5 Justifying Human Rights

There are two fundamental but distinct claims calling for justification in a doctrine of human rights. Firstly, that human beings have rights and, secondly, that human beings have rights. The first claim centres on the idea that merely being human is itself of moral significance and that is hardly a peculiar notion nowadays. Most contemporary moralities, whether or not they think in terms of rights, recognise that being human makes one a member of the moral community. That is, they share the conviction that there are certain ways in which it is right or wrong to treat any human being. Of course, logically, a morality can deny that being human is sufficient to make one an object of moral concern and there have been, and still are, moralities which have drawn the limits of the moral community far more narrowly on grounds such as race or caste or class or nationhood. Even moralities which do give moral significance to being human are likely to give an added moral significance to the specific roles and relationships in which people find themselves, so that we are deemed to have greater moral obligations to our children or parents or friends or fellow-citizens than we have to those who stand before us merely as fellow human beings. So, amongst those moralities which do give moral significance to being human, there can be large variations in the degree of moral significance they give to being human.

One further complication is that the range of ‘human’ in ‘human rights’ is not always straightforward. Some rights may be extended to the whole of humanity without qualification. For example, the right not to be tortured can be, and ordinarily would be, ascribed to all human beings whatever their condition. But other rights which are spoken of as human rights may not be claimed for all who are biologically human. Consider rights of self-determination. When those are asserted as human rights, there is usually an implicit understanding that those rights are not being attributed to the very young or to adults who are severely mentally incapacitated. There need be nothing sinister in that. It merely betokens that some rights
are intelligibly ascribed to human beings only if they possess developed and unimpaired human capacities. That is why some theorists prefer to speak of the rights possessed by 'persons' rather than by human beings. Very often these implicit limits on the range of 'human' in human rights will be uncontroversial, but sometimes they can be hotly disputed, as is well illustrated by arguments about abortion and the right to life.

Conversely some rights which are ascribed to human beings might also be ascribed to non-human beings. Many rights cannot intelligibly be extended beyond the human race, but some can; for example, the right not to be subjected to cruelty might be extended to all sentient beings. Thus not all rights that are human rights need be only human rights. However the main point I wish to make here is that, nowadays, the human rights theorist is unlikely to have to work very hard to persuade us that we owe a certain minimum of concern and respect to human individuals as such. Indeed we are likely to feel that, given the common features of members of the human race, the onus is upon those who wish to deny the moral relevance of humanity to make their case.

That still leaves open a vast range of moral possibilities. Just why being human is morally significant, just how morally significant it is, whether that significance should be expressed in terms of rights and, if so, exactly what rights those should be, are questions which remain to be settled. My purpose in this chapter will be to examine a number of arguments for human rights. Taken together, these arguments illustrate the very different ways in which those questions can be approached and the different sorts of answers that different approaches can yield. Both proponents and antagonists of human rights are often given to arguing as though there must be a single, uniquely plausible, account of the rights that human beings have. That is false. People can and do share the general idea of human rights even though they differ over why it is that human beings have rights, over the specific rights that they have and over the implications of their having those rights. In some ways this diversity of thinking about human rights makes the idea more defensible. The idea that human beings have rights can be more widely shared if it does not presuppose a single highly specific moral theory. On the other hand, when we turn from that general idea to practical questions concerning its implementation, the diversity of thinking associated with human rights obviously poses problems.