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RIGHTS, RACE, AND RECOGNITION

What is the source of rights? Rights have been grounded in divine agency, human nature, and morally justified claims, and have been used to assess the moral status of legal and customary social practices. The orthodoxy is that some of our rights are a species of unrecognized or natural rights. For example, black slaves in antebellum America were said to have such rights, and this was taken to provide a basis for establishing the immorality of slavery. Derrick Darby exposes the main shortcomings of the orthodox conception of the source of rights and proposes a radical alternative. He draws on the legacy of race and racism in the United States to argue that all rights are products of social recognition. This bold, lucid, and meticulously argued book will inspire readers to rethink the central role assigned to rights in moral, political, and legal theory as well as in everyday evaluative discourse.

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For my teachers

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Preface

The seeds for this project were planted during my time as a graduate student in philosophy at the University of Pittsburgh. One of the best things about life in that storied department was that it not only allowed for philosophical creativity and curiosity—it demanded them. One of my first serious intellectual curiosities was about the relationship between personhood and the law. How was it that things as diverse as human beings, slaves, corporations, animals, trees, ships, works of art, and national symbols like the stars and stripes could come to be legal persons or nonpersons? And how was this legal status different from philosophical conceptions of personhood?

After cutting my teeth on traditional philosophical problems in metaphysics concerning personhood and personal identity during my early years as a graduate student, I decided that John Locke's observation that person was a "forensic" term held part of the solution to the problem that I set for myself. I eventually came to believe that persons were first and foremost bearers of rights. Moreover, I believed that if being a bearer of rights was a matter of being recognized or treated as such—as the law teaches us—then being a person must in the final analysis also be a matter of being recognized or treated as such, or so I was prepared to spend my precious dissertation years arguing until Kurt Baier intervened. He convinced me that this task posed too great a summit to climb for the purposes of writing a dissertation. Alternatively, he proposed that I focus instead on the less daunting (or so he assumed) task of defending the thesis that being a rightholder is a matter of being recognized or treated in a certain way. This seemed sensible enough to me back then; after all, defending this thesis was necessary to acquire the real prize, namely the thesis that personhood was a matter of recognition or a matter of decree, as I was wont to put it back in those days. And so my philosophical quest began in earnest.

Although he never tipped me off, I suspect that Baier knew that my quest would be arduous and would meet with ridicule and skepticism.

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After all, what philosopher in his or her right mind, with a passionate concern for social justice, and a working knowledge of the history of political philosophy, and of race relations in the United States of America, would endeavor to reject the venerable fighting doctrine of natural rights and to argue instead that all rights were a species of unnatural rights? And how could such a philosopher account for the wrongness of slavery and other historical injustices? Admittedly, on several occasions I came very close to giving up on this project as I struggled to carry out a research project that was so contrary to “philosophical” common sense and that aimed to challenge and to propose a conceptual alternative to a long-standing philosophical outlook that many people believed to be unimpeachable. But I am glad that I persevered. It has been a wonderful intellectual quest and the results have been bountiful. The seeds of this project would not have had the chance to bloom without a skillful dissertation director and thesis committee. I simply cannot imagine having had a better thesis director than Joseph Camp, a philosopher’s philosopher. Nor could I have worked with anyone better than John McDowell at telling you exactly what you believed, why you believed it, and why what you believed was wrong-headed.

Rights, Race, and Recognition is a comprehensive and systematic philosophical articulation and novel defense of a theory of rights that I am now quite convinced of. Parts of the theory have been developed and refined in peer-reviewed journal articles for almost a decade after graduate school. Portions of this book have appeared previously in the *Southern Journal of Philosophy*, *Social Theory and Practice*, the *Canadian Journal of Philosophy*, *Res Publica*, the *Journal of Social Philosophy*, and *Law, Culture, and the Humanities*. And I am grateful to the publishers for permission to draw from these articles. During this period I have taught at several research institutions: Northwestern University, Texas A & M University, and the University of Kansas. I am grateful for the good colleagues I have had in each of these places and for the ways in which they have enriched and challenged my thinking about the nature and value of rights. I am grateful for the many wonderful students I have taught over the years who were gracious enough to allow me to test my views on them and who offered me thoughtful criticism. I am also grateful for the support of the Friends of the Hall Center for the Humanities at the University of Kansas for their generous book subvention award.

To my dismay I cannot name all of the friends and colleagues who have entertained my ideas and provided useful feedback and inspiration over the years. Nor can I name everyone who has provided me with emotional

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and other kinds of support, encouragement, and all kinds of advice over the years. But I am deeply grateful to all of them with special thanks to Linda Martín Alcoff, James A. Anderson, Timothy Boyce, Bernard Boxill, Carl Preston Brown, Stephen Daniel, Ernest Darby, Daniel Dennett, Douglas Dorsey, my brother Johnny Edwards, Mitchell Green, Michael Hanchard, William Johnson, Ron Kennedy, John McDermott, Howard McGary, Lucius Outlaw, Gregory Fernando Pappas, Ronald Ross, Jerry Wallace, and Mark Wallace. There are a few people who have had a profound impact on my thinking about rights—largely through frequent and often spirited philosophical exchanges over the years—whom I must single out for special thanks: John Deigh, Thomas McCarthy, Charles Mills, and Robert Gooding-Williams. And there are a few people who have set the high standard for philosophical work on rights that I have aspired to emulate. While I leave it to them to judge how successful I have been, I thank Loren Lomasky, Rex Martin, and Carl Wellman for setting the standard so high. I am grateful to numerous audiences who have entertained my ideas in the United States and abroad, particularly in Brazil, France, Greece, Italy, Portugal, South Africa, and the United Kingdom, where parts of this project have been presented on various occasions over the years. I also owe special thanks to the generous referees for Cambridge University Press who strongly supported the publication of this book, and to my editor, Hilary Gaskin, for embracing the project and giving it such a fine home.

One of my greatest debts of gratitude is to my brother, Tommie Shelby. His philosophical acuity, calm and steady spirit, compassion, and wise counsel have helped sustain me as a professional philosopher, as a man, as a husband, and as a father. My greatest debt is to my wife, Angela, for sharing me with philosophy for nearly two decades. I can never repay you for your sacrifices but hope that the goodness of the good times have outweighed the many trials and tribulations. You are forever, come what may, my sunshine.

My mother often reminds me that from when I was very young, she knew that I was attracted to the life of the mind. She was my very first teacher and I have been blessed with wonderful teachers during my early childhood and secondary education in the New York City public school system as I grew up in Queensbridge public housing projects. Their concern, encouragement, and ability to inspire confidence have been essential to my academic success. My years as a Colgate University undergraduate presented me with more wonderful teachers. I am grateful to Manning Marable and Josiah Young for introducing me to the study of

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African and African American history and the contribution of people of color to the world of ideas. I am especially grateful to Anne Ashbaugh for letting me know even before I did that I would be a philosophy major. And I am deeply grateful to Jerome Balmuth who insisted that I abandon my aspiration to become a Supreme Court Justice one day, and instead attend graduate school in philosophy and become a professional philosopher (a more lofty plan of life, I am sure he thought). As a small token of my appreciation for their profound impact on me, I dedicate this book to all of my teachers, with abiding love and admiration.