear their turbans instead of motorcycle helmets or protective headgear in potentially dangerous situations such as building sites (Parekh 2006). In these situations the laws were changed to allow what was considered to be a legitimate alternative – one that was consistent with deeply held cultural beliefs.

### *Uncovering core functions*

In the second strategy practitioners are encouraged to look beneath the surface of the practice in question and try to identify its core function. For example, with female circumcision the core function of the practice could be to 'protect' the integrity of women and/or to ensure that they can be satisfactorily married. If a careful analysis of a disputed practice (e.g. female circumcision, forced marriage under duress, polygamy) indicates that it does violate human rights norms then the aim should be to explore alternative ways of protecting the values in question, that is, working out a more acceptable means of carrying out the core function of the practice. In brief – see Li (2006) for more detail – the

suggested steps are: (1) identify the perceived core function of the practice, (2) compare the function with human rights values and note any discrepancies, (3) evaluate whether the practices in question are still necessary and whether they are able to achieve the core function, and (4) identify any practical alternative practices that might achieve the core function in ways that are consistent with human rights and their underlying values.

### ***Ruling out corrupt judgments***

The claim that certain practices which violate human rights norms are culturally necessary, and if outlawed would seriously compromise the integrity of a way of life, should be subjected to close scrutiny. We argued above that sometimes there are acceptable alternative ways of accomplishing the core functions of such practices and on other occasions the apparent conflict may not actually exist. Furthermore, sometimes it is the dominant culture that needs to reorientate itself and allow for culturally based behaviours that conflict with its accepted norms. However, as with any moral action, at times the problem may reside not in the cultural elements of the behaviour but in the judgment of the actors concerned. Moral actions depend on the judgment of individuals, and these judgments are themselves underpinned by clusters of capabilities: evidence evaluation and decision-making skills, the ability to detect correct values, a lack of vested interests, and intact moral sentiments or emotions (Li 2006; Wong 2006). If there are deficiencies in any of the components of judgment then the resulting beliefs may be flawed and can be dismissed without further evaluation of the practices concerned. For example, the claim that women are naturally inferior to men can be refuted on the basis of the research evidence (clearly false) and the presence of vested interests of individuals who are likely to benefit from the subjugation of women. The provision of accurate information can immediately expose certain assertions as mistaken and therefore rule out some cultural practices based on erroneous assumptions.

The situation gets more complicated when it seems that the victims of discriminatory or abusive cultural norms appear to be supportive of them – for example, women who assert that they welcome circumcision or are happy to be sequestered away from the outside world in order to please their husbands. In these situations it is important to ascertain whether or not the women's judgments have been compromised by social pressure, impoverished emotional awareness, lack of knowledge of alternatives, or poor self-esteem. If this is shown to be the case then it may be appropriate to disregard such affirmations when human rights violations are at issue. According to Gewirth, freedom and well-being are the essential prerequisites of agency and this entails access to relevant information and knowledge of the crucial phases of effective decision-making. The ability to make informed decisions and to advance one's own freely adopted conception of a good life crucially depends on an array of psychological, social and cultural resources.

## *Building cultural capital*

An important resource for dealing with cross-cultural disagreements over human rights is the development of cultural capital (Li 2006). Cultural capital accumulates by cultivating a body of informal knowledge of a culture and its customs and symbols, which results in the acquisition of attitudes and dispositions that respect other cultures and the dignity of human beings (Li 2006; Parekh 2006; Wong 2006). The significance of this term is well captured by Li (2006) who states that, 'The cultural capital of human rights can facilitate (1) forming the motivation to act in compliance with, (2) efforts to implement, and (3) public support for, human rights' (p.214).

At an institutional level, ensuring that representatives from different ethnic and cultural groups are represented on relevant institutions will help to incorporate varying perspectives on matters of public interest. The institutions in question are those that revolve around public and civic life and include governmental agencies, local councils, education and health boards, community groups, advisory groups and professional bodies. The participation of members from minority groups is likely to help members of the dominant culture appreciate the vibrancy of different cultures. In these situations moral disagreements can reveal alternative but real values and provide an opportunity to acquire a richer understanding of the contested social phenomena (e.g. wearing of head scarves, initiation ceremonies, funeral rituals, educational practices, collective decision-making, gender relationships, upbringing of children, etc.).

At a public level, exposing the children and adult members of a dominant culture to the beliefs, norms and customs of minority cultures will facilitate greater understanding and willingness to engage in dialogue when serious moral disagreements do occur. In such situations, it is important that the issue of human rights does not become a blunt instrument used to coerce individuals simply to abandon traditional practices. What is needed is a serious attempt to grasp the meaning of a practice and its broader links to the identity of the persons concerned and their way of life. This does not mean that marked divergences from the values underlying human rights should be tolerated; merely that serious analysis of the origins of the differences and an attempt to find mutually agreeable solutions should be a primary aim of intercultural discussion. Appreciating the internal complexity of a culture and using the strategies identified above will also help people to reach agreement on basic human rights and their application to different ethnic groups.

From an individual practitioner perspective, becoming educated in the history, social structure, languages and cultural practices of the various minority groups that comprise the society they live in is likely to enrich one's moral imagination, and intellectual and emotional capacities. In addition, an advantage of being introduced to differences in cultural beliefs and lifestyles is that practitioners will be better able to understand the meaning of potentially problematic child-rearing or interpersonal problems and therefore respond in a more sensitive and appropriate way. It is easy to lose sight of the fact that for

members of a dominant social group cultural norms are often invisible, taken for granted features of their lives. Social regularities such as public holidays, the structure of the working week (and weekend), social and gender norms, dress codes and safety rules in fact reflect deeply entrenched cultural norms. All humans are cultural beings and derive their values and conceptions of the good life from the wide array of cultural resources available to them: parenting practices, education, literature, film and popular culture. The foundations of personal identity are socially and culturally constructed and constrain the choices people make about the quality of their own lives and the significance of other people's. Adopting a pluralist perspective on what constitutes acceptable social behaviour will help practitioners understand that human rights are devices designed to protect the minimal conditions required for worthwhile lives, and that there are multiple ways of living such lives, all equally valuable.

## Conclusions

In this chapter we examined the relationship between human rights and culture and in particular evaluated the claim that it is not possible to apply human rights ideas to different cultural and ethnic groups. We have argued that human rights are based on abstract values that can be meaningfully translated into local norms that protect the conditions required for people to live minimally worthwhile lives. To underline the value of adopting a pluralistic viewpoint in the application of human rights, we cannot think of a better way to end this chapter than to quote from Parekh's (2006, p.338) excellent book on multiculturalism.

What I might call a multicultural perspective is composed of the creative interplay of these three complementary insights, namely the cultural embeddedness of human beings, the inescapability and desirability of cultural diversity and intercultural dialogue, and the internal plurality of each culture. When we view the world from its vantage point, our attitudes to ourselves and others undergo profound changes.

## Chapter 3

# *Values, Rights and the State*

The impact of religious beliefs and values on the delivery of human services has been significant throughout history. In the context of discussing religious/spiritual values, many writers have noted the charitable origins of human services, the impact of religion, and the ways in which attitudes towards those values have shifted over time (Bowpitt 1998; Daly 2006; Healy 2005; Melville and McDonald 2006; Modood 2005; Tangenberg 2005). Any consideration of the influence of religious beliefs and values on practice requires that we also examine the ways in which differing world views influence the helping systems that have developed, the work they do and how they do it. In general it requires that we consider the ways in which service relationships are imbued by values, and how this fits with a human rights perspective. In the context of religious values it requires that we look particularly at the ambiguities within the relationship between the secular state and religious organizations and at what happens to the value base of each entity when collaboration and partnership are considered. We will look at how rights fit within this context – in particular the service provider’s right to embed religious values and beliefs in their service delivery, and the right of service users not to have those values or beliefs imposed upon them (Leveratt and Pargeter 2001).

As we explore these issues, we will initially look at the nature of the secular state and the public–private partnerships that have characterized the development of human services. We will then consider the rights of service users within the context of faith-related service delivery and will discuss the need for principled practice by those working within those services. Influenced by Smith and Sosin (2001), in this chapter we will use the term ‘faith-related’ rather than ‘faith-based’, as we feel it better reflects the diverse range of systems of service delivery and the varying levels of faith commitment within them. We will then finish the chapter by considering issues related to the impact of service users’ belief and value systems upon the provision of services. In this context we will look particularly at the development of the consumer rights movement in the fields of health and welfare. First, though, we will consider the nature of secularization and the secular state.