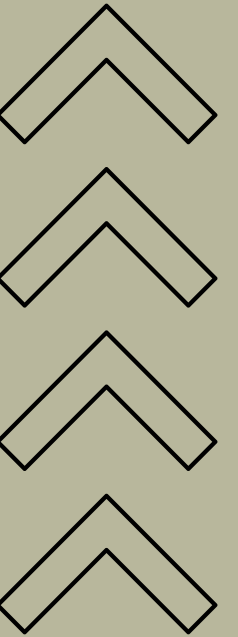


Issues in Moral Philosophy

Lecture 2

Human Rights and Democracy

Dr Xintong Wei





Democracy

Is there a human right to democracy?

- The concept of democracy
- The relation between democracy and human rights



Human Rights

What are human rights?

- The concept of human rights
- The ground of human rights
- The scope of human rights

Human Rights

Human Rights are rights that all people possess in virtue of their humanity

The idea of rights held by all in virtue of their humanity, however, can be traced back, for example, in the 1776 American Declaration of Independence and the 1789 French Declaration of the Rights of Man and the Citizen, and in the writings of Hobbes, Grotius, Pufendorf, Locke, Wollstonecraft, Paine, Kant, among others.

If there are human rights, what are they? What are the features of human rights? Are they moral rights?

What grounds or justifies human rights? Are international legal human rights grounded in pre-legal moral rights?

Which proposed human rights are real human rights?



Two Conceptions



Naturalistic Conception

Human rights are (a) moral rights that (b) all human beings possess (c) at all times and in all places (d) simply in virtue of being human and (e) the corresponding duty-bearers are all able people in appropriate circumstances.

Political Conception

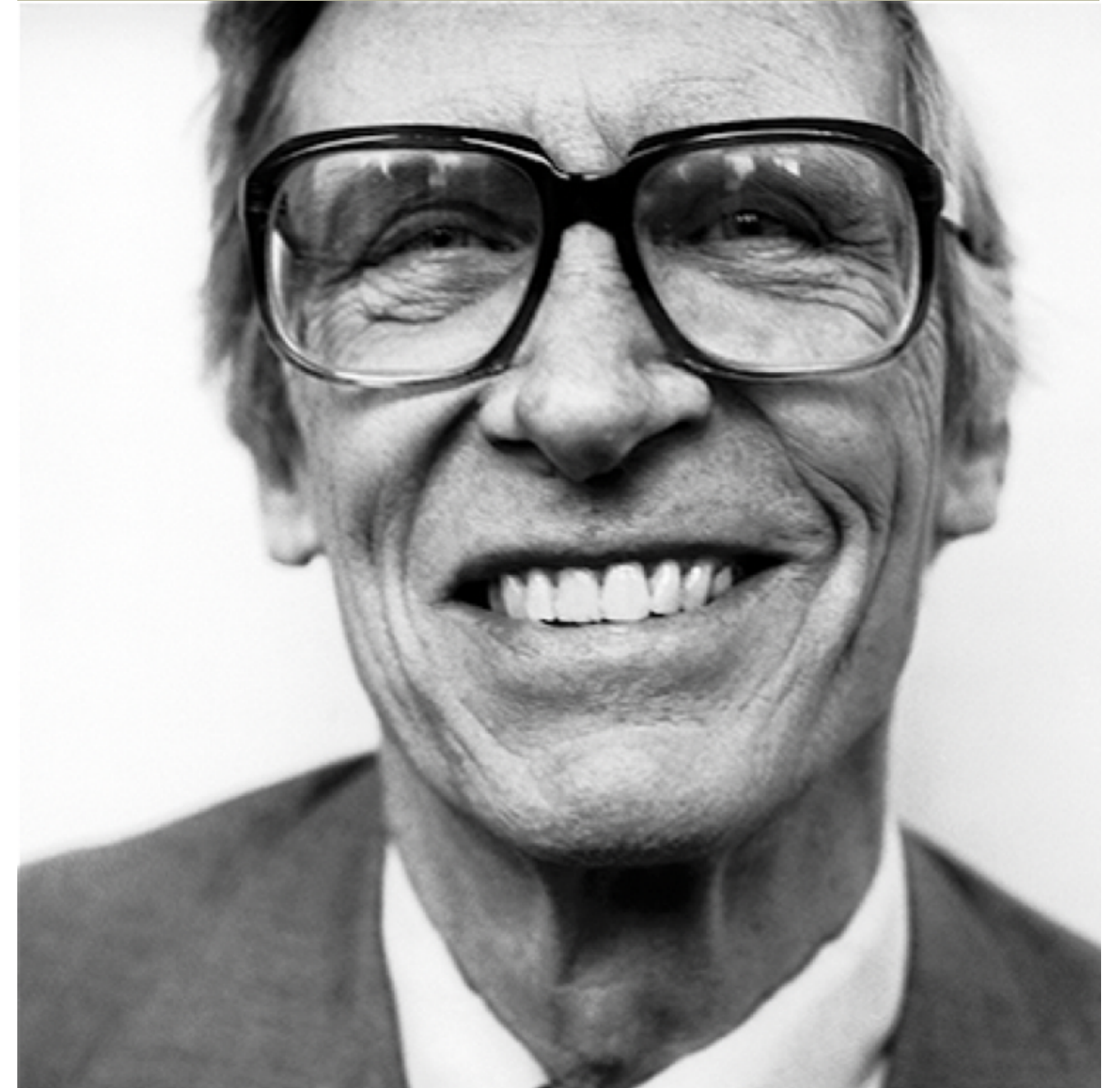
Human rights are not based on certain features of humanity; rather, the distinctive nature of human rights is to be understood in light of their role or function in modern international political practice.

The Function of Human Rights

Human rights are rights that set limits to a society's internal autonomy (Rawls 1999 and Raz 2010) or rights that the international community has a responsibility to protect in modern societies (Beitz 2009)

'Human rights are a class of rights that play a special role in a reasonable Law of Peoples: they restrict the justifying reasons for war and its conduct, and they specify limits to a regime's internal autonomy.'

John Rawls Law of Peoples, p.79



John Rawls

Grounds



Instrumental approaches

Human rights are grounded in their instrumental role to protect some important aspects of being human: e.g., interests (Beitz 2009), needs (Renzo 2015), agency (Griffin 2008), capabilities (Nussbaum 2011), as minimal conditions for living a good life (Liao 2010).

Transcendental approaches

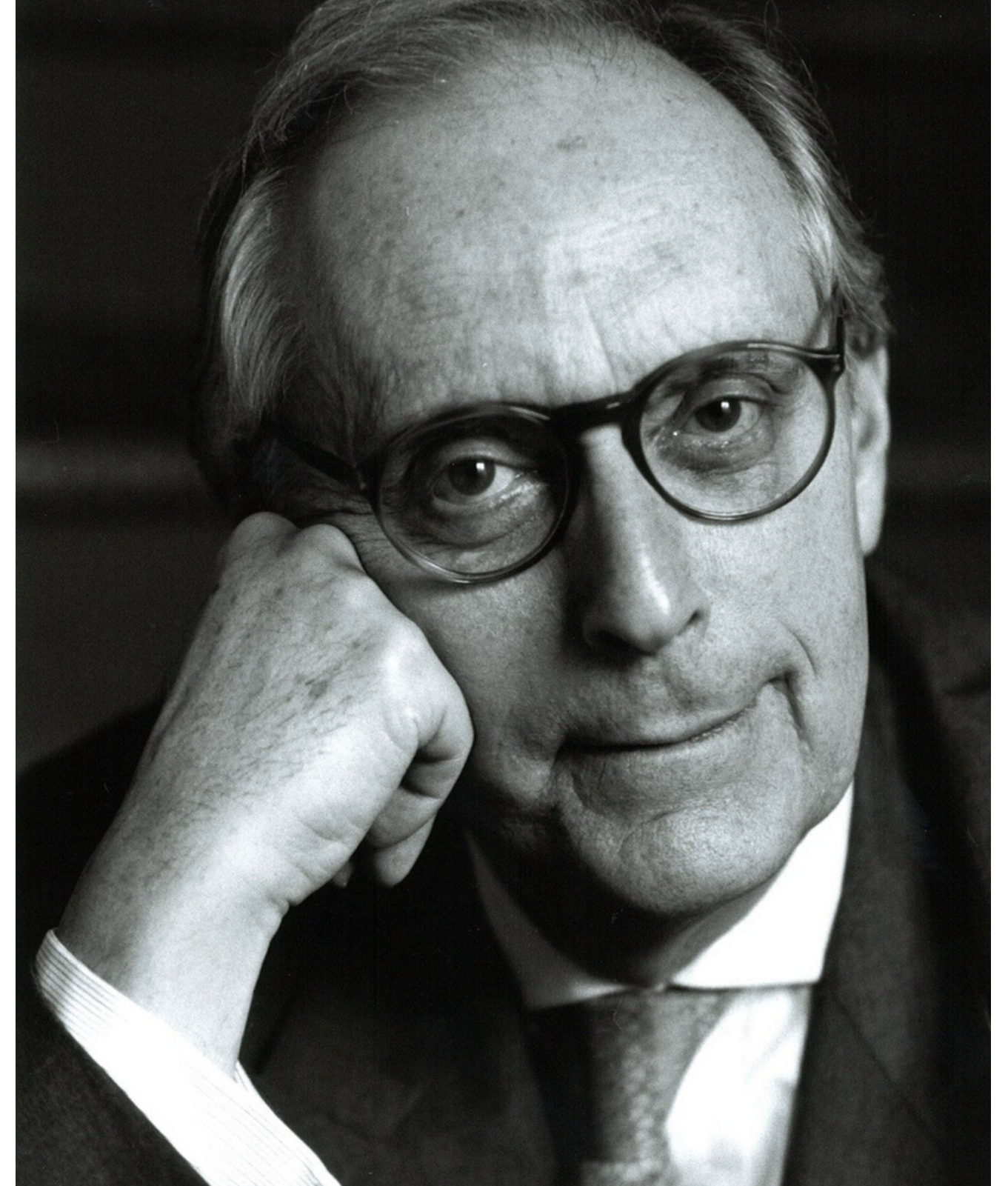
It is constitutive of acting and thinking that there are human rights which puts limit on our action. (Gewirth 1998)

Agency and Human Rights

James Griffin (2008) defends a view according to which human rights are protections of personhood.

The notion of personhood (or normative agency) has three components:

- **Autonomy:** 'To be an agent [...] one must (first) choose one's own path through life – that is, not be dominated or controlled by someone or something else'
- **Minimum provision:** '...one's choice must be real; one must have at least a certain minimum education and information. And, having chosen, one must then be able to act; that is, one must have at least the minimum provision of resources and capabilities that it takes'
- **Liberty:** '...others must also not forcibly stop one from pursuing what one sees as a worthwhile life.' (Griffin, 2008: 32-3).



James Griffin

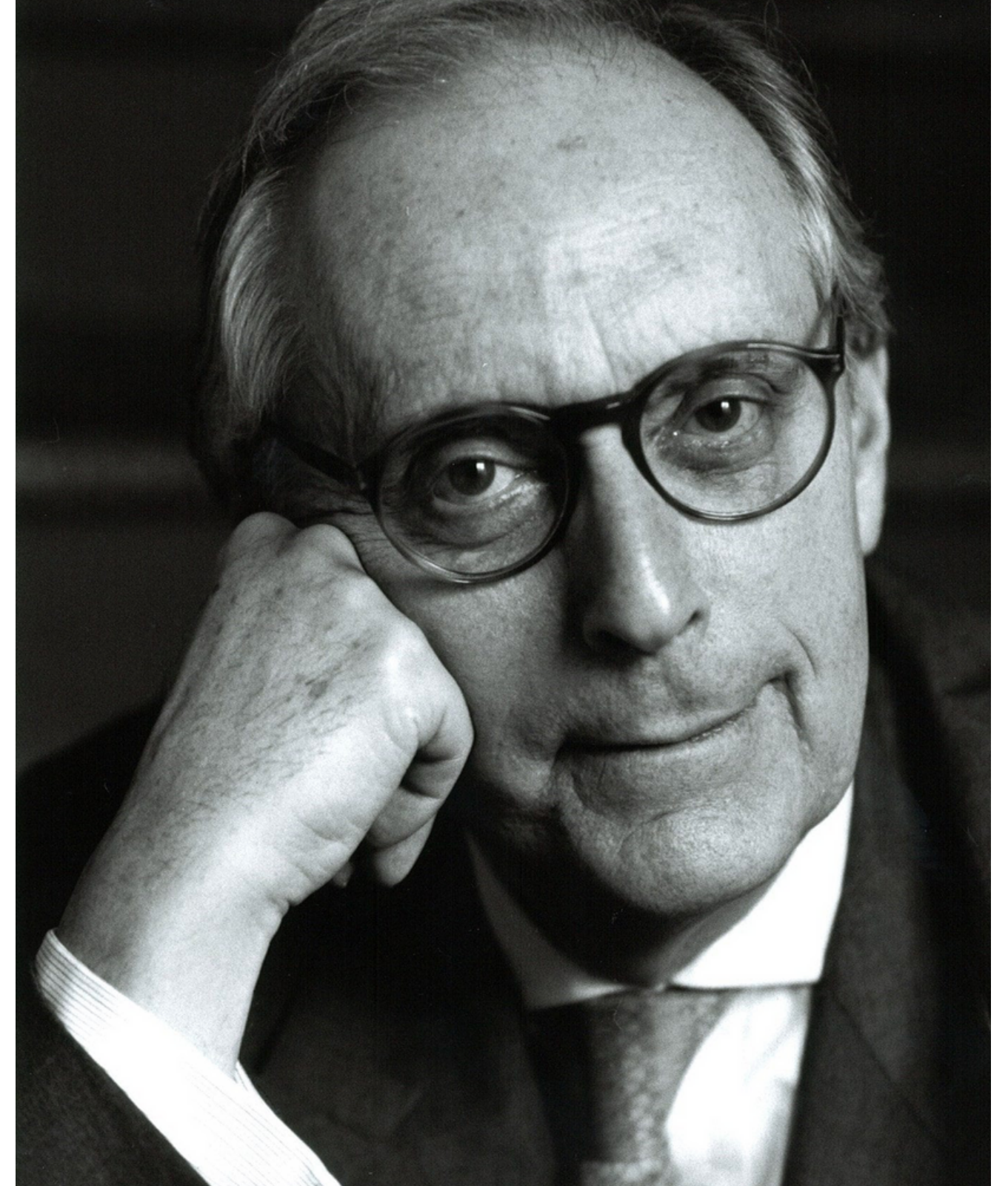
Agency and Human Rights

How do we evaluate a theory of human rights?

- Does it over-generate/under-generate human rights? Is the theory sufficiently determinate?
- Does it offer the right sort of explanation why a candidate right is a human right?

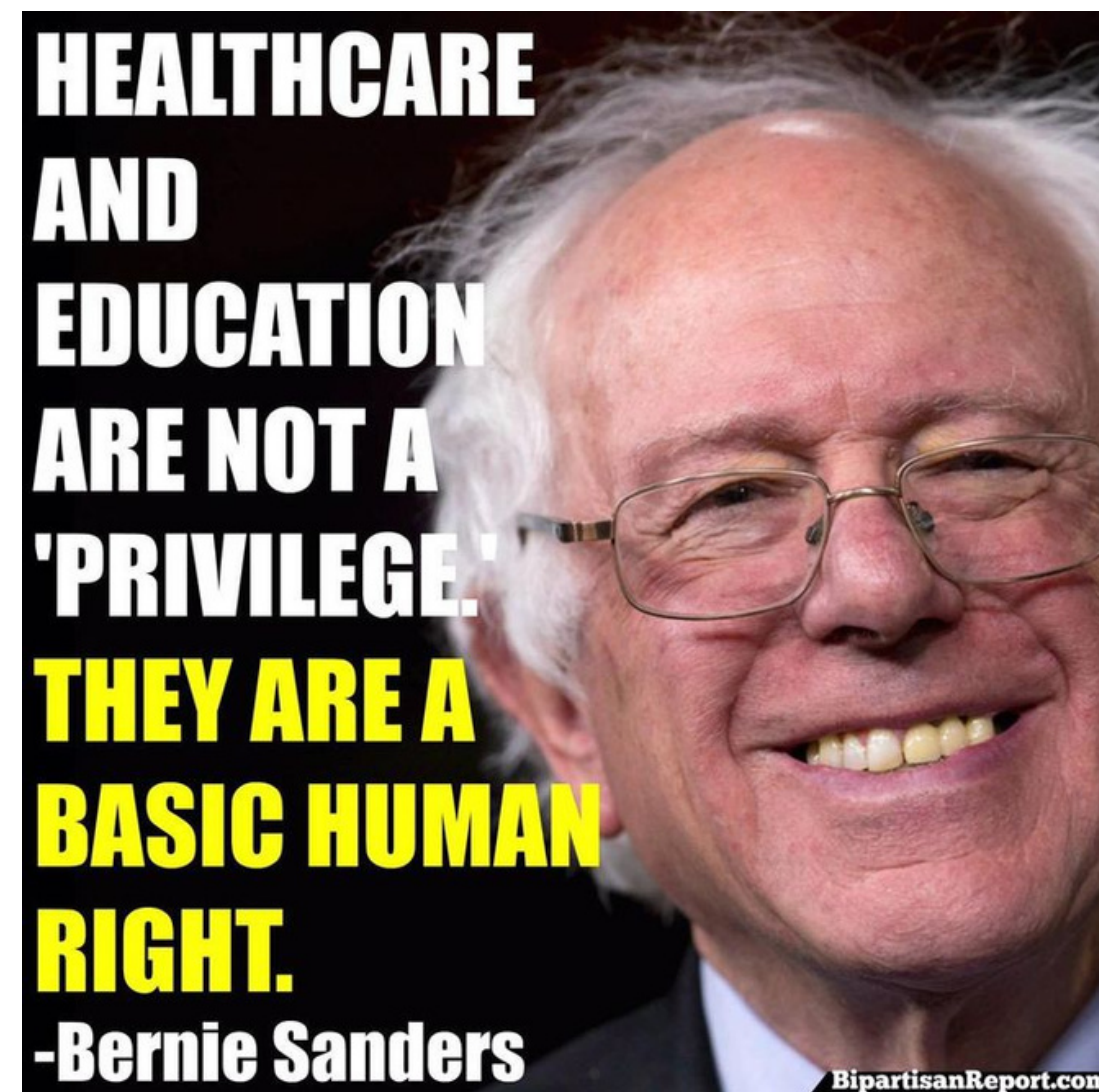
Worries:

- Is the agency view too narrow? Not all human beings have human rights.
- Does it offer the right account of why we have a right not to be tortured? Some philosophers think the fact that torture causes great pain should be the main reason why it constitutes a human rights violation. (Tasioulas 2010, Liao 2010)



James Griffin

Scope



Positive Rights

- Rights that ensure individuals' well-being, economic security, and access to essential resources and services.
- These rights recognize that individuals have entitlements not only to civil and political freedoms but also to certain social and economic goods that enable them to live a dignified life.

Group Rights

- The rights that are attributed to specific groups of people based on their shared characteristics, identities, or affiliations.
- These rights are distinct from individual human rights, which are granted to individuals regardless of their group membership.

Convinced?



Discussion questions:

1. Do you think human rights are natural, moral right?
2. What, in your, opinion, justifies the existence of human rights?
3. What are the considerations you will take into account when determining the scope of human rights? Do you think there is a human right to universal health care or higher education?

A Human Right to Democracy?

What is democracy?

What does the right to democracy consist of?

Is the right to democracy a human right?



What is democracy?

Democracy is a political system in which each subject has equal power in shaping the political decisions (e.g., laws and policies) that are binding on all subjects, which typically involves:

- a constitution (written or unwritten) that specifies the power of each institution in that political system and guarantees certain fundamental rights
- a decision-making mechanism based on majoritarian rule
- regularly held, free and competitive elections
- institutions that facilitate the public exchange of reasons, such as a free press and public forums
- the rule of law and persons are treated equally under the law

A right to democracy refers to the cluster of rights that allow one to participate as an equal (formally) in the collective political decision making.



- Does the right to democracy forms an essential part of a set of human rights that together protect the basic needs/personhood/capabilities of the right-holder?
- Some rights offer the relevant protection directly: e.g., the right to subsistence, health care.
- Some rights offer the relevant protection indirectly: e.g., the right to a free trial. Such procedural rights protect the right-holder against threats against their other rights such as the right to bodily security.
- Some rights offer the relevant protection both directly and indirectly: e.g., the right to freedom of movement.

Instrumental arguments

The protection of the basic needs/personhood/capabilities of the right-holder indirectly require a right to democracy, because it is normally necessary and reliable in protecting basic human rights.

Non-instrumental arguments

The protection of the basic needs/personhood/capabilities of the right-holder directly requires a right to democracy

Fundamental political interests

According to Christiano (2008) we have fundamental political interests in shaping the society we live in.

There are four important facts that characterised our collective political life:

- conflict of interest
- cognitive bias
- fallibility
- extensive disagreement

Given these facts, we have interests in (1) correcting for the cognitive biases of others in determining how to shape the society (2) being at home in the world we live (3) being recognised and affirmed as equals.

The only way to realise the equal advancement of the interests of members of society is to make political decisions democratically.



Thomas Christiano

Epistocracy?

Peter (2015) challenges the claim that we have fundamental interests that can only be realised by democracy:

- "I may have an interest that the cognitive bias of others is corrected—by me or by someone else. If someone else is able to correct others cognitive biases on my behalf, that must be sufficient.
- I may have an interest in seeing a connection between my judgment about how the world should be organized and how the world is organized. But that doesn't imply that I necessarily have an interest in expressing my judgment.
- An interest in being recognized and respected need also not have its prime expression through political participation—it may be possible for me to be recognized and respected in other ways that are more important." (Peter 2015:487)
- Alternative political systems such as epistocracy (rule by the wise) may also be able to reliably realize such interests.



Fabienne Peter

Securing Basic Human Rights

Basic human rights of subsistence and bodily security, basic liberties, are more likely to be safeguarded in democratic societies.

Democracies do not go to war with each other.

No substantial famine has occurred in democracies.



But what about...

The tyranny of majority

Instablity

Manipulation and populism

Gridlock and Inefficiency



But what about...



“It is enough if the evidence shows that democracy is an important (even if not the only) relevant contributory factor so that in its absence the likelihood of such conditions increases significantly. Second, in the face of uncertainty about the precise composition of the explanatory factors leading to severe underfulfillment of human rights, and given that so far research appears to show that democracy is an important factor, it is only prudent to be risk averse and err on the side of keeping the list of rights ample (including democracy besides the rule of law, freedom of the press, and the other important factors).” (Gilabert 2018:273)

Too demanding?

Two principles to determine whether a candidate right is a human right:

- a. No-conflict: The set of rights we recognise as human rights should be consistent with each other, e.g., if the candidate right X is a human right, X should not be in conflict with other rights we recognise as human rights
- b. Less-demanding: If two candidate rights both adequately protect the relevant human needs/interests/agency/capabilities, we should always recognise the less demanding candidate right as a human right.

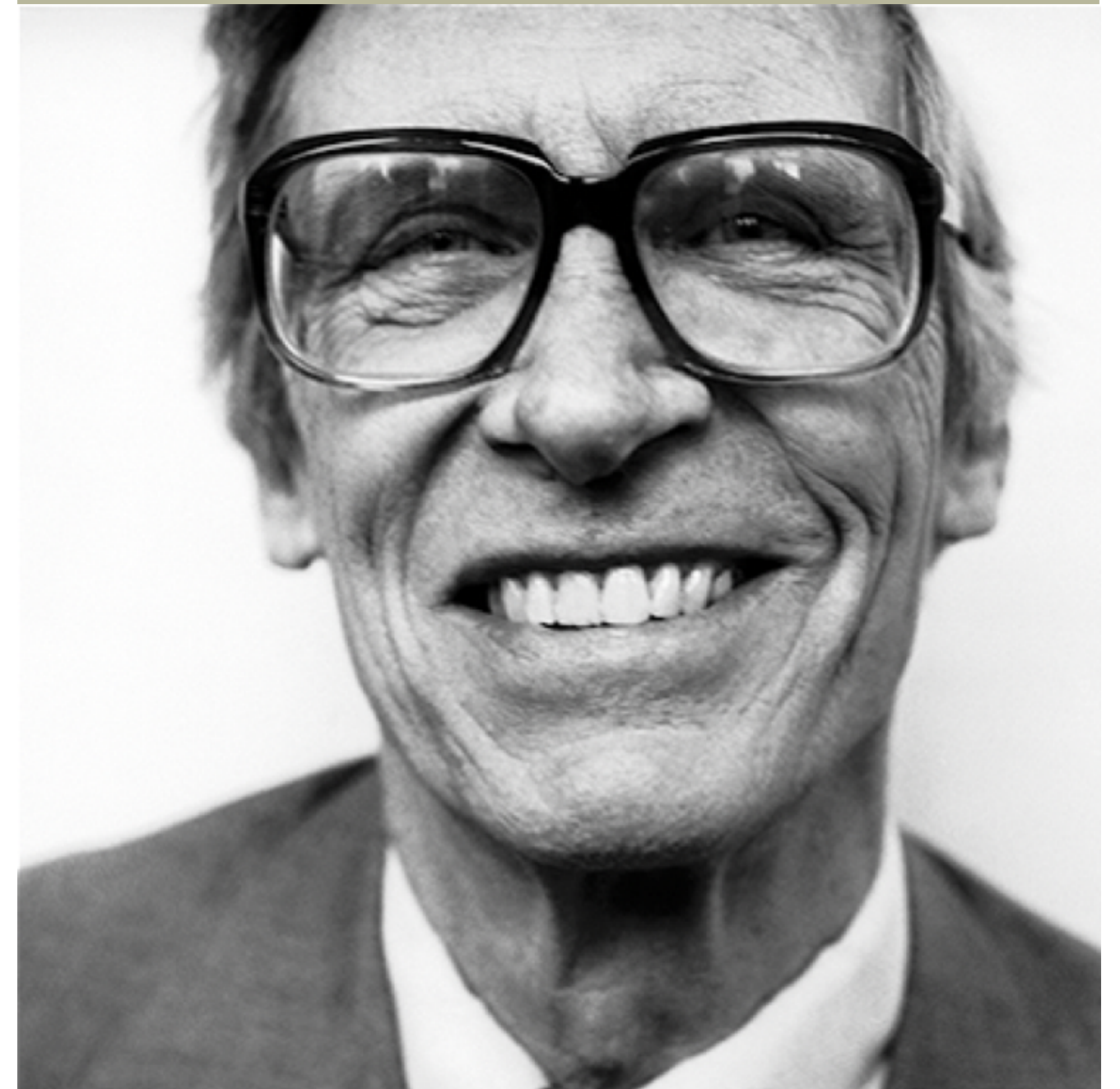
Decent Non-democratic Societies

Rawls (1999: §8) articulates the possibility of non-democratic societies that secure basic human rights.

He calls such societies “decent hierarchical societies” and argues that such societies can be part of a pluralistic and tolerant world in which liberal democracies co-exist on terms of mutual respect.

Two criteria for decent hierarchical societies

- a. the society is not aggressive against other peoples and accepts and follows the Law of Peoples;
- b. its basic structure contains a decent consultation hierarchy

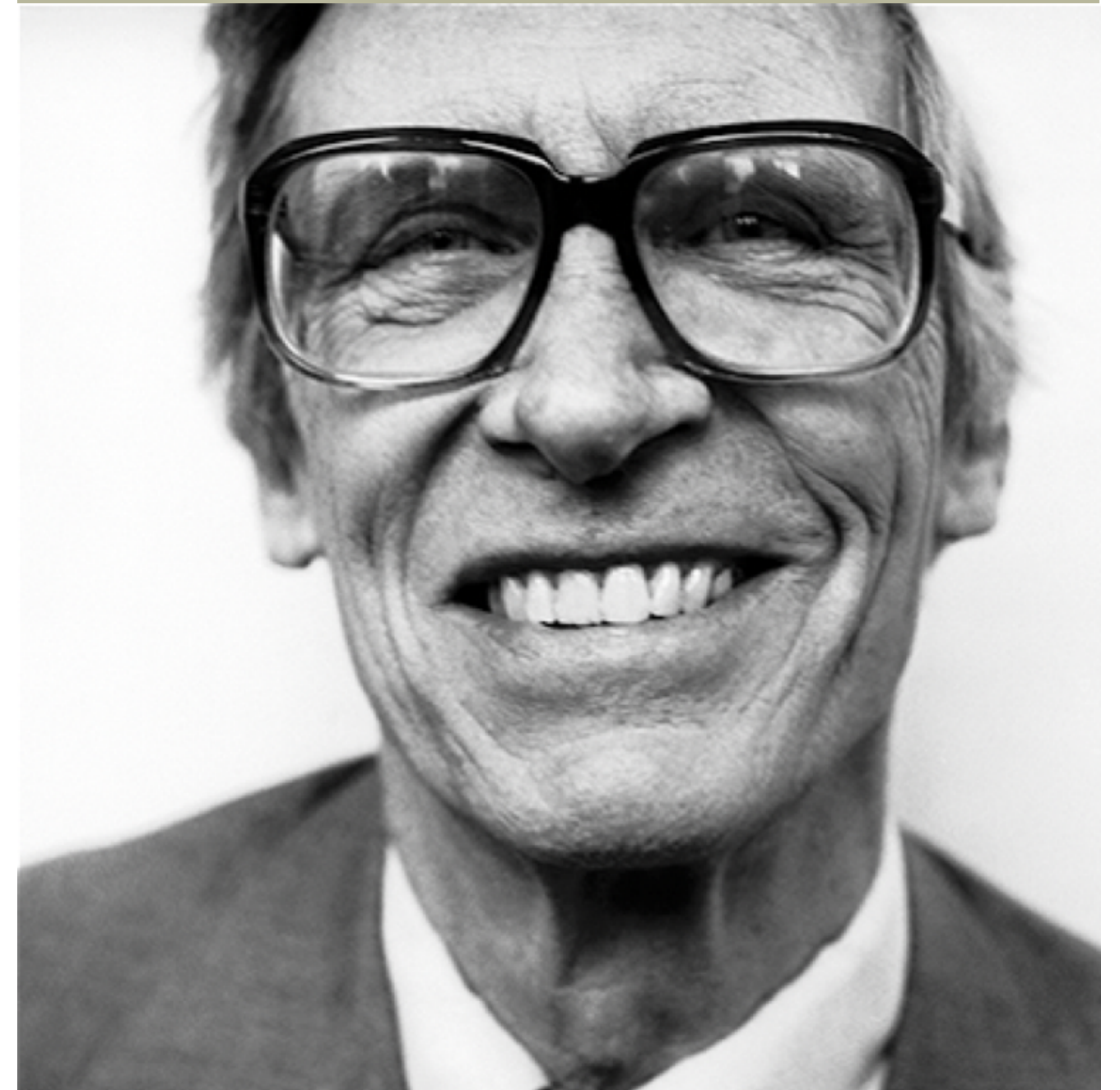


John Rawls

Kazanistan

“Among the human rights are the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly)” (Rawls 1999:65)

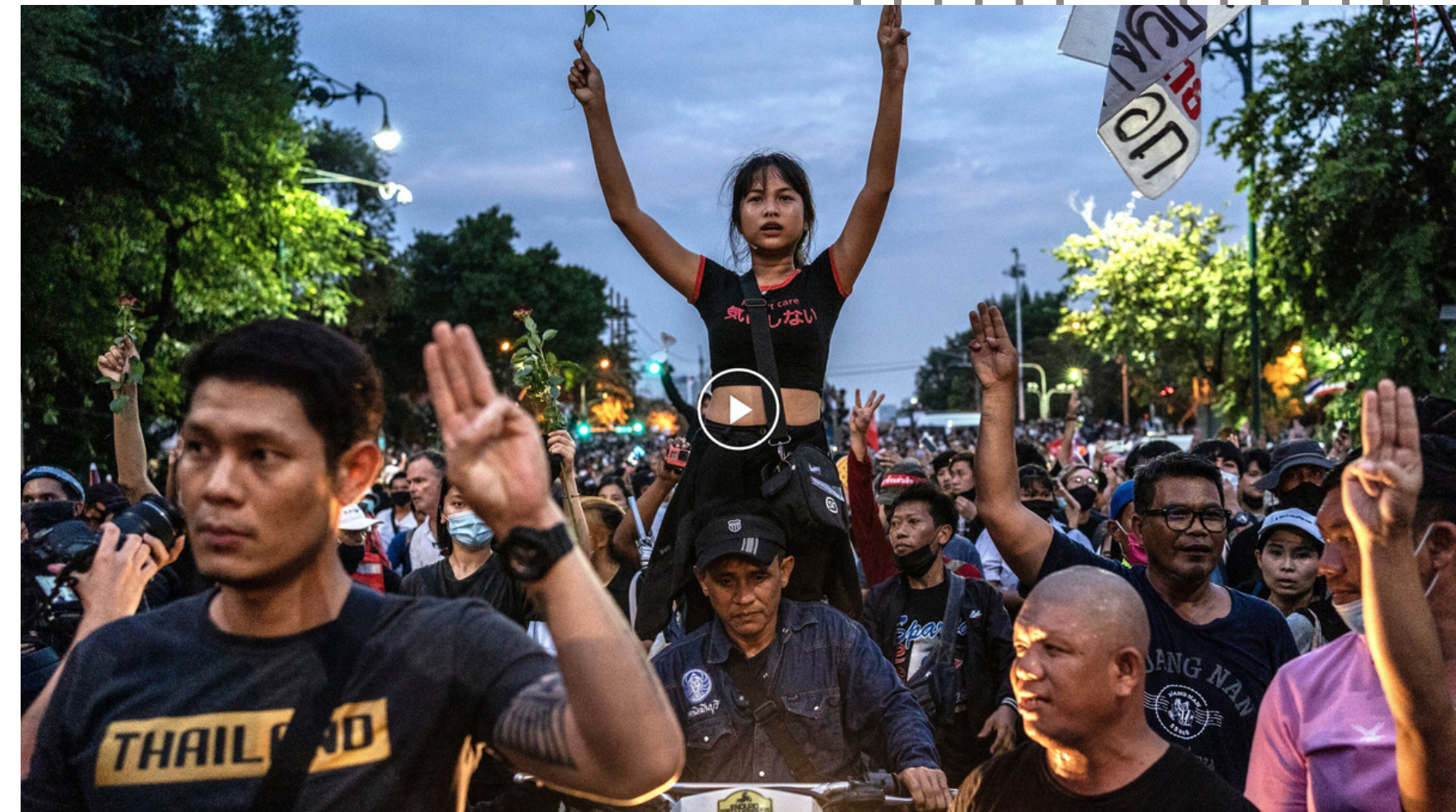
If a decent consultation hierarchy as articulated by Rawls is possible, then democracy is not necessary for securing basic human rights.



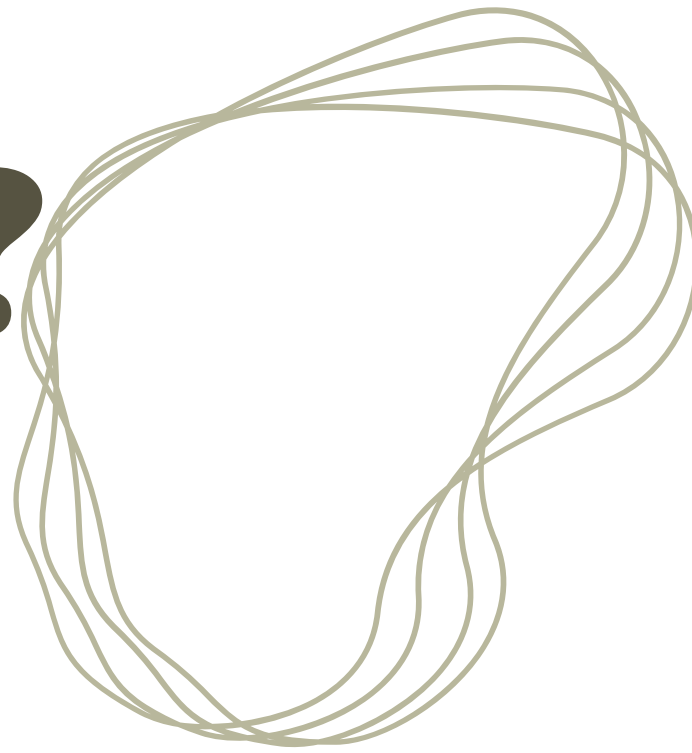
John Rawls

Further worries

1. Does the right of democracy conflict with a people's right to self-determination?
2. Human rights function as a standard of international political legitimacy and licence politically enforced intervention. If there is human right to democracy, it would delegitimise non-democratic states and licence politically enforced intervention such as economic sanctions which requires strong reasons to be justified. But such intervention is unjustified.
3. No *public justification* (justification acceptable to all reasonable persons) for the human right of democracy.



Convinced?



Discussion questions:

1. Compare the strength of instrumental and non-instrumental arguments for the human right to democracy.
2. Do you think democracy is necessary for securing basic human rights?
3. Do we have a basic interest in democracy that requires protection?

