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## Introduction

### THE USES OF RIGHTS IN POLITICAL CONFLICT

In Egypt's nationwide protests against the Muslim Brotherhood government in 2013, one of the loudest and most resonant cries was "Rights!"—for women, religious minorities, and secular Egyptians. Yet, on July 3, 2013, the liberal groups headlining the demonstrations welcomed a military takeover in which hundreds were soon killed, thousands imprisoned, and basic human rights greatly diminished. No doubt most protesters did not expect this bloodbath and rejected the Muslim Brotherhood's apparent plans for Egypt. Elected only one year before in a tumultuous vote, it had made constitutional and legal changes that scared many of those who supported a secular, rather than religiously inflected, government of Egypt. But in battling for another regime change so soon after the election and only two years after the fall of the Mubarak dictatorship, the protesters' eagerness to accept destruction of the country's first democratic government suggested that they had also used human rights strategically. By portraying the Brotherhood as Islamist radicals and inveterate rights abusers, demonstrators could frame themselves as victims, rallying support at home and abroad. Even as they allied with the military and refused at first to call its actions a "coup," liberals seemed to believe that they were protecting their rights. Yet by subverting the Muslim Brotherhood government that had so recently won power through a flawed but real electoral process, they also subverted

rights. The dictatorship of General Abdel Fattah el-Sisi quickly committed far greater abuses than the Muslim Brotherhood had done. Most of the victims were suspected Brotherhood members. But liberals who had lived in Egypt during the Brotherhood government also fell victim, and many were forced to flee abroad.

The Egyptian liberals' use of human rights as a rhetorical weapon to undermine a flawed but struggling democracy might seem surprising. Rights are sometimes thought to transcend politics, furnishing a moral bedrock for societies and activists. For many, rights are progressive goals whose achievement brings peaceful reform. In some visions, rights embody humanity's best hope for achieving its highest aspirations. The United Nations promotes a universal rights culture as an antidote to conflict and domination. Many observers focus on rights' defensive uses: to protect the vulnerable and uplift the needy. For the influential legal scholar Ronald Dworkin, rights are "trumps" that safeguard individuals against invasive policies, repressive states, and oppressive cultures.<sup>1</sup>

Certainly they protect against these things, but rights, including liberal rights, can also be used as weapons of politics and for illiberal ends. How and why are rights used for aggressive purposes? In answering these central questions, this book focuses on the ways in which powerful forces use rights to batter weaker groups, smash minority ideas, or, as in Egypt, Thailand, and other states in recent years, unseat democratically elected governments. Groups such as Thailand's Yellow Shirts have argued that their movements are simply striving to protect the rule of law from governments that they decry as populist. Yet the rights language of such groups often masks a last-ditch effort to hold on to power when previously marginalized or repressed groups assert different views on social, economic, and political relations.

Nationalist battles involve the thrust and parry of rival rights—both individual and group. In places as diverse as Quebec, Scotland, and Catalonia, cultural, language, and minority rights are at the center of conflict. In Malaysia, India, and Nigeria, "sons of the soil" movements have won special rights to political, economic, and social status for indigenous majorities, even as "migrant" groups, both from overseas and from other regions of the same countries, seek their own rights. Nativist and populist movements in Europe demand cultural protections for majority groups in the face of mass migration from Africa and Asia.

Women's rights have been used in France, Belgium, Austria, and elsewhere to justify *burqa* bans. Although couched as a way of liberating Muslim women, the claim acts as a powerful attack on "unassimilated" Muslims. Meanwhile, Muslim women in these countries have begged to differ from

their self-proclaimed defenders. They protest that wearing the burqa is itself a basic right. Internationally, women's rights served as post hoc justification for America's war against the Taliban and NATO's support for a corrupt new Afghan government. In another recent case, American and European governments have elevated LGBT rights to a central plank of foreign policy. The World Bank has followed suit, withholding development loans to poor countries, such as Uganda, for draconian laws attacking LGBT populations.<sup>2</sup> Yet traditional Catholics, Protestants, and Muslims in Africa and elsewhere view these policies as misguided international attacks on their right to live by the time-tested or majority-approved values of their own cultures. Many in the West condemn the resulting violations of LGBT rights in the name of majority cultural rights, but the societies targeted with internationally based rights claims see themselves as under threat by powerful outsiders.

Nor is there anything novel in offensive usages of rights. Natural rights, civil rights, and human rights have been used in such ways for centuries, not only to protect the powerless but also to boost dominant communities at others' expense. John Locke, philosopher and partisan of his day, stressed the right to "property" in "lives, liberties and estates."<sup>3</sup> He did so not only to weaken the British monarchy of James II in its conflict with Parliament, but also to increase the political power of the landed gentry and middle classes against propertyless Britons who also demanded rights.<sup>4</sup> In revolutionary France, the "Declaration of the Rights of Man" undermined the old regime but limited political rights to men of means. When radical women such as Olympe de Gouges issued a "Declaration of the Rights of Woman and the Citizen," they were rebuffed, then guillotined; women would not gain the vote in France until 1945. In nineteenth- and twentieth-century America, states' rights repeatedly stifled African Americans' claims to equality. These and many other cases reveal that rights are and have always been Janus-faced. They are used not only for defensive ends but just as much for aggressive purposes. They may protect the powerless, but just as commonly the powerful employ them to expand their influence.

This book focuses on this understudied aspect of rights, providing an answer to the puzzle of how rights may not only help achieve liberation but also end up justifying or facilitating oppression. The book provides the first systematic account of the multiple ways in which activists use rights in conflicts. In particular, I show how they invoke rights to *mobilize* their political forces, then *deploy* them against their foes—and how foes in turn *counter* these advances with their own rights tactics. The result is a new approach to understanding how political actors use rights as offensive weapons of conflict, not just as noble objectives to be achieved through selfless struggle.

I analyze the variety of ways in which all sides to conflict invoke rights, particularly highlighting aggressive usages by the powerful against the weak. Ultimately, this perspective helps explain why some who appeal to rights end up undermining them in practice.

### **Prior Perspectives**

Until now, the scholarly literature has primarily contemplated the appealing first face of rights, largely ignoring the less attractive second face. The most optimistic accounts focus on individual human rights, chronicling their historical triumph and foreseeing their future victories. For some, such liberal rights represent a global “script” that magnetically attracts new adherents around the world.<sup>5</sup> In this view, rights inevitably expand over time and across space, and any delays or diversions are ascribed to governmental repression, cultural backwardness, or individual false consciousness. In this vision, rights’ achievement will ultimately realize humanity’s greatest dreams, raising it to its highest stage of development. In such an “indivisible” rights culture, as the United Nations asserts, “the improvement of one right facilitates advancement of the others,” and “likewise the deprivation of one right adversely affects the others.”<sup>6</sup> Missing, however, is the recognition that contending political forces often dress up their causes as human rights, whether individual or group. Vindicating the rights of one comes at the expense of another. In the name of rights, powerful forces have engaged in invasions, coups, and even torture.

Academics who take a more political approach to rights nonetheless continue to conceptualize them narrowly, portraying them as unequivocal goods attained through principled methods and high-minded persuasion. Movements for civil rights, women’s rights, indigenous rights, and countless others are analyzed this way. It is seldom recognized, however, that in rhetorical, political, and legal conflicts over rights, they are means—potent tools to defeat opposing forces—not just ends. This is most obvious in the “cause litigation” common to highly institutionalized settings, such as American or Indian courtrooms. There rights are fought with and fought over—with direct consequences not only for the individual litigants but also for the societal groups whose interests they embody. It is equally true in other, less structured political contexts, such as newspapers, parliaments, public squares, and even battlefields. An invocation of rights, whether group or individual, can cover up less estimable goals, mobilize armed forces, shatter opposing coalitions, and destroy entire societies. This is why rights are so commonly used by the most powerful forces in modern societies, as well as

by the weakest. Indeed, as this book shows, rights are multiform weapons and are popular not merely for their ostensibly progressive goals but also for their usefulness to all sides in all types of political disputes.

If scholars have recognized rights' instrumental uses, they have mostly seen them as defensive—as shields to protect the vulnerable or as hoists to raise the downtrodden. Michael Ignatieff has claimed that human rights are “universal because they define the universal interests of the powerless, namely, that power be exercised over them in ways that respect their autonomy as agents.”<sup>7</sup> International relations specialists have highlighted the naming and shaming of violators as the primary means of vindicating rights. It is noteworthy, however, if often overlooked, that many basic rights are beloved of the powerful. A good example is property rights, which are staunchly upheld by a wealthy minority against insurgents claiming rights to food, education, work, and more. Oligarchs, who centuries ago had to protect their riches by employing private armies, have added rights as another arrow in the bulging quiver of protections they now use to maintain their status and the status quo.<sup>8</sup> Internationally, a gamut of rights are now invoked by Western states to justify armed interventions into weaker societies. Rationalized by concern for the most vulnerable, such interventions often advance only the interests of the most powerful.

Those scholars who do take note of material and political matters nevertheless have not sufficiently analyzed how rights operate in practice. Critical scholars, following Marx's footsteps, have noted that rights can be tools of the powerful but have seldom explored how they are actually used in politics. Others confine deep analysis of rights to specific historical or organizational settings. Lawyers and law professors, who use rights on a daily basis, demonstrate their instrumental aspects. But much of this scholarship examines rights and law within well-ordered national legal systems, particularly the United States or Canada. In such contexts, it is easy to see how litigation can be utilized as a tool. Judicial decisions can provide definitive judgments in favor of needy claimants. Less analyzed, however, are the ways in which broad political movements use rights outside institutionalized settings—to mobilize domestic support during moments of societal change or to draw international awareness to their cause.<sup>9</sup>

What explains this neglect, even though rights' weaponlike utility has been, as I suggest here, central to their rise? One reason may be that proponents of rights are so imbued with the righteousness of their causes and the assumed universalism of their goals that they are blind to rights' aggressive aspects—or even actively conceal them. The necessary strategic element in political conflict is seldom celebrated, at least not by the winners. Instead,

theirs are triumphant tales of right over wrong. It is only those facing a rights campaign who cry that they are being attacked. Sometimes, of course, their protestations cover up their own controversial goals and repressive policies, which they themselves have draped in rights language (albeit a very different set of rights). Either way, there is much to be learned by analyzing rights as tools rather than being transfixed by their moral content.

It is true that pragmatically oriented analysts such as Ignatieff have noted that rights are “a fighting creed,” one that demands “taking sides, mobilizing constituencies powerful enough to force abusers to stop[, being] partial and political.”<sup>10</sup> The legal historian Samuel Moyn argues that human rights have risen to prominence as the contingent outcome of long-term if indirect competition with other visions of “utopia.”<sup>11</sup> James Peck, Stephen Hopgood, and others have documented the ways in which human rights NGOs have sometimes tethered themselves to the violent foreign policies of powerful states.<sup>12</sup> This political realism is exactly right but limited in scope: it neither conceptualizes nor analyzes the ways in which proponents, both weak and strong, use rights in the pursuit of political goals.

Some, such as Ignatieff, claim that human rights are different from other forms of politics because they are “constrained by moral universals” that “discipline [activists’] partiality—their conviction that one side is right—with an equal commitment to the rights of the other side.”<sup>13</sup> In fact, this is seldom the case. Rivals often portray rights conflicts as zero-sum, with full achievement of their foes’ rights necessarily coming at the expense of their own. In most cases, opponents are so sure of their rectitude that they brook no concession on core values. Those who promote their causes with rights reject their foes’ claims. Rights advocates denounce their opponents, even if they too come outfitted in a suit of rights. Governmental institutions may enforce particular rights, usually based on the influence of one side over those institutions. But such outcomes, variously portrayed as glorious wins, ignominious losses, or necessary but regrettable compromises, are seldom stable because the competing sides keep on fighting to achieve their rights more fully.

Some scholars recognize rights’ political aspects but lament this fact or urge restraint. Richard Thompson Ford’s *Universal Rights Down to Earth* typifies this view. He argues that activists overuse the concept of human rights. Instead, “only the most stark and discrete abuses” should be considered human rights issues, whereas “problems with more diffuse and complex causes are better understood as political questions.”<sup>14</sup> Ford is hardly the first to decry rights’ “proliferation” or “rightsification.” For decades, academics of all political persuasions have pointed to the explosion of “rights

talk” as a problematic development in national and international politics. In this view, the overuse of rights fragments societies, leading to an individualistic dissensus that ignores the common good. Others more sympathetic to the rights project criticize the expansion of new rights beyond a civil and political core. For international human rights lawyers and scholars, the ceaseless propagation of rights waters down their essence. This makes it difficult to build agreement around “fundamental” rights and rally action against the worst violators.<sup>15</sup>

Notwithstanding these critiques, political leaders, alert to rights’ utility, ignore the dons’ warnings. Rights continue their historic march, used by all sides in all manner of conflicts. They are not so much goals as means in these struggles. As Nicola Perugini and Neve Gordon show, for instance, Israel’s Jewish settlers now employ indigenous and property rights to deprive Palestinians of land and ultimately to undermine Palestinian activism, if not Palestinian society itself.<sup>16</sup> In the United States, where the Supreme Court in 2015 affirmed the right to same-sex marriage, Democrats are already using the *Obergefell v. Hodges* decision to drive wedges into a Republican Party torn between conservative religious voters who oppose the decision and party leaders who, with an eye on electoral victories, are more divided. In this move, liberals follow a well-worn path: before the Court’s decision, conservatives had used the ostensible threat that same-sex marriage posed to religious freedom as a means of wedging traditionalist Democrats away from the Democratic Party leadership as it became increasingly supportive of such marriages in the late 2000s.

All these examples of how aggressively rights can be used, how open they are to political manipulation, and how the powerful as well as the weak take advantage of them show that it is high time that scholars broaden their conceptual thinking about rights. I hope to contribute to this task by analyzing the varying ways in which rights are made to operate by political antagonists. This analysis will also illuminate the overwhelming strategic temptation to “rightsify”—to turn social problems into rights claims in contemporary conflicts.

## Definitions and Preliminaries

### PROPONENTS AND FOES

In this book, I focus much of my attention on rights “proponents” or “activists”—individuals, organizations, and states that formulate, raise, or advance rights claims on behalf of themselves or other groups. Activists are usually linked to “movements,” defined broadly by Sidney Tarrow as “collective

challenges, based on common purposes and solidarities, in sustained interaction with . . . opponents.”<sup>17</sup> “Opponents,” “rivals,” or “foes” are individuals, groups, and institutions that fight against the proposed right. They too are part of movements—rival ones with their own set of activists promoting a contrary set of rights. Finally, beyond the main parties to conflict, contention over rights involves third parties, those outside the opposing groups who hold resources that could help shift its outcome. Third parties sometimes become so closely enmeshed with one side to conflict that they can be difficult to separate from it in practice. Nonetheless, I use this tripartite division to examine the various tactics that movements use in rights conflicts.

It should be underlined that these definitions of activists and movements encompass more than just the left-wing groups highlighted in the scholarly literature. My definitions span the political spectrum to include an ideologically diverse set of actors. The same goes for opponents of a rights movement, who are not necessarily conservative groups, as the foes of the right-to-life movement attest. More controversially perhaps, the definitions I use include individuals and groups regardless of their relation to governmental institutions and political power. Political party leaders, government officials, or even states themselves may be considered rights proponents in certain circumstances, even if in others they resist or repress rights claims from opposition activists. Notwithstanding these and other complexities, in the conceptual sections of this book, I distinguish the various conflicting parties and their tactics. In the empirical chapters, I seek to do so as well, although the task of categorizing key actors as proponents or opponents is harder because of the dynamism and contention involved.

## RIGHTS

What do I mean by “rights”? It should be clear already that I define the word more broadly and differently than many who study “human rights.” For one thing, I include within my purview property rights, group rights, and even majority rights that are seldom considered by scholars of human rights. For another, I downplay, although by no means omit, the moral component of rights, for reasons discussed later. Instead, in this book I adopt a definition loosely based on the ideas of the legal philosopher Wesley Hohfeld. I define a “right” as the power of one entity, the rights-holder, to enforce a duty on another, the duty-bearer, whether directly or through some institution such

as a court.<sup>18</sup> The closely related term “rights claim” is a demand for such a right made by a proponent against an opponent through a rhetorical, legal, political, or military campaign.

These definitions of rights and rights claims are expansive. They cover individual human rights vis-à-vis a government, including the familiar “negative” rights—for instance, to free expression and association, which are realized when states leave individuals alone.<sup>19</sup> These definitions also include “positive” rights, which require states or other entities to provide concrete goods to individuals, such as the right to food or the right to water. Finally, the definition includes group rights, whether those of ethnic, racial, religious, or other minorities—or of majorities or even states—to anything from land for their people to protection for their cultures and territories.

Notwithstanding the scope of this definition, a key point for my purposes is that neither rights claims nor rights are ends in themselves. As Paul Sniderman and his coauthors note, the politics of rights involves “not the existence of support for a particular democratic right or freedom, but rather . . . concrete questions of public policy and constitutional politics.”<sup>20</sup> This is a critical point, but it is important to go beyond it: rights and their correlative duties are means of achieving something substantive, whether that be abstract, such as freedom of thought or religion, or material, such as rights to food or shelter. This point is clearest for property rights, which are clearly rights *to* something. Now consider rights that might appear less concrete, such as the right to free expression. In this case, too, the right is inconsequential or at least incomplete without someone saying something—and almost always in the cases that matter most to defining the right, something controversial, hurtful, or offensive to another. Broadly defined rights such as women’s rights mean the right *to* equal treatment, among other things. Next consider the right to privacy, which might appear merely to involve the community’s leaving people alone. Again, however, being left alone permits the individual to gain something real, such as a contraceptive device or an abortion. In the digital world, the right to privacy provides something equally important if abstract—a zone in which others cannot observe the rights-holder. Reciprocally, the right to privacy imposes a duty on others, whether private or public entities, to stand clear. Finally, it is worth noting that rights provide another abstract but critical end: recognition of the rights bearer as an individual or group. Forcing those in power to grant such recognition may be as important to the rights proponent as attaining material aims.

## RIGHTS VERSUS RIGHTS CLAIMS

If rights are means to such ends, the distinction between rights and rights claims recedes in importance. It is true that in legal practice a “vested right” is a right (usually to property) that cannot be taken away. However, in politics rights are seldom if ever irrevocable and self-implementing, automatically providing the entitlement, let alone the objective, they encompass on paper. This is so even for rights embodied in the constitutions of democratic states. In such countries, rights litigation remains a constant feature of larger politico-legal disagreements over shifting conceptions of the substantive goals embodied in particular rights. In these continuing struggles, activists use formal written rights much as they previously voiced rights claims to achieve these goals.

Much political conflict involves the problem of turning a rights claim into a right, usually embodied in a written law. There is no question that the codification of a right is a signal moment. In principle, at least in liberal democracies, it places the enormous power of the state behind enforcement of the duty correlative to the right. But this is never the end of the story. Even after promulgation of rights, rights campaigns continue focusing on three additional matters of critical importance: fighting back against the ostensible new duty-bearer’s continuing efforts at reversal; compelling the duty-bearer to implement the novel right, often through pressure on the state to enforce the duty; and shaping the constantly evolving interpretation of the right’s definition, contours, and limits. Obviously, there are substantial overlaps among these conceptually distinct but inescapably muddy situations. In recent years in many countries, contending groups have debated whether human rights encompass sexual rights, in particular gay and lesbian rights. Where that question is answered affirmatively with new law, further questions are whether sexual rights encompass the right to same-sex marriage, to adoption by same-sex couples, to rights of transgender people, and more. Given such overlaps, I use the terms “rights” and “rights claims” interchangeably in this book to encompass any of the foregoing attempts to achieve and maintain the underlying goals sought by campaigners.<sup>21</sup>

## RIGHTS AND MORALITY

This book’s omission of a moral component from its definition of rights should now be even more glaring. In this, the definition used here differs from any number of others, particularly of human rights, such as Ignatieff’s

quoted earlier, or Micheline Ishay's definition of these rights as "universal," held "equally by everyone . . . simply because they are part of the human species."<sup>22</sup> Similarly absent is any notion that rights are natural or inherent. Rather, my definition follows that of legal realists who argue that the rights available at a particular time and place reflect a transient and conditional balance, pivoting on the political question of who can enforce a duty on another.<sup>23</sup> In this book, I focus on the means by which that fluctuating balance is achieved—in particular, the ways in which political actors use all manner of rights as tools to do so.

Notwithstanding the power of the legal realist perspective, there is a critical moral dimension to rights that legal realists have largely overlooked. Rights gain their tactical usefulness in part from their ability to galvanize constituents and third parties into action, and this in turn hinges on the ethical pull they exert on those audiences. Countless numbers have enlisted in movements and militaries, believing in rights. People have protested, fought, and died in pursuit of rights and, more fundamentally, their substantive goals. Rights claims resonate across national borders and cultural communities. Rights gain acclaim and power because masses of people believe that they and the ends they help realize are good—and right. Yet it is notable that where the rhetoric of rights sounds loudly in a conflict, it resounds on all sides. Adversaries contend over different views of what is right and what their own rights should be. The attraction that one side's claims exercise over its own members leaves the rival movement's constituents cold. We shall see many examples in this book. What this righteous contention shows is that rights' moral dimension is powerful but limited: it may be formidable enough to rouse a particular community, but it is often negligible outside of that community, where other moral visions, rival rights, and contrary goals exercise equal and opposite appeal.

Following this approach, I view such charged terms as "human," "universal," and "inherent" as superfluous to the definition of rights, and even to the definition of human rights, despite being so frequently attached to them. If I am correct, however, this raises the question of the terms' purposes. This will be an important subject for detailed analysis in this book, particularly in chapter 2. The short answer is that these additional terms are rhetorical moves aimed at securing the claimant's underlying goals, most importantly by attracting adherents to the cause through moralistic rights language. Rights' proponents, particularly human rights advocates, may reject such views. After all, they are advocates, and many deeply believe in the goals that these rights help secure. To admit anything different, even if

they saw it, would be to call into question the fundamentality of the rights they most revere and reveal them as mere political preferences. However, their deep engagement in activism aimed at achieving those very rights belies this posture. It shows their actual political realism, even if they strategically cloud this with idealist oratory. Notwithstanding advocates' views, this book adopts a legal realist view of all rights, including those claimed to be human.

In adopting this definition, I similarly reject the idea of an a priori hierarchy of rights. Leaving aside the most trivial of rights claims—ones that have failed to generate major political movements—it is hard to prove that certain rights are by nature more important to human thriving than others. This has not stopped political actors from seeking to erect hierarchies of rights. Governments and scholars, especially in the West, have proclaimed civil and political rights more genuine or fundamental than economic, social, and cultural rights, even while Communist and developing states have sought to reverse the ranking.<sup>24</sup> Proponents take a hierarchical view as well: unsurprisingly, they elevate their preferred right to the superior position. Conflict between the right to life and right to choice suggests how controversial activists' rankings are in practice. For the type of analysis I attempt in this book, however, I eschew such a priori hierarchies and instead focus on ones that actually exist in practice (even if I may personally disagree with them). If one right is more fully vindicated than another—and this kind of differentiation is inevitable—it is primarily a matter of the right's having an influential political movement or power-holder behind it. Sometimes this movement is so successful that its goals have been incorporated into the state itself, through constitutional or legal provisions. In such cases, the movement may become almost invisible, its formerly controversial goals so broadly accepted as to be treated as unassailable common sense. Still, it is important to realize that no matter how thick the accretion of political, legal, and rhetorical support for a right, it remains subject to possible change in the future.

To go further, the substantive goals that rights help realize are not necessarily liberating or progressive. Rather, the ends that rights may achieve are open and indeterminate. Adversaries seeking divergent, even contradictory, goals invoke rights. The strong as well as the weak assert rights claims and seek to impose duties on others. Making a similar point about the broader concept of liberty, John Acton stated that it has “two hundred definitions, and . . . this wealth of interpretation has caused more bloodshed than anything, except theology.”<sup>25</sup> This point applies as well to human rights, al-

though most who promote them would claim that they have a deeper, moral foundation, one that necessarily protects the individual from the collective and the weak from the powerful. That is one potential way in which “human rights” may be implemented. It is by no means the only one, however, and quite possibly not the most common. In today’s world, governments and movements of all political persuasions regularly don the mantle of human rights. Some may proclaim the membership of countries such as Egypt and Saudi Arabia on the UN’s Human Rights Council as a perversion of the concept. Yet such perversions are inherent in the structure and vague terminology of rights themselves. As Perugini and Gordon argue, any political cause can be draped in a rights frame, even those that involve outright domination of one group by another.<sup>26</sup> Certainly, those who prefer “liberal” concepts are free to label themselves as the sole upholders of human rights. But they cannot prevent others from using the same terminology to advance contrary aims—nor from seeking to achieve them through the imposition of a duty on another.

## The Argument

### RIGHTS AS WEAPONS

If the ends that competing rights proponents seek are open, conflicting, and not necessarily liberating, activists of all political persuasions also treat rights as weapons of political conflict. They do so in three broad ways, whether leading insurgent social movements, reformist NGOs, or established states. Before the fray, they mobilize their supporters and sympathizers using righteous *rallying cries* to bolster support. In conflicts, they *deploy* rights against their foes. And those targeted *counter* the blows, using their own rights rhetoric to marshal forces against their attacker. In each of these three aspects, those mounting—or rebuffing—rights use a recurrent set of approaches or repertoires. Table 1.1 and the remainder of this section outline each of these tactics, and later chapters describe them in detail.

Consider rallying cries, the rhetoric that activists use to mobilize their own forces and sympathetic third parties. One such method is to argue that a particular right is *natural* or *human*. Broadening their ambitions, rights proponents proclaim certain rights to be *universal*, applicable everywhere and always. To forestall argument about the rights they promote, they portray them as *apolitical*, as neutral baseline principles that must *remain* immune from the sordid compromises of mere politics. On these foundations, they describe their preferred right as *absolute*, trumping rival interests or

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TABLE 1.1. Rights Tactics in Political Conflicts

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RALLYING CRIES

Proponent mobilizes supporters and third parties by portraying its rights as:

- Human (or natural): Innate or inherent to all
- Universal: Applicable across time, space, and culture
- Absolute: Trumping other interests, concerns, or rights
- Apolitical: Above politics and beyond debate
- Violated: By opponent

DEPLOYMENTS

Proponent uses rights as:

- Camouflage: To hide underlying goals and motives
- Spear: To overturn discrete policy or law
- Dynamite: To undermine or destroy a foe's culture or community
- Blockade: To suppress another subordinate group
- Wedge: To weaken or break a rival coalition

COUNTERS

Opponent uses its own rights as:

- Shield: To protect itself from the proponent
  - Parry: To repulse the proponent's rights claims through:
    - Denial: Rebutting the proponent's claims that its rights are human, universal, apolitical, and absolute
    - Rivalry: Promoting its own rights contrary to the proponent's
    - Reversal: Depicting itself as a victim of the proponent's violations
    - Repudiation: Rejecting seemingly authoritative decisions against itself
- 

community concerns. Today all four of these rhetorical moves are often mistaken for incontrovertible facts. Certainly, activists advertise them as such, and trumpet them from the ramparts. Simultaneously, they depict their rights as *violated*, publicizing or even flaunting their foe's abuses. But too few scholars have examined these pronouncements as tactical devices aimed at mobilization; nor have they critically probed their sources, structures, and effects among aggrieved groups or potential third-party supporters.

Next consider proponents' deployments of rights to weaken their foes and obtain their objectives. Such tactics include the use of rights as *camouflage* to catch foes off-guard, by hiding or legitimating unpalatable ideas; as *spears* to attack specific policies in the hope of poisoning the larger system

over the long run; as *dynamite* to blow up entire cultural or social systems immediately; as *blockades* to thwart rival movements; and as *wedges* or crowbars to fracture or smash opposing coalitions. Nor are these multifold uses of rights mere happenstance. Activists carefully consider the most effective ways to use rights in particular political and social contexts, then put one or more of these tactics into action.

Rights' militant side is revealed not only by the activists who invoke them but also by their foes, who work to counter the initial campaign. When attacked, they use a different set of rights as rhetorical *shields* to defend their current status and privileges. In addition, they fight back. Repressive states facing a rights campaign may deploy paramilitaries, guns, and torture. In other societies, force may be exerted less brutally, with police, courts, and prisons playing key roles in the repression of a movement promoting new rights. Just as important, foes respond to a rights movement with rhetorical *parries* involving a contrary set of rights tactics. *Denial* seeks to puncture the original movement's Olympian pretensions to the naturalness, universality, neutrality, and absolutism of its rights. *Rivalry* raises a contrary set of rights, ones favorable to the original opponent. *Reversal* depicts the foe as a virtuous victim of the original rights movement—and the latter as a persecutor. Finally, there is *repudiation*, the rejection not just of claims but of seemingly authoritative judgments about them that go against the foe, whether these occur in courtrooms, elections, or the streets. Notably, just as with the original movement's rallying cries, these countering methods work to mobilize the opponent's own constituents and potential allies. Parrying tactics will seldom convince the original rights proponent that it is wrong, but that is not their purpose. Rather, like the use of righteous rallying cries to mobilize supporters of a movement, countering devices bolster the foe's defenses and ready its own movement for action.

## A STRATEGIC VIEW OF THE RISE OF RIGHTS

To return to an earlier point, the effects of the righteous rallying cries, deployments, and countering tactics outlined here hinge in part on rights' moral appeal to a particular community. For centuries, masses of people have been moved to political action because they believed they were fighting for the good—even if others disagreed and were motivated by contrary rights to pursue opposite goals. Recognizing the intertwining of rights' strategic and ethical dimensions therefore opens an alternative perspective on their historical rise, highlighting their utility in political struggle in addition

to their moral magnetism. Few historians would dispute rights' dual nature as both ends and means of conflict. But fewer still have explored the latter dimension as itself a key factor in creating what the international lawyer Louis Henkin has called today's "age of rights," or what the political scientist James Ron and his collaborators argue is an increasingly internationalized rights culture. Some, such as the historian Lynn Hunt, argue that rights have risen to prominence through a seemingly unstoppable cultural shift as human empathy for those different from oneself has gradually expanded. Other scholars portray rights as the product of mankind's innate yearning for dignity; all people desire rights and all people will reach for them. International relations specialists highlight the role of enlightened outsiders—NGOs, international organizations, and fellow cosmopolitans—in bringing universal rights to the world's oppressed. Finally, Moyn holds that human rights represent the "last man standing" among a set of ideologies, such as socialism, that have failed to realize human thriving.<sup>27</sup>

I do not directly challenge these historical interpretations. The rise of rights has many causes. Instead, I supplement these accounts by showing that rights have also risen because of their great utility in political conflicts. Although rights are not the only means of making claims, they are highly effective tools to this end. Proponents have therefore found them important to advancing their goals, as I will show by retelling key episodes in the rise of rights from this perspective. The result is a novel way of explaining how we have entered today's "age of rights." This is a story that is primarily strategic. It illuminates how rights arguments have advanced "progress"—but also slowed or prevented it. Of course, strategy is not everything. Contingency and uncertainty swirl around rhetorical conflicts, just as the fog of war enshrouds real battlefields. New issues arise, old ones look different at later times, and foes may turn one's tactics upon oneself. There is only so much that even the most skillful can predict in a context of inevitable reaction from foes, unforeseen actions by third parties, and random occurrences in the world at large. Notwithstanding such limitations, for analysts and activists alike, understanding the strategic uses of rights in politics—both to build a movement and to undermine a foe—is of great importance.

I am not the first to argue that rhetoric, including rights rhetoric, serves as a tool of politics. As E. H. Carr wrote long ago, "The intellectual theories and ethical standards of utopianism, far from being the expression of absolute and a priori principles, are historically conditioned, being both products of circumstances and interests and weapons framed for the furtherance of interests."<sup>28</sup> Daniel Rodgers argues that "keywords" such as "rights" have

been “instruments, rallying cries, tools of persuasion . . . often weapons” in American politics since the founding.<sup>29</sup> In his study of political identity, Joseph Margulies calls the nation’s ideals “verbal weapons in a continual struggle” over their content, and Michael Kammen has documented similar uses of the related concept of liberty.<sup>30</sup> The same can be said overseas: internationally, the use of rights language has proliferated as a “master frame,” proving Tarrow’s point that “contentious language that takes hold successfully in one context tends to diffuse to others.”<sup>31</sup> However, as the outline of this book’s argument should show, I take the analogy between rights and weapons more seriously than others. Conceptually, I provide the first systematic framework for identifying, distinguishing, and understanding the forms that such weaponry can take. Analytically, I propose a set of hypotheses concerning each of these forms, including their most likely users, targets, content, mechanisms, and probabilities of success. Empirically, I provide sustained analyses of varied domestic and international rights conflicts to demonstrate the utility of the concepts and the plausibility of the hypotheses. Nor do I confine myself to the type of rights most frequently analyzed in recent years, human rights, but instead examine the full panoply of rights in a wide variety of contexts.

## **Caveats**

### **RHETORICAL, NOT PHYSICAL, WEAPONS**

Before detailing this argument in later chapters, let me clarify what I am not saying. First, I do not maintain that rights are literally the same as physical weapons or that activists use rights exclusively for cynical or aggressive purposes. Rights claims have resounded through the most significant advances in human history, helping to bring emancipation and freedom to millions. Many proponents have sincerely believed in the slogans they shout. Rights are commonly used for defensive purposes, and the scholarly literature on rights has highlighted such usages.

What I do claim, however, is that rights have an equally important and underanalyzed offensive capacity analogous to certain types of material weapons and aggressive tactics.<sup>32</sup> Because rights are quintessential tools of politics, they can be used by any side to a conflict. As with material weapons, even the mildest application of rights may be perceived by the opponent as belligerent, no matter how much the claimant argues that this is a misperception.<sup>33</sup> This perception will then affect the way in which the foe reacts and the conflict unfolds. Proponents may not always intend to use rights

aggressively, but they can easily turn them this way and often do. Even if normative definitions predominate in scholarly works, hostile uses constantly obtrude in practical politics and legal actions. To identify rights only with the defensive or the good misses much that is intrinsic to their actual usages, even if rights proponents often hide the aggressive element. In short, I seek a realistic understanding of how and why rights are deployed as weapons, as well as the effect of such uses on the movement, its foes, and the larger conflict.

By focusing on the aggressive, I do not reject the fact that rights have other aspects or that they enjoy deep moral resonance among those who voice them. Nor do I hold that conflicts over rights boil down to mere struggles for power. The groups at odds with one another seek power for substantive aims, whether material or abstract. They form not out of individuals' will to power but out of shared identities, principles, or conditions, which in turn are shaped by their interactions with others who are different from themselves. All of this underlines again the need for scholars to analyze rights as offensive weapons that are used to advance a movement's goals and undermine its foe's, albeit weapons that gain much of their power from their strong but limited moral appeal.

This raises the issue of whether we can separate rights as ends from rights as means. Clearly, the two are interwoven. Yet it is possible and useful to disentangle them. Most analysts of rights have done so, but turn their eyes to rights as ends. I take a different tack, highlighting proponents' offensive uses of rights as weapons to achieve all manner of political goals. At the same time, I do not neglect the ends that rights are thought to achieve, but examine how they, and their glorious rhetorical casing, may become corroded when rights are used as means.

#### **OTHER FORMS OF CLAIMS-MAKING**

Second, I do not believe that people make claims exclusively by asserting rights, nor should they. Some make claims by pleading for their needs to be fulfilled, or they appeal to a foe's sense of morality or responsibility. Others demand justice, equity, or fairness. Still others posit the societal utility of their goals, bargaining for them against other groups with different goals. In many conflicts, protagonists make multiple arguments simultaneously. But these other demands hinge on the foe's goodwill, empathy, or judgment. They do not result in enforceable legal obligations. Rights do. We therefore frequently see efforts to turn these other arguments into rights claims and

rights. One example is the quest for economic development. Long seen as a social good, in recent years it has increasingly been framed as a right by a new movement for “rights-based development.” Another is the quest for environmental quality, once justified on ethical or utilitarian grounds but now increasingly portrayed by the environmental movement as a right, even a right of nature. In the end, however, these rights claims amount to little more than an effort to transform a political judgment into a legal mandate and a tool for mass mobilization. Whether or not the turn to rights is a wise strategy in any particular struggle, it is common today in a variety of issues.<sup>34</sup>

Of course, even a right seldom provides certainty of enforcement. In many ways, rights are under constant threat. Foes seek to whittle them away, impose contrary rights, or ignore their duties. Sovereign power, dressed in the garb of majority rights, threatens individual rights, particularly in times portrayed as crises. In liberal democracies with working judicial and enforcement mechanisms, however, rights provide greater assurance that a goal will be realized than do other forms of claims-making.

Rights claims are prominent even in realms far removed from such societies, though they are not the only way that claims are made. Rights talk may have reached its zenith in the United States, but it is now internationally recognized. Such recognition encourages groups around the world, even those without long traditions of rights activism, to broadcast their goals and grievances in the form of rights and their violation. In terms used by scholars of contentious politics, rights are both symbolically resonant and modular.<sup>35</sup> They can be used in vastly different cultural settings with similar effects. Ultimately this entails imposing a duty on another entity, but it also involves using rights as tools to achieve the political goal. Today local activists in global backwaters often request support from powerful Western audiences, asserting that their rights are being violated. For these audiences, rights are an intelligible form of claims-making, even if the pleas emanate from alien locales. Or at least they appear understandable: distant appeals often mask a more complex and contrary reality. Just as important, the workings of power are legitimated by such claims, as we see in examples such as the divine right of kings historically or the supposed rights of the community against those even merely suspected of terrorism or crime today. In most societies, alternative forms of claims-making may offer independent bases of political action, but they must in the end be institutionalized as rights to be enforceable and meaningful. For this reason alone, rights are one of the commonest forms of political rhetoric in the contemporary world.

## POWER, HIERARCHY, AND RIGHTS

Third, my downplaying of rights' moral dimension does not mean that I personally agree that "might makes right" or accept existing hierarchies of rights. Limits on state and corporate power have been major achievements in human history, even if much remains to be done.<sup>36</sup> They have not been reached through some immanent force in rights or the underlying goals they provide but only through enormous, generations-long efforts to harness countervailing power. Ultimately these efforts have been aimed at imposing a duty on some other entity. In this, rights strategies have played key roles both in advancing movements' agendas and in undermining foes' contrary aims.

On the other hand, those foes typically gained and maintained control using analogous rights tactics. Even if one opposes such power structures, the realities must be acknowledged for the sake of accurate analysis and critique. Doing so does not signal acceptance of the status quo as legitimate, inevitable, or unchanging, but rather emphasizes the inherently political basis on which rights exist, always in a form contingent on maintenance of the current constellation of power. For unfortunate confirmation of this view, one need only consult the recent history of torture in America. The George W. Bush administration implemented it secretly after 9/11, the Obama administration ended it but refused to prosecute its perpetrators, and Donald Trump shouted his belief in it, then successfully nominated CIA director Gina Haspel, who supervised waterboarding and allegedly destroyed evidence about doing so. The supposedly fundamental right to bodily integrity—one typically placed at the apex of the philosophers' rights hierarchy—has fallen victim, to one degree or another, to the right of the community to feel secure. Indeed, the U.S. government has justified torture using rights-based language and what Rebecca Sanders has called "plausible legality" in which "officials seek out legal cover to secure immunity and legitimacy for questionable policies."<sup>37</sup>

## SINCERITY AND CYNICISM

From a methodological stance, these points raise the question of whether and how I distinguish between sincere and insincere uses of rights. For the most part, I do not seek to do so and do not believe it is necessary to solve this conundrum. In political conflicts, proponents' motives are mixed: they may believe in their causes, but they are also willing to use their rights in-

strumentally to achieve their ultimate goals. Sincerity and cynicism are tightly interwoven, but separating them is seldom essential for analytic purposes. True, certain aspects of rights' effectiveness may hinge on an advocate's force of expression or her belief in the right's ethical imperative. Conversely, if rights were seen for what they are—as staple tools for achieving contending activists' conflicting moral visions—they might lose some of their inspirational force. Nonetheless, because both the weak and the strong use rights tactics to restrain others and to empower themselves, revealing rights' workings is fruitful and even potentially freeing. In any case, rights will still retain their critical legal power: crystallizing the entitlements and duties of individuals and groups, including the state itself, in the wake of political mobilization and conflict.

### **The Plan of the Book**

To make this argument, I present a conceptual framework of the “rights as weapons” perspective, then apply it to historical and contemporary cases. In chapter 2, I detail the ways in which leaders of political movements raise rights as rallying cries to mobilize their members and third-party sympathizers. Chapter 3 turns to how foes counter these tactics, and the movements themselves, with their own rights tactics aimed at shielding their interests and parrying the blows against them.

In the next five chapters, I turn to the ways in which proponents use rights to advance their side or weaken their foe. Chapter 4 examines rights' use as camouflage to cover ulterior motives, a tactic common to all manner of conflicts and one that often accompanies the other tactics I examine. The next two chapters consider the invocation of rights in simple conflicts pitting two antagonists against one another. Of course, conflicts are never so simple, because third parties are always available on the sidelines for mobilization. For heuristic purposes, however, it is helpful to examine this bare-bones scenario before turning to more complex ones. In chapter 5, I examine the common situation in which a weak actor uses rights against a stronger one. I call this a “spear” tactic because the weaker actor uses only a narrow claim against a single policy, typically because he does not have the power or resources to mount a broader campaign. Chapter 6 considers the opposite situation: the use of rights claims by powerful forces to quash weaker groups. This I call rights as “dynamite,” because the aims of making such claims are broad, immediate, and explosive: the destruction of key aspects of the foe's social or cultural system—or the foe itself.

Chapters 7 and 8 examine rights tactics in more complex and realistic situations that involve not only two main antagonists but also third parties. In chapter 7, I examine “blockade” tactics: the refusal of a movement seeking its rights to join forces with other deprived groups against a powerful common foe. Instead, the movement appeals to the foe, arguing that a grant of its own rights will act as a bulwark against the rise of the other deprived group. In chapter 8, I analyze how activists use rights as “crowbars,” or “wedges,” to break third parties away from the rival coalition and, if possible, have them join its own alliance, weakening the foe and advancing the movement’s goals.

Each of these five chapters follows a similar format. First, I define the weapon-like usage of rights and its purposes. Then I discuss several issues: the political context in which rights are likely to be used in this particular way; the movements most likely to do so; the foes most likely to be targeted; the rights most easily fashioned to this purpose; the mechanism of their deployment; and the likelihood of success. Next, the chapters illustrate each tactic through detailed analysis of one or more conflicts. (Necessarily, these case studies also pay heed to the mobilizing, countering, and camouflaging tactics conceptualized in chapters 2, 3, and 4.) Admittedly, there is never a perfect fit between the ideal typical concepts I develop and their manifestations in actual cases. However, the empirical studies demonstrate the plausibility of the hypotheses I propose and indicate that viewing rights through the weapons analogy advances our understanding of political conflicts.

Some of the cases I examine in the empirical chapters are historical, such as America’s nineteenth-century voting rights movements (chapter 7 on blockade tactics) and twentieth-century civil rights movement (chapter 8 on wedge tactics). Others are contemporary. I examine the use of rights arguments in the nationalist struggles in Northern Ireland and Catalonia (chapter 4 on camouflage tactics), in Italy’s disputes over religious symbols (chapter 5 on spear tactics), and in Africa’s conflicts over LGBT rights, in America’s war in Afghanistan, and in European burqa bans (chapter 6 on dynamite tactics). In addition, I analyze rights claims surrounding the transgender movement (chapter 7 on blockade tactics) and LGBT rights in Israel-Palestine and the United States (chapter 8 on wedge tactics). As support for my argument, I rely on a wide variety of primary and secondary sources, including interviews. (A complete online bibliography, including active citations for unique activist sources, is available at the book’s Princeton University Press website.)

My major criterion in selecting this broad range of cases was to choose those cases that best illuminate the particular tactic under discussion. This approach is particularly useful in books such as this one, which propose new hypotheses and theoretical perspectives. Such “plausibility probes” accentuate key conceptual points and critical empirical processes. In addition, given the importance of many of the cases I examine, the approach suggests that this book’s perspective has broader analytic value.<sup>38</sup> On the other hand, it cannot show how common these tactics are. Other researchers will use other methods to answer that question. However, as the panoply of cases mentioned in this chapter and the others discussed in depth later should suggest, it seems likely that these aggressive tactics are common if largely overlooked. At minimum, this book should attune analysts to this possibility as they examine a wide variety of rights movements worldwide.

## Conclusion

Notwithstanding the moral pull of rights and rights claims—at least for their proponents—rights of all kinds are inescapably political. From this perspective, this book’s central questions are: how do rights claimants achieve their goals, and how do they impose corresponding duties on others? Material factors obviously play a key role. Money, bodies, and arms—these have always been central to struggles for rights, and I do not believe that rights arguments displace them. Instead, I argue that the rhetorical and legal force of rights works powerfully, in mutual interaction with material factors. Threats to rights can and do spark violence. Rights conflicts can lead to real wars. As such, rights and rights claims cannot necessarily be seen as secondary to material factors. The rhetoric of rights, violation, and victim—used by all sides—is itself a potent force. As Stuart Scheingold has urged, rights should be treated “like other political resources: money, numbers, status, and so forth.”<sup>39</sup> Like them, rights are instruments of politics. Although they are not as easy to measure in concrete terms, rights are equally useful in a broader political strategy to achieve a particular goal—in part, as we shall see, because of the moral fervor that a rights claim, and the charge of violations, can unleash among the abused community and its sympathizers. This plays a key role in mobilizing a movement and sympathizers to the cause. Just as important, the sharp edge of rights claims makes them formidable and multifold tools against opponents.

If we supplement conventional perspectives on rights, what is the payoff? Most important, analyzing rights’ unexplored aggressive face directs

attention to rights claims' political aspects, which are frequently obscured or blurred when rights are examined from a moral vantage. Notwithstanding the fact that many campaigns aim to correct egregious and undeniable wrongs, there are numerous others whose claims are less clear-cut. Which should triumph: Reproductive rights or the right to life? The right to property or the right to work? The rights of criminal suspects or the rights of victims? The contention and compromises surrounding these and numerous other issues underline their political aspects, despite their obvious moral content.

In addition, rights campaigns involve continuous and critical strategic decisions, not least about the ways in which claims are made. Yet these decisions are shortchanged in heroic accounts of the subjugated dispatching the oppressor. Examining rights' aggressive face simultaneously directs attention to the resistance raised by this aggressiveness. This perspective also counters teleological analyses of rights campaigns that explicitly or implicitly assume the historical inevitability of a past or future right. In fact, rights as ends remain contingent and vulnerable, even in the most rights-conscious of countries. And a major reason why contestation over their implementation, scope, and meaning continues long after they are added to national constitutions, let alone international conventions, is that rights themselves serve as weapons, not only to advance their proponents' interests but also to wound or even destroy their opponents.