Pragmatism, Rights, and Democracy

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Several reviewers of my book *Operative Rights* have made criticisms and raised questions that I believe deserve a response.¹ To make what I say intelligible to readers who may not have read that book, I shall supplement my answers with summaries of the features of my theory to which they seem to be reacting and illustrations of the way the principles involved can be applied. To begin with, I need to amplify a point I make in the book. I do not think that a theory of rights, by itself, is adequate as a basis for moral theory.² Moral issues do not all have to do with rights, and not all moral obligations rest on rights (the obligation to be charitable, which many of us accept, is an example). The obligation that I hold to be inseparable from any rights-entitlement is only one kind of moral obligation. Thus, I have not proposed a “rights-based morality” and, while I hope to do more work in the field, I cannot promise that I will ever develop a comprehensive moral theory. In my opinion, the most adequate approach to values and morality thus far is that of John Dewey.

In characterizing rights as social institutions rather than as inherent traits of essential human nature, I am rejecting the traditional concept of “natural rights,” although I agree with George Herbert Mead that, as products of social interaction, rights are nevertheless natural in an everyday sense of this term.³ In addition, by analyzing rights in terms of norms that confer specific entitlements and correlative obligations of respect for those entitlements, I have differentiated between rights and other kinds of moral obligation. Rex Martin, whose work *A System of Rights* I have already mentioned, takes a comparable position, saying, “Natural or human rights are not simply demands of morality, not even of distributive justice.” In Martin’s words, “Without . . . recognition and maintenance, whatever was said to be justified
on moral grounds would not be a proper human right.”

He quotes the British philosopher T. H. Green: “Rights are made by recognition. There is no right but ‘thinking makes it so. . .’.” For Green’s “thinking,” I have substituted what Mead calls “the attitude of a generalized other or community,” and what Green and Martin characterize as “recognition” I speak of as understanding and take to incorporate and be expressed in respect. That is, on my view rights are “made by” society through the establishment of social norms, a process that occurs only in actual communities whose members evolve those norms and come to internalize them as part of the process of acculturation. And I insist that, in order for those members to “have” or participate in rights, the norms that govern them must be maintained in operation—perpetuated—although not necessarily in unmodified form. Since I see rights as ways in which the members of a community relate to and interact with one another, ‘participate’ is the more accurate term. What we have, when rights are operative in our community, are rights-entitlements together with obligations to respect them. Where a right is operative, every member of the community has both the entitlement and the correlative obligation that makes that entitlement a matter of right. Rights (ordinary language sanctions this usage for what are technically rights-entitlements) and their correlative obligations are social imperatives; they must be mandated by a community’s social norms. Therefore, one who does not belong to a community in which a given set of rights-norms is operative would, to use the vernacular, “not have” that right. (For simplicity’s sake, in the pages that follow, by ‘community’ I shall mean normative community unless I specify otherwise.)

Whether or not they are formally defined or promulgated as law, there are rights operative in every community, rights-norms internalized by its members and by which they are expected to (and generally do) govern their conduct toward one another, even if the language of the community contains no name for “a right.” For instance, there is no such term in classical Chinese, and it is widely held that in Confucian culture, which is authoritarian rather than egalitarian, there are no rights. But consider the norms concerning the family: despite the hierarchical structure of authority in the traditional, Confucian family, the fact that the
family as an institution is taken to be rooted in the cosmic order implies that all members of the community are both entitled to others’ performance of their familial roles and, reciprocally, obligated to perform such roles. They enact both the entitlement and the obligation within the families into which they are born and those into which they marry. To put this in the terms that I have used: both the entitlement and the obligation are relevant to all members of the community. Each would have the same obligation to any other, were that other a member of his or her own family; that is, the obligation is applicable to them as family members. The fact that the culture confers both upon everyone in the community makes participation in one’s family and the performance of the proper behavior toward one by the members of one’s family what I call “rights-entitlements,” and the entitlements and obligations taken together, “operative rights.”

Part of the difference among cultures is that there are different rights operative or institutionalized in different societies. However, I have argued that there are some rights, which I call “generic rights,” that ought to be operative in all societies, including two fundamental generic rights and others that are either presupposed or entailed by these. More conventional rights-theories, identified with the “natural rights,” “social contract,” or neo-Kantian schools, take certain rights, usually called either “natural” or “human” rights, to be possessed by all human beings, resting this attribution on some feature of their common human nature. This concept of universal human rights is so pervasive in Western society that, when a given right is not operative and the entitlement is not respected, a person who is not treated as one who has that entitlement and thinks that she or he ought to be is likely to object, “But I have a right!” Moreover, where something taken to be a universal human right is not operative, both ordinary citizens and scholars will say that this right has been violated. Commentators on my theory of rights, pointing out that to say “I have a right” is an important defense in cases when the entitlement in question is not honored and the claimant believes it ought to be, have charged that this defense would have no meaning in a community in which there is no such operative rights-entitlement. Critics have also pointed out that, on my view, even if it ought to be universally operative, if a right is not operative in a
given community, we could not charge that it has been violated there.⁸

Could the claim to have a right (i.e., a rights-entitlement) when there is no such right operative in one’s community have any meaning beyond the weaker claim that one ought to have it? I would have to say that, with regard to that particular community, it could not. But in terms of the theory of community in which my theory of rights is situated, it could have a different meaning for some of that community’s members in virtue of their membership in other communities with different social norms. We all belong to many communities, many of these not localized and, in fact, having members who may never have interacted or communicated with one another. Nevertheless, the normative perspective in virtue of which individuals are members of, say, the English-speaking community, would enable any selection of them to communicate with one another. So would the perspective provided by the norms governing the game of chess. Each of these is what I call an extended community. Like those of any other normative community, its members can all expect one another to govern their communicative interaction in a particular sphere by the same set of social norms. Similarly, as I have written,

there is an extended community of rights, whose members have all internalized the culture of rights—the general principles governing and exemplified by all rights-relations—and may even try to govern themselves by those norms, whether or not there are rights operative in the organized communities to which they belong. All the members of this community know or are expected to know (at least implicitly) what it is to have rights-entitlements; they recognize an obligation to respect them; and they know to expect and require others to respect both their own and one another’s entitlements even if, in the organized communities to which they belong, those rights are denied them [OR 65].

A person who respects rights-entitlements and is ready to exercise them, expecting them to be respected in return, can, speaking as a member of this (extended) community, meaningfully make the claim, “I have a right!” To say so within the confines of a local community in which that right is not operative, however, is, first of all, to risk not being understood. To the extent that one
is understood (as one would be by people who are familiar with the concept of rights even if they have not internalized the norms governing the right in question and do not respect any such entitlement), to make such a claim is also to invite vigorous denial. But, false as it is, the statement that one has a particular right that is actually inoperative, having prescriptive force (conveying the meaning that we ought to have it), can serve as a way of suggesting that everyone in that community ought to have and respect that entitlement. Also, if we imagine a community in which the language of rights is altogether absent and the concept not formally understood (even if rights exist as institutions and the practices they involve are customary), to claim to have what we would call a “right,” whatever term one uses for it, and explain what one means by this, can serve to introduce the concept. This is in fact what happened when Western literature on rights began to be translated into Chinese. In short, to say, “I have a right!” can be to use this expression as an instrument for initiating a process of social change.

The more problematic question is whether a right can be violated in or by a community in which it is not operative. I have charged, for instance, that certain communities violate not only the rights of some or all of their members, but also the rights that I hold to be fundamental and generic and that, by definition, ought to be operative in all communities whether or not they are, specifically, the rights of personal autonomy and personal authority. (The reader will recall that by ‘autonomy’ I mean self-direction, judging for oneself; by ‘authority,’ legitimacy and deserving to be taken seriously.) Can a community in which these or any other rights are not operative accurately be said to violate them?

To say that a particular right is not operative in a community is not only to say that its members do not recognize any obligation to respect the entitlement in question, but also to say that there is no such right there. If this is so, then even though that right is recognized in an extended community to which some of its members belong, within the local community nobody has a right of that kind that can be violated. In the case of a right that the speaker believes ought to be operative but that is not, the charge ought to be, not that the right is being violated, but that it is being denied, that the community does not grant any such entitle-
ment. In charging that there are communities whose norms "vi­
olate" what I take to be the fundamental generic rights of some or
all of their members, we could say that in the extended commu­
nity of those who respect that right, the denial would be con­
structured as a violation. Nevertheless, in the community in question,
the charge should be that entitlements that they ought to have as
a matter of right are being denied to those persons. My usage can
be explained (though not justified) by the fact that anyone who
has internalized and governs him- or herself by the norms of the
extended community or a particular community in which that
right is institutionalized will see the denial as a violation. Charging
that an inoperative right has been violated, like claiming to have
a right in a community in which one actually does not, is inaccu­
rate and misleading; but it does reflect the perspective I am pre­
scribing.

II

I have also argued that rights of autonomy and authority analo­
gous to those I take to be the fundamental generic personal rights
ought to be operative for communities in their relations to one
another, that is, as members of more inclusive communities. I
refer to these as "communal rights," distinguishing them from the
"collective rights" that pertain, not to communities as such, but
to their members, jointly or collectively. (An example of a com­
munal right would be the right of a cultural community to exist;
its members jointly can have the collective right to communicate
with one another in their own language.) I argue that some com­
munities, at least, are eligible for participation in communal
rights-relations in the sense that they have the power to do so.
For this, a community must be able to function agentially, that is,
to generate communal judgments and govern its interactions with
other communities by shared norms. Large communities can
function as singular entities by means of a vote.

Accepting the view that normative communities are essential
to human life, at least as we know it, I maintain, to begin with,
that the exercise of autonomy and authority by all members of
any group engaged in a common effort is essential to the establish­
ment of norms to govern their joint activity and, hence, to the evolution and stability of normative communities. Because it is so important, the free exercise of personal autonomy and authority ought to be protected, and the way to accomplish this is to establish that freedom as a rights-entitlement, operative not only in every developed community, but also in any group of individuals attempting to regulate their collective behavior or their common enterprises in some effective way (who are, that is, in process of forming a normative community). If people are to be willing to cooperate with one another and to conform to principles and policies that others are helping (or have helped) to shape, they must have the security of knowing that their autonomy is not threatened and that they are accepted and respected as authoritative participants in collective decision making. Feeling that their autonomy and authority are threatened, they are likely to try to dominate and control one another rather than work cooperatively toward common ends. Failure of its members to respect one another’s autonomy and authority can thus undermine even an established community and jeopardize its very existence, underscoring the need for these to be guaranteed as personal rights.

It is hardly necessary to search for arguments in support of the thesis that the existence and integrity of a normative community can be threatened from without as well as from within. Nationalist struggles throughout the world illustrate the way communities can weaken or even destroy one another. The war in Bosnia is not only over geographic boundaries and political independence; from the first, it has been in large measure a battle over whether the Bosnian Muslim community should have the right to survive. Under the prevailing nationalist leadership, each of the major ethnic communities has come to pose a threat to the others. In a separate essay I have argued that peace and stability could only be established among them by means of a dialogue (which would have to be initiated and supervised by a disinterested outside party) in which all were accepted as legitimate participants, and the purpose of which was for the citizens to determine for themselves the conditions of their future coexistence and the terms on which they would henceforth regulate their mutual relations. To ensure this acceptance, it would have to be understood by all
the members of each of the communities involved that its auton-
omy and authority were guaranteed as rights, and that this meant
that all participants, regardless of ethnic identity or geographic
location, shared the same rights and had the same obligation to
respect them. These rights would have to be operative among the
communities as such as well as among their members, individually
and collectively; as personal, collective, and communal rights,
they would have to govern the entire peace-making process and
eventually become operative in and among whatever political
communities might be established as its outcome. The joint oper-
atation of these rights is what I call, using Drucilla Cornell’s term,
“dialogic reciprocity.” Even though in the book on rights I do
not use the term (as one reviewer perceptively noted), what I am
talking about is genuine participatory democracy.11

The thesis that the fundamental generic rights should be ex-
tended to communities presupposes that those communities
should have a right to exist, and I have advanced this as a general
thesis. But does this imply, as one reviewer has suggested it does,
that all normative communities must be preserved or that all such
communities that come into existence are necessary to satisfy the
requirement that the necessary conditions of human living be
protected?12 Does the generalization that normative community
is a prerequisite of human life entail that every such community
is indispensable or morally justifiable? Are the members of a com-
munity not entitled to allow that community to go out of exis-
tence? Should they, or anyone else, be prohibited from making
the judgment that the community is one that should not be per-
mitted to exist or to retain the norms that are operative within it
or in its relations with other communities or their members?

To begin with, it is not necessary for any rights, including those
I contend ought to be operative for all normative communities,
to be implemented in every case or at every point in the life of
every such community, whether this be a community of individ-
uals or an inclusive community of communities (cf. OR 46–48).
Should conditions arise in which a prescribed rights-entitlement
can be exercised, in principle any member of the community
could choose to exercise it, and, if the community did, any mem-
ber who was in a position to implement the obligation to respect
that entitlement ought to do so. Although in principle it is rele-
vant to all, the right is applicable only to those in a position to actualize it. But while anyone to whom it is applicable would be empowered to claim it, there is no necessary requirement to do so. If there were, the act would be coerced and not a right at all. This applies to communities as well as to individual persons. Even if the right of all constituent communities (all cultural communities, for instance) to continue to exist is operative within an inclusive community, any subcommunity may voluntarily dissolve itself, merge with another community, or disintegrate as a result of inertia, without its autonomy or authority being curbed by others and without its right to existence being either violated or denied. To say that normative community is a necessary condition of human life is not to say that any particular community or selection of communities is so, let alone that all the communities that have ever come into existence are equally necessary.

But should every normative community that comes into existence and endures be allowed to continue in existence, or to do so unchanged? This is a moral issue, and a serious one. Under ordinary circumstances, that is, absent compelling moral reasons, we should accept the obligation to respect the entitlement in question. If a community’s members, whether as their express purpose or simply through the way they conduct themselves, act so as to keep it alive, to interfere with them is to deny—or, where these rights are operative, to violate—the community’s right to existence. However, there are communities whose entitlement to exist, given the ends they promote, some might wish to challenge on moral grounds. A community wholeheartedly and irrevocably committed to the extermination of another community or its members would present such a problem, and it would be easy to argue that it should be outlawed. Could such a step be justified? To begin with, we must not forget that in view of the ever-present possibility of conflict with other rights and other values, no right, however important, can be absolute or unconditional. We cannot, without reservation, respect the right of autonomy of a proven felon and we feel no compunction in limiting this autonomy by imposing a prison sentence. I have categorized the rights to autonomy and authority as generic (meaning that they ought to be operative in all communities) and, further, as fundamental (in the sense that they both presuppose and entail other rights that
are thereby rendered generic). Nevertheless, the generic right of normative communities to existence and to the perpetuation of their norms is no more absolute or unchallengeable than any other. At the same time, because it is (or ought to be) a right, the existence of any given community and its right to its own identity—the collective right of its members to perpetuate the norms by which they govern their common practices and shared activities—should be protected unless the danger it poses is publicly and convincingly demonstrated to be so great as to make it impossible to contain. If it has acted upon its commitment to do violence (as in the case of the subway terrorist group Aum Shinrikyu in Japan), such a community has forfeited its right to exist, at least without instituting radical changes. Short of this, if such action appears to be a genuine potentiality, its right to continue in existence should be placed under scrutiny. But before any further steps are taken, the community in question should be given the opportunity to defend itself in dialogue between its own representatives and representatives of all the other members of the inclusive community, a dialogue in which the fundamental generic rights are carefully and consistently kept in operation.

We may also ask whether there are other circumstances under which the norms of a community (and, hence, its identity) should be open to challenge by the wider community. Similar principles apply to the right of identity as to the right of existence: Neither is unconditional. But only when a community has norms that are incompatible with those of the inclusive community, so that they cannot all be consistently implemented by one and the same person, or when they are adjudged seriously unjust, should its right to those norms be brought into question. And even then, any challenge should be made publicly and discussed in an open dialogue within the inclusive community in which all parties’ autonomy and authority are equally respected. Moreover, the norms and rights of the inclusive community should be taken to be no more absolute or unchallengeable than those of its subcommunities.

One more question arises in this connection. Can only normative communities have rights? What about perspectival communities such as the community of women (which must be distinguished from organized women’s groups)? As defined, rights
that are operative in a community are relevant to all its members. I have argued that the right to be treated as equals is a corollary of the fundamental generic rights, so that women and members of other perspectival communities such as minorities or people with physical disabilities are no less entitled than anyone else to exercise all the rights that are operative—and no less obligated to respect them. Moreover, where the members of such a community require special protection in order to exercise any given right, such protection is instrumental in securing the right and should be considered part of that right. But insofar as these rights are individually and not collectively or communally exercised, they are personal rights, relevant and applicable to persons as individuals, not collective or communal ones.

III

If, for a right to exist, is for it to be operative or institutionalized in a community, its being so is the sufficient condition of its existence. I am sympathetic to the view of Jan Narveson, that there is no right except an enforced right. However, I cannot endorse this view unconditionally. In the first place, we must ask what it means to enforce a right or, more properly, enforce the obligation to honor the entitlement that it establishes. I do not draw a hard and fast line between "human" or "moral" and "civil" or legal rights, since moral rights can be written into law, although they need not be. (Laws against deceptive practices, for instance, which are in effect only in selected communities, are codifications of the more widespread moral right—i.e., the entitlement—to be told the truth.) What I term operative rights could be classed as moral rights, although I have not used this terminology. But only if such right is also a right under the law is legal enforcement possible. Violating a legal right is a crime and enforcement a legal imperative; if the rights specified by law are operative in the community, government is an instrument for their enforcement as well as for their codification. However, while rights-legislation, at least in a democracy, usually reflects the attitude of the community, this may not be the case, and rights that are initially introduced by this means may or may not become operative. If they do not,
enforcement of laws defining them as rights can be difficult. But unless and until an operative right is written into law, only pressure on the part of other community members can possibly induce people who would not otherwise do so to honor it in actual practice.

Ideally, all the members of a community in which there are operative rights-norms would have internalized these norms and would not only govern themselves by them voluntarily but would expect others to do so as well. That this ideal is never completely realized must be admitted. Habitual criminals aside, there can always be persons who are members of a community in virtue of sharing other elements in its normative perspective but who do not accept, or may never have internalized, particular norms; and even those who have internalized the operative rights-norms and who understand that those rights ought to be respected do not all respect them, and those who do may not always practice that respect. The case is no different for legal rights than it is for moral rights. Property rights are an example of the former: the thief understands that stealing is wrong. And even in a society such as ours, where the norms dictate that they ought to be, promises are not always kept, even by those who understand that we have a right to this. To the extent that the norms governing them are voluntarily implemented, however, both legal and so-called moral rights are secure and do not have to be overtly enforced.

On the other hand, whether the rights in question are legal or only moral, to the extent that the norms establishing them do not fully or effectively govern the conduct and the judgment of those to whom they are applicable, they have less normative force and are only weakly operative. For the same reason, they might be less likely to be enforceable. However, this is not the same as being inoperative—not being rights at all. From a Pragmatist point of view, should we say, when the force of the norms governing a right is weak, that there is no such right, or that there is an existent right that ought to be implemented? Or should we abandon the ontological dichotomy altogether and talk instead of degrees of normative force? The latter is what I would advocate (going beyond what is stated in the book).

Another aspect of this issue needs to be clarified as well. It would seem that in order for a right to be operative in a given
social community, it must be agreed upon by every member of that community, each of whom must share "the attitude of the generalized other" that defines the community and must act accordingly. The problem is that every social or geographic community, whether it be a political community such as a state or city or tribe, or an informally constituted community such as a neighborhood, is composed of a multiplicity of subcommunities, and the normative community in which any given set of rights-norms is operative may not encompass the inclusive community in its entirety. Yet, if a perspective or set of norms governing particular rights is predominant in the wider community, it is likely that the rights it defines are recognized (in the sense of being discriminated or identified) by all the latter's members. That is, even those who do not consider them to be rights, or who do not think they should be, are aware that, in the community at large, most people do take them to be so. I would say that, just as when the norms are imperfectly operative among those who nevertheless accept them, the smaller the proportion of those in a social community for whom rights-norms are actually operative, the weaker their normative force there.

Two questions have been raised about my position concerning persons who have lost the power to participate in rights on their own or have never developed it: First, is my argument adequate to guarantee rights for "comatose, brain-injured, and hopelessly imbecile human beings"? Second, even if it is, don't traditional theories grounding rights in human nature provide a stronger guarantee? To begin with, the only guarantee I see for any rights is that provided by the norms that govern them, which is to say that it rests with society, the communities in which rights are operative. So-called "universal human rights," or "natural rights," in practice provide no other guarantee: If those rights are not operative in human communities, they can only be ideals, not actualities, and the concept of a universal (normative) community of rights is similarly ideal. Treating rights as social institutions, I cannot accept the principle that human nature guarantees rights. Nevertheless, rights presuppose a distinctively human capacity, the capacity to internalize and govern oneself by rights-norms. Can one who has never had this capacity or who has lost it still "have rights"? Concerning the latter, if we take identity, as I con-
tend we should, to be a function of continuity rather than of persistent sameness, we understand that a person retains his or her identity despite undergoing changes. If that person ceases, through illness or injury, to be able to make the necessary judgments, it is this same person who is comatose or brain-injured. On these grounds I have argued that operative rights continue to be relevant and applicable to such persons despite the fact that they can be exercised only by their representatives. Even after death, when in ordinary language we would say a person no longer exists, it is that person who has died and whose having lived is still efficacious. Insofar as the person has lived in it, the world (the identity of which is also a function of continuity) differs from what it would be had she or he not done so. In Buchler’s language, we would say that the person “prevails”—prevails now as dead even as she or he had prevailed as living. Being the same person, she or he retains any rights that are applicable, an example being the entitlement to have one’s will executed—an entitlement that persists until that process is completed. In exercising the claim to this entitlement, the executors of the will are expressing not only their own but also the testator’s respect for the entitlement. This is because to understand an entitlement as a right, even with reference to oneself, is to apply to it the attitude of the generalized other in terms of which it is to be treated as such.

In addition to arguing that the comatose and the dead retain the rights in which they participated during their active lives, I have contended that those with only limited ability to participate actively in rights-relations should be counted eligible for rights and assisted, to the extent that this is necessary, in claiming and respecting rights-entitlements. A person with some capacity to understand what is entailed in having and respecting rights should be helped to understand when she or he should be or is in a position to exercise a rights-entitlement and also be helped, as far as possible, to fulfill the obligation to respect one when this is applicable, thus actualizing whatever potentialities that person has. To the extent that this is impossible, rights that are applicable can, again, be implemented through representation. A newborn, not yet having developed the capacity to judge and act in the ways called for by the institution of rights, is strictly not able—and, hence, should not be eligible—to participate in it. I have argued,
however, that from birth infants should be treated as if they were participants in order to cultivate that capacity and instill the operative rights-norms and, of course, infants and small children can also be represented by adults in the implementation of rights. As in the case of the comatose or brain-injured, the principle of representation should also apply to a fetus that has reached the point at which it could survive outside the womb, on the grounds that a viable fetus must be assumed to have a potential capacity for participation in rights, a potentiality that, before reaching this stage of development, it lacked. I do not take rights to be relevant before this stage; other moral principles would have to apply. Regarding the few persons, however mature or immature, who are totally unable to develop the powers necessary to claim or respect or understand rights, I have contended that we can talk only of benefits, not of rights. One who is totally unable to comprehend what it means to have or to respect an entitlement, and for whom there is no hope of developing such understanding, will never be able to participate in rights. This does not mean, however, that I deny altogether the moral relevance of rights to such persons. I suggest a “principle of comparable or analogous benefit,” which “would mean that, to the extent that they can benefit from being treated as if they had particular rights-entitlements, severely handicapped individuals should be so treated” (OR 44). I would now endorse this suggestion more strongly than I did in the book. Nevertheless, a benefit, even one that we are morally obligated to bestow, is not a right.

I do not claim that my theory provides as strong a formal guarantee of rights as a “natural rights” theory does. I find the latter guarantee to be empty, however, since, where the institution did not exist and the norms governing it were not operative, having rights would have no consequences and, in the Pragmatist sense of the term, no meaning. More important, I think, is the fact that I would not claim that I provide an equally strong guarantee of rights for all persons or all communities under any and all circumstances. As we are forced to acknowledge whenever it is necessary to adjudicate a conflict of rights, the weight to be given a right must be situationally determined. Similarly, rights do not inherently “trump” other values. Their implementation, like all human conduct, especially moral conduct, requires judgment. All judg-
ment is situational or contextual and all judgment emanates from and is shaped by a perspective. Not only is the appraisal of a situation or context a judgment; adopting a perspective for judging also involves judgment, even though in many cases the judgment is not reflective or thoughtful but routine and mechanical. Whether we would wish it to do so or not, I believe that the Peircean principle of fallibilism necessarily applies. The best we can do is try to arrive at and justify our judgments as rationally as is in our power.

NOTES


3. See above, Chapter 8.

4. Rex Martin, A System of Rights (Oxford: Clarendon Press, 1993), p. 97. Richard E. Flathman also construes rights as social practices and provides a naturalistic explanation and justification of them. However, unlike my own view, Flathman's is individualistic, despite the fact that he insists that one can claim and exercise rights only within a society and polity of which one is a part. Cf. The Practice of Rights (Cambridge: Cambridge University Press, 1976), especially Chapter 9, "Rights and Community."


7. "In China . . . mainstream social and political thought has developed without a notion of individual rights, at least until the beginning of the twentieth century" (Julia Tao, "The Chinese Moral Ethos and the Concept of Individual Rights," Journal of Applied Philosophy, 7, No. 2 [1990], 119).

8. See, for example, the review by William J. Langenfus in Philosophy and Social Criticism, 21, No. 1 (1995), 111–117.

9. After pointing out that "there was no word in the classical texts equivalent to 'rights,'" Julia Tao tells us, citing as authority Professor
Wang Gunwu, vice chancellor of the University of Hong Kong, that in translating Western texts, “The word chosen for the abstract concept of rights was ch’uan-li which combines the character ch’uan meaning ‘power’, ‘influence’ and ‘privilege’ and li meaning ‘profit’ and ‘benefits’” (“The Chinese Moral Ethos and the Concept of Individual Rights,” 120).

10. “Nationalism and Dehostilization,” an invited paper at the conference on “The United Nations at Fifty: (1945–1995): At the Threshold of a New World Order,” held at Hofstra University, March 16–18, 1995. In view of the Dayton Accords, the proposal made in this essay, which was a specific one based upon a request from parties in Sarajevo for the establishment of what they called a United Nations Transitional Authority, is outdated, but especially in view of the difficulty of implementing the Accords, I think it still has relevance to the point I am trying to make here.


12. See Langenfus’s review cited in note 8, above.

13. One may also waive a right, which is a stronger step than simply omitting to claim it and would entail additional considerations.

14. Jan Narveson, “Pacifism: A Philosophical Analysis,” Ethics, 78 (1968), quoted by Joseph Betz. Gábor Szabó, in his review of Operative Rights, calls attention to the role of the state in shaping as well as enforcing rights (Magyar Filozofial Szemle, 5–6 [1995]). (In Hungarian; I am grateful to John Lachs for providing me with a translation.)

15. See Szabó’s review.

16. See Betz’s review of Operative Rights.

17. This is to say, in response to Szabó, that there is not and, I believe, cannot be, a universal “generalized other” (Szabó’s review).


