Rights and Human Rights

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Doubts about rights

The concept of rights, as has often been noted, became prominent at a particular time in our history. It is associated especially with seventeenth and eighteenth century political ideas about the rights of individuals versus those of governments, and with such notable events as the American Declaration of Independence. It was at this time, too, that debates about rights of property and liberty became prominent. What was the role of this concept in earlier times? Has it always existed? Does it have a permanent place in our moral thinking? According to H.L.A. Hart,

> the concept of a right, legal or moral, is not to be found in the work of the Greek philosophers, and certainly there is no noun or noun phrase in Plato or Aristotle which is the equivalent of our expression 'a right', as distinct from 'right action' or 'the right thing to do'.[1]

A bolder denial has been made by Alasdair MacIntyre, according to whom

> there is no expression in any ancient or medieval language correctly translated by our expression 'a right' until near the close of the Middle Ages: the concept lacks any means of expression in Hebrew, Greek, Latin or Arabic, classic or medieval, before about 1400.[2]

These claims have not gone unchallenged, however. Thus it has been argued that rights play a prominent and essential role in Aristotle's *Politics*.[3] It is in any case hard to see how the concept of a right could be lacking from human relations. The creation and recognition of rights is no more avoidable than the making of promises, for rights are created in the very act of making a promise. The obligation of a promise 'is the very same moral relation,

[1] *Essays on Bentham* (OUP 1982), 163.
[2] *After Virtue*, (Notre Dame 1981), 67.
[3] Fred D. Miller, Jr., *Nature, Justice and Rights in Aristotle's Politics* (Oxford 1995), ch. 4.

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viewed from the point of view of the promiser, as the *right* which the promisee has with respect to the promiser.'[4] If A promises X to B, then he gives B a right to receive X, and to complain if he does not receive X; and perhaps, as the case may be, demand compensation. This does not depend on the existence of particular words or phrases ('a right', 'I promise') in our language, or their equivalents in other languages. What matters is the recognition of A's complaint or resentment against B as reasonable, on the basis of what had been said in a suitable kind of situation.[5] Thus it can properly be said that Achilles was exercising a right—in this a right to keep what belonged to him according to accepted rules of warfare ... and objecting to the those who tried to prevent him from exercising his right.

Scepticism about rights has sometimes been concerned with the role of rights rather than with their existence. Thus it has been argued that the term 'rights' is not, like 'right', 'wrong' and 'ought', a fundamental feature of moral discourse. According to R.M. Hare, the word 'rights' needs to be 'translated' into those other words before it 'can be a dependable prop for moral arguments'; and 'till that happy day comes, we shall get the issues in better focus if we discuss them directly in terms of what we ought or ought not to do, or what it would be right or wrong to do'. (He proceeded to suggest how this might be done, so that talk about rights could be seen to amount to nothing more than talk about right and wrong.)[6]

Now it is true that there are logical entailments from 'rights' to the words favoured by Hare. Thus if someone has a right to to be given X, then he *ought* to be given X and it would be *wrong* not to do so; etc. But it does not follow that the meaning of 'rights' can be reduced to the meanings of those other words. For to speak of 'rights' is to refer to a special kind of moral situation, in which a special kind of moral dialectic is appropriate, including such utterances as 'I have a right to ...', 'You have no right to ...' and 'What gives you the right to ...?'.

The importance of rights has sometimes been discounted by advocates of utilitarianism who see here a rivalry between two

[4] A.I. Melden, *Rights and Persons* (Blackwell 1977),40 (italics added).

[5] The importance, to the concept of rights, of grounds for resentment, was noted by S.I. Benn. See his 'Human rights—for whom and for what?' in E. Kamenka (ed.), *Human Rights* (Arnold 1978); also his *Theory of Freedom* (CUP 1988), ch. 13.

[6] 'Abortion and the Golden Rule' in James Rachels (ed.), *Moral Problems* (Harper & Row 1979),153, 154.

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fundamental principles of ethics; but there is no need to regard either rights or utilitarian considerations as fundamental. 'The greatest good of the greatest number' is a principle that has an undeniable place in moral reasoning, but a right may be decisive against that principle, and in such cases 'rights are trumps'[7]. In other, however, they are not. Take the redistribution of wealth. In taking my money and spending it on other people, the government overrules my right of property; but this may be defensible on the utilitarian ground that those people are in great need of help. It might be said that, this being so, the government has *a right* to take my money. But here the term 'a right' would be used in a 'diluted' sense: it would mean no more than that *it is right* for the government to do what it is doing.

It might still be said that in taking such measures a legitimate government would be exercising *its right* to make such choices. But this is not a relevant kind of right. The government's right is a right to make choices, but this does not determine *what* they ought to choose; so that if, for example, they choose to redistribute wealth, they would be expected to have suitable moral reasons for making that choice (and thereby overriding a right of property). (Such reasons might be put forward when presenting their intentions (or justifying their actions) to the public—especially to people whose property rights are affected.) Another example is the right of liberty, which may be appropriately overridden, in many cases, on utilitarian grounds.[8]

The roots of rights

How does the concept of rights come about? Human beings are vulnerable. They can be harmed and hurt, both physically and mentally; their plans can be frustrated and their reasonable hopes and expectations disappointed. To these vicissitudes there are reasonable reactions, both active and emotional. One may take action to improve a situation or prevent it from arising; and one

[7] Ronald Dworkin, *Taking Rights Seriously* (Duckworth 1978).

[8] According to Dworkin, 'the prospect of utilitarian gains cannot justify preventing a man from doing what he wants to do' (op. cit., 193)—in this case, exercising his right of free speech. But it is not clear why he thinks this. (In another passage he concedes that the prevention could be justified in order to 'obtain a clear and public benefit', but not on 'minimal grounds' (193–4).)

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may feel emotions such as disappointment, regret and grief in reponse to what has happened. Now these reactions are subject to logical conditions and assessment: the actions and feelings should be appropriate to what has happened. A feeling of regret, for instance, requires a suitable object: there must be something *regrettable* to which the feeling is directed. Failing this, an expression of regret would not be intelligible. And if this condition is satisfied, there remains a question of assessment. Someone who has experienced a trivial loss may be criticized for grieving over it to an excessive extent; while another person might be criticized for 'a lack of feeling' if he dismisses a serious loss too lightly. And similarly with action: a person who goes to excessive lengths to counteract his loss or to protect himself against future losses or harms may be criticised for that reason. In a wide range of cases, however, these criticisms would not be appropriate: in such cases a person's reactions, whether of feeling or of action, are clearly reasonable in the light of what has happened or might happen to him.

The points I have made are applicable to various kinds of harm and disappointment: sickness and bereavement, the vagaries of the weather, and so on. But when we consider harms that are due to human agency, new kinds of reactions, both emotional and active, enter the field, and with these come new ramifications in the assessment of reasonableness. If some person has harmed or hurt me or frustrated my desires, then I may reasonably feel regret or disappointment; but I may also feel *resentful* against that person for what he has done and, where appropriate, take action to defend myself against him.[9]

Resentment, like the other emotions I have mentioned, may be unreasonable or disproportionate, but in many cases it is neither of these; and the same is true of self-defence. There are important differences, however, between resentment and the other emotions; and this again is a matter of logic. It makes no sense to speak of resentment against the weather for letting me down or against the microbes who make me ill. Resentment belongs to a language-game which includes the exchange of justifying reasons between those who suffer harm and those who inflict it. If I express resentment against you, you may ask for my reason. What do I have against you? And when you know my reason, a number of defences may be

[9] In my use of 'resentment' in the following discussion I have been influenced by P.F. Strawson's well-known 'Freedom and Resentment' (*Freedom and Resentment and Other Essays*, Methuen 1974).

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open to you. You might argue that your behaviour was justified for such and such reasons; or you might produce an excuse for what you did (you had no choice; you were not aware that your action would harm me). And these defences might, in their turn, be subject to critical discussion. Or again, you might try to defuse my resentment by offering an apology or compensation. I, on the other hand, would be justified in complaining to you, and about you, if such responses were inadequate or not available. And in so complaining I would be expressing *a right* not to be treated as you treated me. A person has a right not to be treated in ways that give rise to reasonable resentment; and he has a *justified grievance* against those responsible, unless they can produce a suitable defence or apology.

Here lies the difference between blaming another person and 'blaming' the weather. If I know that you, knowingly, are the cause of my pain, frustration or disappointment, then I may reasonably resent what you have done, and I would have, prima facie, a justified grievance against you; and you, if you are rational, would have to recognize that this is so. How you would in fact defend your behaviour, or whether you would bother to defend it at all—this depends on what kind of person you are and other circumstances. But however this may be, you could not deny that I have a justified grievance against you if you know that I am a being with desires and feelings who believes that you have harmed me when you could have refrained from doing so, etc.

I have traced the existence of rights to the natural reactions of beings who (a) can suffer harm, frustration and disappointment, and (b) belong to a community of which the members can feel resentment against, and demand justification from, one another. These feelings and demands may be justified; and if they are, then a right has been infringed. Now it might be suspected, especially by those who uphold the is/ought principle, that there must be a circularity here. If my grievance against you is justified, must this not be *because* you have infringed a right of mine? But if this is so, then the existence of rights would not have been explained by my account. The account would come (putting it simply) to this: X has a right not be harmed because he would have a justified grievance against anyone who harmed him; and his grievance would be justified because such harming would be an infringement of his right.

This is not, however, a correct rendering of the account I have given. According to that account, my grievance against you would be justified *because you harmed me* (and did so without justification).

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It is true that in acting as you did you would have infringed my right against being harmed, but this right is nothing other than the right to feel aggrieved and behave accordingly. My grievance would be reasonable and justified in the same way as that in which one's feelings about natural harms can be reasonable and justified. It is not as if the use of 'rights' imported a normativity that would not be there without it: the relevant normativity is already present in the use of 'reasonable' and 'justified', and these concepts are essential to an understanding of agency and resentment.

Rights and language

I have claimed that rights belong to a language-game which includes the exchange of reasons. Does this mean that the possession of language is a necessary condition of having rights? If so, are animals excluded? The fact is that the term 'rights' has been applied to animals, and the expression 'animal rights' has become established. But when the term is used in this way, it does not have its distinct meaning, and what is said in this context can just as well be said in terms of 'right' and 'wrong', etc.—as when we say that it is wrong to inflict gratuitous pain on animals and that we ought to treat them in appropriate ways. It is only when we attribute rights to speakers of a language that the term has its distinct meaning. Rights, it has been pointed out, can be 'claimed, demanded, asserted, insisted on, secured, waived, or surrendered';[10] they can also be disputed and bestowed; but these things cannot be done by non-linguistic animals.

Rights are ascribable to beings who can feel resentment; and the ascription of resentment is dependent on certain logical conditions. These include the awareness of harm done by a person who could have chosen to act differently, and who is himself aware of other people as responsible agents who can engage in exchanges of justifying reasons. But there is no purchase for these notions in the case of animals. There is no reasoning, moral or otherwise, among animals or between animals and human beings. Real animals, unlike those imagined in *Animal Farm*, cannot participate in the language-game of rights; and to say of animals that they have a right to such and such treatment is no more than to say that we ought to treat them in that way. The introduction of 'rights' into this context may seem to strengthen our reasons for treating them

[10] Alan R. White, *Rights* (OUP 1984), 90.

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decently, but they do not need to be supported in that way. As Hume observed, 'we should be bound by the laws of humanity to give gentle usage to inferior beings', though we are not 'under any restraint of justice with regard to them, nor could they possess any right or property'.[11]

The members of a human society are bound together by a network of rights and duties, but this cannot be said about animals. If one blackbird enters the territory of another, is that an infringement of the latter's rights? Does a cat have a right to kill birds, or do birds have rights against cats? Can the owners of animals have rights against them?

According to a recent writer, 'it seems unsatisfactory to allow the morally significant question of who can possess rights to be determined by conventions of language'.[12] It is, however, a mistake to oppose 'morally significant questions' with 'conventions of language' in this way. The possession of language is a *necessary condition* for various moral ascriptions, and this is not a matter of convention. The rights and duties of promising, for example, can be ascribed only to beings who can perform and understand the speech-acts of promising; and moral responsibility, in the sense of being held to account, can be ascribed only to beings who can *give* an account of what they are doing and why they are doing it. What is at issue here is not a 'convention of language', but the *possession* of language, and language of a suitable kind. Thus the denial of animal rights is not based on a mere convention.

In the following discussion I try to show how various kinds of rights can be accounted for as inevitable features of human life and language. The rights concerned will be treated under two main divisions: benefit rights, and rights of non-interference.[13]

[11] *Enquiry concerning the Principles of Morals*, ed. Selby Bigge, 190. The passage is quoted by Melden, op. cit. 17.

[12] Peter Jones, *Rights* (Macmillan 1994), 68.

[13] My classification of rights is not meant to be comprehensive and neither is it in competition with the comprehensive and much-debated classification of rights by W.N. Hohfeld in his *Fundamental Legal Conceptions* (London, 1919). Hohfeld's system was inspired largely by juristic considerations, and I have not found it useful for my purpose. My main purpose is to show (a) how kinds of rights, and the concept of rights in general, originate, and (b) to compare rights with other kinds of moral reasons.

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Benefit rights

By 'benefit rights' I mean rights to receive goods or advantages of some kind; and the relevant grievance in this case is due to the disappointment of reasonable expectations. This can come about in a number of ways.

Speech-act rights

A right to receive a benefit can be created by an act of promising. By promising Mary to provide benefit B, John leads her to expect to receive B from him; and she will have, prima facie, a justified grievance against John if he does not provide B. But what is meant here by 'expect'? The sense of 'expect' in this case is both predictive and normative. What John conveys to Mary is not merely that she is *likely* to receive B from him, but that she will be entitled to complain if she does not. She can expect *that* John will provide B and also expect it *of* him to do so; and to justify his behaviour if he does not.

A similar case is that of giving permission. By saying 'You may use my bicycle whenever you like', I give you the right to use my bicycle whenever you like. In that case you may reasonably expect to be able to use it at any time, but you will also be entitled to complain if I prevent you from doing so.

In some cases the two kinds of expectation (predictive and normative) come apart. A teacher tells his class: 'I expect you all to behave well this afternoon.' (Perhaps they have heard that an inspector will be coming.) Does the teacher think that they will really behave well? Not necessarily: he may have little confidence that they will. If the class fails to behave as desired, he may say he is disappointed. Yet he and the children would know that this is not really true. When the teacher said that he expected them to behave well, he was using 'expect' in the sense of a moral demand. He was warning the children that he would have a right to rebuke them if they did not behave 'as expected'.

In most cases, however, both senses of 'expect' are relevant. If you promise to do X for me, then (in the absence of special reasons to the contrary) I may properly expect you, in the predictive as well as the moral sense, to do X for me. If this were not so—if people did not generally keep their promises—then the practice of giving promises could not exist. The two senses of 'expect' also occur in the case of 'customary' rights. Thus if I have long been

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accustomed to enjoying certain advantages or benefits from someone, I might reasonably expect that they would in fact continue; but I might also, in suitable cases, come to expect them as matters of right and complain accordingly if they were discontinued.

Another 'speech-act' source of rights is the enactment of laws, though in this case printing is likely to take the place of speech. Statements of the form 'It is hereby enacted ...', when published by a legal authority, can lead citizens to expect certain benefits and the citizens concerned can reasonably complain if the benefits are not provided. An important difference, however, between this case and that of promising, is that whereas latter is an inevitable feature of human life, this is not so with the enactment of laws. What both cases have in common, on the other hand, is that the relevant expectations and consequent rights are *deliberately created* by those who make the promise or introduce the law.

In contrast to the above, there are rights that are not created. These include customary rights and relationship rights, as well as rights of non-interference.

Customary rights

In any human society there are bound to be regularities of interaction between the members. These lead to expectations of 'what is done' and 'what is not done', so that someone who fails to behave as may reasonably expected may be guilty of causing a disappointment and hence the object of a reasonable grievance.[14] Suppose that in a particular society neighbours are expected to make a certain donation whenever someone gets married. The practice may have begun with a spontaneous action from someone or some group, without being regarded as a duty. Gradually, however, it is copied by others and finally hardens into a duty, with a corresponding right on the part of the married people. In such cases a non-recipient might reasonably resent the behaviour of a defaulting neighbour, claiming that he was entitled to the donation; and this might be confirmed by other members of the community. In such contexts we may use such expressions as 'what is done', 'what we do' and 'it isn't done', and these again can have both a

[14] The importance of 'Established Practices' is discussed by T.M. Scanlon in 'Promises and Practices', *Philosophy and Public Affairs, 19*, 1990, 199-226.

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normative and an empirical meaning. It would be a matter of empirical fact that people usually behave in the relevant ways, but they would also be under an obligation to do so.

Another example of 'customary' rights is that of rights of way. A typical case is that of people who have become accustomed over many years to using a route over land belonging to others, without complaint from the latter; and in due course they are deemed to have a right of way which could properly be set against the owner's right if he now tried to prevent them. (In societies with a suitable legal system such rights of way may be confirmed by law in accordance with prescribed periods of usage and other conditions.) Here again it is the coming into existence of reasonable expectations, and the harm done by frustrating them, that accounts for the right concerned. On the other hand, if such a right has long been unexercised, then the expectation of being able to do so may have faded and a right that was based on it may have withered away. A custom that is 'more honoured in the breach than in the observance' ceases to be a custom, and the same fate can overtake customary rights.

A related case is that of absentee landlords. Suppose the owner of a property has long been absent from it and others have occupied it for a long time. In that case we may recognize that the latter have at least some right to the property, which may need to be balanced against that of the original owner. This also happens in the case of territorial disputes between whole populations, where a conflict of rights has often led to fighting.

Relationship rights

Whereas the practices that are behind customary rights vary greatly with different societies, relationship rights are based to a large extent on universal features of human nature. Such are the relations that exist between parents and children. There is natural tendency for parents to give preferential treatment to their children, and vice versa, and this makes it reasonable to expect such treatment, and to complain if it is not given. There are, in other words, *rights* to preferential treatment between parents and children; and there are similar relationships among siblings or friends. These rights and expectations also vary according to custom to some extent, but the variation is limited by the natural concern and affection that people feel for those close to them. Given this fact of human nature, we

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have a right to expect preferential treatment (including affection itself) from people close to us, and to complain if this is not given.

A similar point may be made about neighbours and colleagues, and members of one's community, for it is natural both to have greater concern for such people than for others, and to expect greater concern from them than from others. These expectations, again, give rise to reciprocal rights, so that if they are disappointed, one can properly complain that one's right to special consideration has been disregarded by the people concerned.

Rights of non-interference

A benefit right, such as those described above, involves a relation with three terms: a claimant to whom the benefit is due, the party who is obliged to provide it, and the justification for the claim. The latter is required in answer to the questions 'What gives you the right to receive ...?' and 'What gives you the right to expect ...?'—in reply to which the claimant might refer to a promise he had been given, a special relationship, an established custom, etc. And if these replies are adequate, then the disappointed claimant may have a justified grievance against the party who fails to provide the benefit.

This is not so with rights of non-interference. In this case the harm is done, and the justified grievance incurred, by acting and not by failing to act (or failing to provide what is due). And here justification is demanded, not from right-holders, but from those accused of infringing their rights. A typical complaint here is 'You have no right to do that to me'. Such rights may be described, accordingly, as 'no-right' rights.[15]

It has been argued[16] that the distinction between negative rights and benefit (or 'positive') rights is untenable, because rights of the first kind may entail rights of the second. Thus my right to be free from interference may entail a positive right to be protected by the police against interference. It does not follow from this, however, that the distinction between negative and positive rights is untenable. A way of drawing it in the present example is by reference to logical priority: it is *because* I have a right to be free

[15] Cf. K.R. Minogue, 'Natural Rights', in E. Kamenka (ed.), *Human Rights* (Arnold 1978), 19. The expression 'no-right' also occurs in Hohfeld's classification, loc. cit., but not with the same meaning.

[16] Henry Shue, *Basic Rights* (Princeton 1980).

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from harm or interference from others that I have a right to protection by the police, and not conversely. (The first entails the second, and not conversely.)[17]

There is also a disparity between non-interference and benefit rights with respect to duties. If I have a right to benefit B, then someone, or some agency, has a duty to provide B to me. It is sometimes thought that there is a similar correlation of negative rights with negative duties. Thus it is said that we all have a duty not to interfere with the liberty of others, not to violate their property, not to torture them or kill them, etc.[18] On this view, the fact that I have a right to my belongings entails that all other persons have a *duty* not to take them from me, and likewise in the case of other rights of non-interference. It follows that each of us has all the corresponding duties towards all the others. But this is a distortion of the concept of duty. A duty is a reason to act. Having promised you to do X, I have a duty—a reason—to do X; so that if I am asked why I am doing X, I can reply by reference to that duty. But there is no counterpart to this in the case of rights of non-interference. Suppose I am walking down a busy street and do not punch anyone on the nose. Would this be a case of fulfilling a duty? Or should we say that I abstain from punching anyone on the nose because I have a duty to abstain? But in this case there is neither acting nor abstaining. Asked for what reason I do not punch anyone on the nose, I might reply 'Why should I? What do you mean?' It is true that that question might be in order if I had a reason *for* punching someone. But even if this were so, the straightforward answer would not be that I have a duty not to do it, but that I have *no right* to do it.[19]

This is not to deny that a duty can consist in refraining or abstaining from some action, as opposed to acting. I have, for

[17] For a different way of defending the distinction, see Onora O'Neill, *Towards Justice and Virtue* (CUP 1996), 131.

[18] Here I disagree with O'Neill's remarks about rights and obligations. According to her, 'any right must be matched by some corresponding obligation ... Unless obligation-bearers can be identified by right-holders, claims to have rights amount only to rhetoric ... This condition can be met for *universal rights* when they are matched by corresponding universal obligations that are allocated to all others ... Liberty rights provide a paradigm of universal rights.' (*op.cit*, 129).

[19] 'What corresponds to 'I have a right to do X' is not 'You have duty to let me do X' but 'You have no right to stop me from doing X', where the emphasis in the sentence may fall on on the 'you' or on the 'right' according to the point that is being made ...' (Minogue, op. cit., 19).

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example, a duty to my neighbours to abstain from making too much noise; and in this case their negative right to be left in peace entails a negative duty on my part. But this is a relation between specific people and not people in general—as is the case with rights of non-interference that are of universal scope.

Non-interference rights, I said, are characterised by such challenges as 'You have no right to do that' and 'What right have (or had you) you to interfere?', and it might be assumed that these call on the respondent to invoke *a right* to defend his interference. But this is not always so. Suppose I discover that a man entered my garden without my permission and I put it to him: 'What right did you have to enter my garden without my permission?' The answer might be that he was a police officer in pursuit of a criminal. In this case he had a right in virtue of his office to enter my garden, and this would be a suitable justification for the trespass. But what if the man was a passer-by who thought my house was on fire and wondered whether to call the fire-brigade? He too would have a satisfactory reply to the challenge 'What right did you have?'. But would he be invoking a right? It is true that the expression 'a right' would not be out of place here: we might say that he had a right to act as he did. In this case, however, the expression 'a right' would not have its distinct meaning: we would be saying no more than that it *was right* (or not wrong) for him to act as he did.

Correlated with rights of non-interference is *the right of self-defence*. This is perhaps most commonly invoked in the case of physical attack; but it is applicable to all kinds of interference, or threats of interference, with a person or his interests. In such cases there is a suitable ground for resentment, and if this cannot be countered by sufficient reasons for the interference, the victim has a right to defend himself against it. The right of self-defence is a right to defend one's rights.

The right of property

Let us now consider some particular rights of non-interference. We can harm a person or his reasonable expectations by taking away or interfering with his property, and such a person may have a justified grievance against us. But how deeply is the concept of property, and the right it entails, rooted in the human form of life? Is property itself an institution that needs justification? Property, it has been argued, is the source of much evil. It divides people from one another, produces envy and leads to warfare. Should not the

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earth and fruits thereof be there for all to enjoy? Would not human life be happier if land and goods were shared by all?

The concept of property, of 'mine and thine', is expressed in our language by genitives and possessive pronouns, and moral principles are implied when we apply these words to objects. In describing this spade as 'mine' and that one as 'yours', I imply that I have certain rights with regard to this spade and acknowledging that you have similar rights with regard to that one; so that, in the absence of other moral considerations, it would be wrong for either of the spades to be taken from us without our consent. But what is the basis of these ideas? Is property an inevitable feature of human life, or is it no more than a matter of convention?

Hume, in his discussion of property, spoke of a 'stability of possessions', whose origin he ascribed to a convention. We live, he said, in a world of competition for scarce resources, and our selfish nature leads us to get whatever we can for ourselves. Yet advantages are to be gained for everyone if there is stability of possessions. But how is this to be achieved in spite of our selfish tendency? 'This can be done after no other manner than by a convention entered into by all the members of the society to bestow stability on the possession of ... goods and leave everyone in the peaceable enjoyment of what he may acquire ...'[20]

In a later passage he spoke of this as a 'voluntary convention and artifice of men' (T 533), as if someone, or some group, hit on the idea that stability of possessions would be to the advantage of all, and then got others to agree to bring this about. But how is this supposed to have happened? He illustrated his idea as follows:

I observe that it will be for my interest to leave another in the possession of his goods, *provided* he will act in the same manner with regard to me. He is sensible of a like interest in the regulation of his conduct. When this common sense of interest is mutually expressed, and is known to both, it produces a suitable resolution and behaviour.

This, he said, 'may properly enough be called a convention or agreement betwixt us ...' (T 490). Now it is clear that two people may arrive at an agreement about respecting each other's possessions if this is in their mutual interest. But this can only happen if the idea of possessions (of 'his goods' and 'my goods') is already in being; it cannot serve to bring that idea, and the presupposed stability of possessions, into being—either in that

[20] *Treatise* (ed. Selby-Bigge), 'Of the origin of justice and property', 490.

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instance or in general.[21] In any case, respect for property is not contingent on such bargains. I do not respect your possessions *provided* that you will respect mine, and your right to keep what what you have is not contingent on your undertaking to do the same for others.[22]

Hume thought that there must have been an originating event of the kind he described, and we might wonder where and when he supposed it to have taken place. But even if there had been such an event, this would still leave the question why people, such as ourselves, who did not take part in it, should be bound by 'a convention that was entered into' by those who did take part.

Another thinker with ideas about the 'origin of civil society', including property, was Rousseau:

> The first man who, having enclosed a piece of ground, bethought himself of saying 'This is mine', and found people simple enough to believe him, was the real founder of civil society. By how many crimes, wars [etc. etc.] might not any one have saved mankind, by pulling up the stakes ... and crying to his fellows: 'Beware of listening to this impostor ...' (J.J. Rousseau, *The Social Contract and Discourses* (transl. G.D.H. Cole), Dent 1973, 76).

Now it is true that people might be mistaken, and perhaps simple-minded, in believing a man who declared a piece of ground to be his; but then again they might not. In either case, however, they must already have the concept of property: they must know the difference between cases in which 'This is mine' is true and cases in which it is not; and this knowledge cannot have been created by the action of a 'first man' such as that described by Rousseau.

Hume also, however, thought of the stability of possessions as coming about in a spontaneous way, as when he tells us that it 'arises gradually, and acquires force by a slow progression' and without any explicit agreement (490); and this may seem a more realistic suggestion than those quoted earlier. But is the stability of

[21] Hume also says that the 'convention or agreement betwixt us' would come about '... without the interposition of a promise'. But such an agreement would have to be *understood* as a promise. If each of us merely expressed an interest in not having his possessions disturbed by the other, this would not yet amount to an agreement.

[22] A similar objection is made by Melden (op. cit. 94–5) to Rawls's account of promising.

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possessions a matter of convention at all? A convention is a state of affairs that might have been different or absent. Is this true of the stability of possession?[23] Stability is part of the very concept of possession. An object would not be a possession if it could be taken or used by anyone at will. Let us consider, then, how it comes about that there are possessions. An individual or a community is likely to occupy a particular territory and to do so with some degree of permanence. This is because it is more convenient, on the whole, to stay where one is unless there are special reasons moving away. Given such an occupation, we may say that they are *in possession* of that territory. But is this the same as to say that it belongs to them? We might say of a group of squatters that they are in possession of a property, without implying that it belongs to them. In this case, however, there would be someone who already owns the property. But if there is no such owner, what reason could there be for denying that it belongs to those who occupy it? It would be reasonable for them to treat it as belonging to them, and to regard attempts by others to dispossess them of it as unjustified. This is so because the latter would be *harming* them by interfering with their reasonable expectation of continuing to enjoy the property, whereas no such harm would be done to the invaders by keeping them out.

Similarly, an individual is likely to have on or around him various goods, such as tools, food and clothing, which he keeps in convenient places and expects to be able to use as convenient. Assuming, again, that there are no other claimants, those goods may be said to *belong* to him, and he would be justified in resisting attempts by others to take them or use them without his permission. Such belongings occur spontaneously even within a household, where it is usual for particular implements, pieces of furniture and items of clothing to be treated as belonging to particular individuals. There are natural advantages in staying where one is and using what one has, rather than disturbing the reasonable expectations of others with respect to *their* possessions; and this is not a matter of convention. A reason would be needed

[23] In a further passage Hume compared the human situation with regard to property to that of 'two men who pull the oars of a boat' (490). They do it, he says, 'by an agreement or convention, though they have never given promises to each other'. Presumably Hume was thinking of a situation in which progress would be impeded or impossible if the men did not pull together. But in that case, the 'agreement or convention' would amount to no more than a natural reaction to those physical conditions, without any need for a convention or artifice.

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for *not* respecting the possessions of others—for disturbing the normal conditions. And this, again, is not a matter of convention.

In some cases the sense of possession is strengthened by the effort that was necessary to acquire or modify the goods concerned. Perhaps the possessor actually made them; perhaps, as in the case of land, he put work into them, thus making them more valuable. In such cases we might say, in Locke's phrase, that he 'mixed his labour' with them. We need not, however, agree with Locke that the mixing of labour is what *makes* the goods into possessions of the person concerned. An object can become my property merely because I was the first to find it, and without any labour on my part. Locke asks how it comes about that a person who finds apples in a wood 'appropriates them to himself' and he regards 'the labour of gathering them' as being sufficient to explain why the apples become his property. But it would be absurd to describe as 'labour' the action of picking up an apple and putting it in my pocket. What would make the apple my property rather than yours is simply the fact that I found it and you did not. 'Finders are keepers'. Having found the apple, I could reasonably expect to enjoy it and resent attempts on your part to take it away from me.

So much for the origin of possessions and the stability that this involves. Now this stability may be threatened by intruders or robbers, and may need to be defended against them. In modern societies this can be done by means of artificial institutions such as the law and the police, while in a primitive state of society it may require physical measures, such as erecting barriers, standing guard, or the use or threat of violence. Now if such struggles were a constant feature of life, and if intruders and robbers were just as likely to succeed as defenders, then there might not be any stable relations between people and land and goods, and no place for the idea of possession. It is not the case, however, that such struggles are a constant feature of life: on the whole, and to a sufficient extent, people are able to stay in the places they occupy and keep the goods they have. And thus the existence of possessions can be seen as following from general conditions of human life, from human needs and tendencies and the advantages to be gained by staying where one is and holding on to what one has in preference to disturbing the reasonable expectations of others.

In the defence of possessions there can be an important role for conventional measures: this happens when physical defences come to be replaced by conventional signs of warning. Such signs are conventional, but their usefulness is a consequence of conditions of human life that are not conventional. In these respects the human

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condition is comparable to, and (in evolutionary terms) continuous with, that of many animals. A territory, a lair, a cache of food—these may be said to belong to an animal because it occupies them or knows where to find them; and, where appropriate, is able to defend them against intruders. But there is also a role here for 'conventional' signs, such as scent markings and the song of birds -'conventional', because other smells or sounds would have served equally well.

It is, then, a condition of normal human life that we can, on the whole, expect to keep what we have, and organize our lives accordingly. Such expectations are reasonable and this gives us the right to defend what we have. If someone tries to take away the goods in my possession, it is reasonable for me to resent his action and repel the intruder; whereas the latter would have no such justification for his action. The latter would be *harming* me by taking away my belongings, but I would not be harming him by keeping him away. Because these goods are mine, I have a right to resist attempts by others to take or use them without my consent; and this cannot reasonably be denied by them. A similar role is played by the frustration of reasonable expectations in the case of broken promises. In this case, however, the expectations have been *created* by the offender, whereas in the case of property they exist before any offender appears.

The right of liberty

By 'the right of liberty' I mean the right to behave as we choose, without compulsion, hindrance or disturbance by others. This includes the right to do nothing as well as to do something, and to live quietly as well as to make a noise.

The existence of property, as we have seen, has been regarded as being in some way artificial, but this could hardly happen in the case of acting and choosing. Acting is more basic to human life than owning. A new-born child cannot be said to have property except in a legal sense; but he begins to act long before that. From a very early age he reaches for things, grasps them and puts them in his mouth; he also expresses displeasure, and perhaps rage, when someone tries to prevent these activities.

In due course the child can be *told* what he must not do, as opposed to being prevented physically. But—and this is a general feature of language—what is told can also be questioned. And the child who has learned the language of prohibition also comes to

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learn the language of objecting to prohibitions: he learns to ask 'Why can't I?' and 'Why shouldn't I?'. And with these questions he begins to express his right of liberty. The parent is now challenged to justify the prohibition, failing which he or she can appear to be acting unreasonably. In due course the child learns that he too is exposed to this challenge when he tries to interfere with the actions of others—when, for example, he tries to prevent his brothers or sisters from doing what *they* want to do.

The extent to which reasons are given to or demanded from a child must depend, obviously, on the nature of the environment into which he is born and in which he lives thereafter. But if the child has mastered the language-game of practical reasons, he must have learned the use of 'Why shouldn't I ...?'—or some expression to this effect—as addressed by one person to another who is trying to interfere. And he must also have learned what might count as a reasonable answer to this question—one that a reasonable victim of interference might be expected to accept. If A tries to prevent B from doing what he wants, then B has a reasonable ground for resenting A's interference; but he must understand that this would no longer be so if he were informed of a suitable reason for the prevention. On the other hand, A must understand that B would have a justified grievance if A's reasons were unsuitable or non-existent; failing which, A could not have mastered the language-game of practical reasons.

Human beings act as they do for various reasons and sometimes merely because they 'feel like it'. Some actions are spontaneous, others the result of more or less deliberation; some are important, others trivial; some are directed at long-term objectives, others are not; and so on. But however this may be, our emotions are apt to be engaged if there is interference. If I want to do X and am prevented from doing it, then I have reason to feel frustrated; otherwise I could not be said to have wanted to do X. And if I know that you are the agent of my frustration, then it is, prima facie, reasonable for me to resent what you have done; while you, if you are rational, must understand that this is so.

The right of liberty is typically expressed by such expressions as 'Why shouldn't I do what I want?', 'Why must I do X when I want to do Y?' and (as with the right of property) 'What right have you to interfere?' These are typical questions that we put to those who interfere with what we are doing or intend to do; and similarly with past acts of interference. And to these questions various kinds of answers might be given. They might refer to other people's rights; to one's own good; to the good, in some sense, of people in general;

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to the justice of retributive punishment; and so on. There is obviously much scope for disagreement here, both about the principles involved and the importance of particular circumstances; but this does not affect the right to demand justification from those who interfere and to complain if such justification is not available.

I have treated the right of liberty as a right of non-interference. But a person may be prevented from doing what he wants, not by interference from others but by lack of means. Let us refer to the liberty he lacks as 'means-liberty', as opposed to 'non-interference liberty'.[24] Do we have a right of means-liberty? Suppose someone has a strong desire to travel in a space-craft but is prevented from doing so by lack of means. It would be absurd to regard this as an infringement of rights; and the same is true of various more moderate desires that people are unable to satisfy due to lack of means. An infringement of rights presupposes someone who is guilty of the infringement. In the case of rights of non-interference this is the person who interferes; in the case of benefit rights, the person who fails to provide the benefit. But who would it be in the case of means-liberty? What is true is that if people are prevented by lack of means from satisfying basic needs, this is a *reason* for helping them; but it does not follow that they have a right to such help.

In the UN Universal Declaration of Human Rights (Article 22) it is stated that 'everyone, as a member of society, has the right to social security ...'. Now it is true that human beings are essentially social, and to that extent everyone is 'a member of society'. But a society need not be such as to entail rights and duties about the provision of social security. Such ideas would, indeed, hardly have occurred in most societies other than those in the modern western world. There may be good reasons for *creating* rights to social security, but they are not rights that we have merely by virtue of being human.

It has been argued that the right to social security might be justified in the case of citizens belonging to 'a politically organised society' with a 'tacit or hypothetical social contract by which the state is morally bound' to provide such security'.

[24] The former should not be confused with Berlin's 'positive freedom' (Isaiah Berlin, 'Two Concepts of Liberty' in *Four Essays on Liberty* (Oxford, 1969)).

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The citizen is normally a participant in the cooperative economic endeavour of the society, and as one bearing his fair share of its burdens, has a moral claim to a fair share of the benefits of economic cooperation.[25]

Now this description of rights and burdens might be suitable if being a citizen were like membership of some cooperative enterprise such as the communes established by Zionist pioneers. In this case it was clear that people who chose to join did so on the understanding that they were, indeed, joining a cooperative endeavour with appropriate burdens and rights. But the sense in which we are all citizens is not like this. Most people are citizens of a particular country or city merely because that is where they were born or where they live (or because of the passports they hold). And while it is true that citizens are subject to the laws and customs of their country, this does not imply the existence of a 'cooperative endeavour' such as would generate rights to benefits. The mere fact that one is a citizen of some city or country is not sufficient for that; but it is only in this (ordinary) sense of 'citizen' that we are all citizens.

Liberty and autonomy

The right of liberty, as I have understood it, is the right to behave as one chooses, without hindrance or compulsion by others. There is, however, another kind of interference with liberty which is different from these two. Suppose I plan to repair my car next week-end and you force me to do something else instead. This would clearly be a case of compulsion and in that way contrary to my right of liberty. Suppose, on the other hand, that I happen to be away at the week-end and you repair the car during my absence. Perhaps you think this would be doing me a favour and giving me a pleasant surprise. And this might really be so, but then again it might not. For it might be that what I wanted was not merely to have the car repaired, but to have it repaired *by me*. In that case I would have reason to resent your intervention even if it was well meant. Or again, suppose I have started to repair the car and you show me that there is a better way of doing it. In that case I might be grateful for your advice, but then again I might not. For it might be that I want to be left to work out how to do the job in my own way. Here again it might be reasonable for me to resent your

[25] Carl Wellman, *An Approach to Rights* (Kluwer, 1997), 115–6.

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intrusion—not because I don't believe your method to be better, but because I want to do the job in my own way.[26] The right to do so, which I call 'the right of autonomy', is a variant of the right of liberty.

The kind of autonomy that is undermined here finds expression in such phrases as 'running one's own life' and in such rebuttals as 'I know there may be a better way, but I want to do it in my way'. Here also is one root of the objection against 'prying into one's affairs' even when this does no harm. One may resent such prying because one does not want others to be in a position to criticize one's management of one's own affairs. Sometimes, no doubt, one is glad to resign one's affairs to the charge of others, but such resignations of autonomy must not go too far. When they do, the person concerned commits a kind of suicide: he gives up an essential ingredient of human life. That is why old people are often reluctant to go into institutions where 'everything is done for them'.

This kind of motive also accounts for the requirement of patients' consent to medical treatment. There is a natural reluctance against resigning one's physical welfare to the charge of another person, even when that person is a doctor who may be presumed to be far more competent in judging what is best for a patient.

The desire to do things for oneself also accounts for a kind of perversity that we find in children when they reject the well-meaning advice and help of their parents. Thus a child may 'resent the indulgent ... 'Yes dear, but Mummy knows best', even in the case that Mummy does'.[27] The child's behaviour, irritating though it can be for parents, is rooted in exigencies of natural selection; and again the point is well made in proverbial expressions, as when we say that we want the child to 'learn from his own mistakes' and 'stand on his own feet'—recognizing that this is necessary if the child is to hold his own in later life. Thus well-meaning parents often find themselves torn between a desire to give help and advice and a recognition that this may not be in the child's best interest in the long run. Or they may be deterred from

[26] Cf. T.M. Scanlon, *What We Owe to Each Other* (Harvard, 1998), 253: 'I want to choose the furniture for my own living room, pick out the pictures for the walls and write my own lectures despite the fact that these things might be done better by someone else. For better or worse, I want them to result from and hence to reflect my own taste, imagination, and powers of discrimination and analysis.'

[27] S.I. Benn, *A Theory of Freedom* (CUP, 1988), 105

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interfering by the child's own natural resentment of interference. On the other hand, the practice of choosing is itself inculcated by parents into their children, especially in societies such as ours. From an early age children are confronted with questions such as 'Which one do you want?' and 'Do you want to do A or B?'; and they become accustomed to the need to answer such questions. And when they do this, their emotions are apt to become engaged in favour of their chosen option, even if they had no preference for it before being confronted with it by the parent.

The details of these interactions must vary according to the characters and circumstances of the people involved; but whatever these may be, a normal, mature human being is expected to have learned to 'stand on his own feet', 'lead his own life', etc.; making his own decisions and carrying them out in his own way; and he may reasonably feel resentment against those who want to 'take over', even if they mean well. He may also object, reasonably, to the presence of 'prying eyes', even if they do not prevent him from doing what he wants.[28] The omnipresence of Big Brother in Orwell's *1984* would have been a cause for resentment for this reason alone.

The right of autonomy is also connected with the right of democratic participation. It is a near universal feature of human life that there are people in positions of leadership who make decisions that others have to follow, and in this way their liberty to decide for themselves is curtailed. Such curtailments can be justified by reference to benefits such as law and order, defence against outside threats and (in modern societies) relief of hardship. Now all of these can be achieved, with a sufficient degree of efficiency and justice, without democratic participation; but it is reasonable for people to be allowed some participation in decisions that affect them. This is one reason, at least, in favour of democracy.

The right to life

The right to life has often been regarded as the most important of rights. But how are we to account for this right and the importance attributed to it? Is a person harmed by having his life terminated? What Cain did to Abel was not to harm him but to kill him. What is

[28] Cf. Benn, *A Theory of Freedom* (CUP, 1988), 270ff.

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wrong, then, with killing a person if we leave aside the pain that this may, but need not, involve? Has a right of that person been infringed?

The prohibition against killing is sometimes explained by speaking of life as if it were a kind of valuable property. Thus it is said in taking a person's life we take from him something that is supremely good; and this is supposed to explain, not only why there is a right to life, but why this right, and infringements of it, are supremely important. But is it true that life is supremely good? Is it even true that life is good? This claim has been denied at least as often as its opposite. And if Schopenhauer did not succeed in demonstrating that life is, on the whole bad, he showed at least that the contrary claim is questionable; and he was able to quote from an impressive array of writers in support of this conclusion.[29]

Others have pointed out that life is a *precondition* of both good and bad experiences, and of supreme value for that reason. But what follows from that premise is not that life is of supreme value, but only that its value cannot be ranked alongside the value and disvalue of good and bad experiences.[30]

The right to life is also unlikely to figure in the original learning situations that confront an infant in the context of a family. It is not as if the killing of other people were something that infants normally attempt, or as if the killing of people by one another were a normal and frequent event in a normal infant's experience, suitable to serve as a paradigm for an initial understanding of rights.

The right to life can, nevertheless, be understood as a right of non-interference. It is the right to be allowed to go on living if that is what one desires; and the corresponding 'no-right' is the right that others do *not* have to interfere with this. In this case, of course, there cannot be retrospective resentment and complaint (about having had one's life terminated), but these reactions are applicable to *attempts* to terminate it. Given that I want to go on living, I have reason to resent attempts against my life.

On this view, however, the right to life must also include the negative option: it must include the 'right to die' for those who desire the termination rather than the continuance of life. The right to die is the right to take one's own life, or to let dying take its

[29] A. Schopenhauer, *The World as Will and Representation* (Dover 1969), 586–8.

[30] For further discussion, see O. Hanfling. *The Quest for Meaning*, chs. 4–5.

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course, without interference from others; and in this case, as in others, sufficient reasons must be produced if this right is to be overridden. (One such reason is to allow for the possibility that the preference for dying may be only temporary.)

It might be objected that to account for the right to life as I have done makes it appear unduly derivate. The very attempt to *account* for that right might be regarded as betraying a kind of moral insensitivity—a failure to understand what morality is about. Now it is true that life has a special 'preconditional' status, as stated above; and also that violations of the right to life are irreversible in a way that other violations of rights are not. These facts explain why the right to life has a special importance, but not why it should be thought to be of *supreme* importance. And neither do they explain how we come to recognize such a right and how it is related to other rights.

The right against unreasonable punishment

So far I have followed my main classification of rights into benefit rights and rights of non-interference. The two rights that follow do not fit well into this classification, but they are too important to be left out. The first is connected with what is sometimes called 'equality before the law'; but the right described in my heading provides a better focus for my discussion.

A person is harmed by being punished, and he may have a grievance against those who punish him. Whether the grievance is justified would depend on whether the punishment was deserved. It would be justified if the punishment were unduly severe or if the offence for which the accused was punished had not been committed by him at all.

In determining the severity of punishments, the principles of *consistency* and *proportionality* are important. The first of these is invoked when we say that a given person should be given the same treatment as others if what he did, and other relevant circumstances, are the same in his case as in theirs. What is to count as 'relevant circumstances' is often a matter of debate, but this does not affect the principle. And if there are circumstances that justify a difference of treatment, then those responsible for the difference should be able to say what they are.

The principle of proportionality, on the other hand, is that punishments should be proportionate to the offence that was committed. Thus it would be unreasonable to inflict a severe

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punishment for a minor misdemeanour, and the person concerned would have a justified grievance against those responsible.

There is an asymmetry, however, between negative and positive offences against these principles. Someone who has been treated more severely, or less favourably, than others in a similar situation has a right to complain; but complaints would not be in order for someone who had been treated *more* favourably than the others. Such treatment would still (in the absence of special reasons) be unreasonable, but the fortunate recipient of it would not be in a position to complain. And the same is true of the person whose punishment is unduly lenient for the gravity of his offence.

A precondition of respecting the above rights is that of establishing the truth about what happened: whether the defendant was guilty at all and, if so, to what extent. And from this follows the need for 'due process' in courts of law and other tribunals.

The source of the present right lies in the nature of man as 'a rational animal'—an animal whose actions are subject to principles of rationality such as those I have mentioned. Someone who acts inconsistently is liable to the charge that he is being unreasonable, and this would lay him open to a justified grievance in the cases I have mentioned; and the same is true of someone who acts for the reason that p without taking sufficient steps to establish that p is true. And these principles cannot be denied by anyone who belongs to the community of rational beings.

The right to be treated with respect

Suppose my neighbour has an all-night party with fireworks and thereby prevents me from sleeping quietly in my home. He may be accused of violating my right to be left in peace. But at the same time he may be accused of failing in his duty to *respect* me, and this lack of respect may hurt me in addition to the loss of sleep. In such cases we might say that the infringement of the right of respect *supervenes* on an infringement of the right to be left in peace.

Again, suppose you forget to keep your promise to provide something for me. In that case you violate my right to receive what you promised, but you also indicate a lack of respect. If—I might reasonably complain—you respected me as you should, then you wouldn't have been so careless about keeping your promise. In this example, again, infringement of the right of respect presupposes an infringement of a first-order right—to receive what was promised. And my justified grievance about your lack of respect could remain

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even if the breaking of the promise turned out to be unimportant in itself (as when I no longer need what you had promised).

The right of respect is similarly connected with other infringements of rights, such as occur in the violation of property, physical violence, lying and others. In each of these the harm of lack of respect may be additional to the harm done by those offences themselves.

Violations of this right may be either aggravated or mitigated by words from the offender. The first occurs if he expresses unconcern, perhaps even contempt, for his victim's position; the second, if he offers an apology or expresses remorse. Another kind of mitigation is by means of warning, as when my neighbour warns me in advance of his party. In this case the first-order harm will still be done, but the offence of lack of respect may have been mitigated or even defused. 'At least we were warned', one might say in such a case, or: 'It made no difference to the noise, but at least he showed respect'. (In this case the first-order harm may also be less because it would not come as a surprise.)

A more direct infringement of the right of respect is that of being insulted. According to the proverb, 'sticks and stones may break my bones; but words will never hurt me'. It is not true, however, that words cannot hurt me. A person who has been insulted might properly complain of having been hurt, and he might speak of this as an infringement of the right of respect. 'You have no right to talk to me like that' would be a suitable response in such a case.

How is it that mere words can hurt us? Why should we feel hurt and resentful in that case? There is a primitive, natural preference for being addressed kindly rather than harshly, with smiles rather than with frowns, and with expressions of affection rather than of dislike. These preferences first appear in the interaction of parents with their children. It is in the nature of parents to react with expressions of pleasure and affection when their children behave well, and with contrary expressions when they do not; and it is in the nature of children to receive these reactions with pleasure or displeasure. And these reactions continue into later life and into the wider community.

There is also a connection between respect and *self*-respect. The latter depends on the extent to which we can feel *worthy* of respect; and to determine whether, or to what extent, we are worthy respect, we must rely both on self-reflection and on the respect shown to us

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by others. Thus our self-respect may be undermined by their failure to treat us with respect, and in this way they may be guilty of inflicting gratuitous harm on us.

There are still other ways of respecting or failing to respect another person. Suppose I think poorly of the quality of a colleague's paper. I might not have any hesitation in mentioning this to a third party; but what if the author himself asked for my opinion? In that case I would probably give a less frank reply then when speaking to a third party. But would this be right? The right to be treated with respect includes a right to be told the truth about oneself. In failing to be frank we may offend against a person's autonomy—his right to deal with his situation as it really is. Perhaps we also imply that he is not capable of doing so properly, which would, if he found out that we had not been frank, undermine his self-respect. Yet, on the other hand, telling the truth, or the whole or unvarnished truth, might be inconsiderate, and contrary in *that* way to the other's right to be treated with respect.[31]

Human rights and undeniable rights

Where, in my review of the sources of rights, are we to look for human rights? A variety of rights purporting to be 'human' have been declared by agencies of one kind and another, including some whose meaning is unclear. An example is 'the right to freedom of opinion and expression'.[32] To be free to *express* one's opinions is clearly a right of non-interference, but the idea of interference with opinion itself is far from clear. Another dubious example is the right to 'the pursuit of happiness', as listed in the American Declaration of Independence. Presumably it is open to anyone to *pursue* happiness, even if his condition is such as to make success unlikely. The pursuit of happiness is compatible with a life of actual misery.

[31] Sometimes an ambiguous wording can help. I once heard a play in which an aspiring poet asks a repected aunt for her opinion of his latest product. Her cautious answer was: 'You should work harder at your poetry'. Was her point that his work was deficient, or that it was worthy of more work?

[32] Article 19 of the UN 'Universal Declaration of Human Rights' of 1948.

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In other cases there are doubts about the status, rather than the meaning, of proposed rights. Such rights as those of paid employment, social security, education and trade unions have been put forward in human rights declarations by the United Nations and other bodies. But, we may ask, why should they be accepted as human rights? There may be good reasons for *creating* such rights—reasons connected with human flourishing, the relief of hardship, etc.; and such reasons, as well as less respectable ones, might be used to persuade governments to sign declarations in which the rights are proposed. But if they do so, would it follow that they are *human* rights?

Human rights, it is often said, are rights that every human being has merely in virtue of being human. In the case of such rights there should be no place for the question 'What gives you the right to ...?', for in posing such a question one would *presuppose* that the addressee is human, and hence endowed with the right concerned. Human rights are thus undeniable and universal. But then it would follow that they do are not dependent on the signing of a declaration. The declaration may be an act of recognition of rights that exist independently of it, but it could not serve to create those rights.

Persons with suitable authority can create rights by signing a declaration, and such acts are akin to those created by promises. The signing may be done for various reasons, including a desire to appear in a good light to more powerful nations; but whatever the reason may be, the signing creates a right, just as promising to do X creates an obligation to do X. But such rights are morally binding only on those who sign, and not on those who do not. The former may accuse the latter (or the governments they represent) of 'violations of human rights' if their behaviour is contrary to the rights contained in declarations that others have signed, but this is not a description that they need to accept.

Suppose, however, that such a declaration has been signed by every single government (or its representative). Would that make a difference? The UN declaration of 1948 is entitled 'Universal Declaration of Human Rights'. What this means is, presumably, that it was signed by all the member states of the UN without exception. Even so, it would not follow that the stated rights are 'human' in the relevant sense. Though the rights were binding on every existing government, since all had signed the declaration, it does not follow either that they existed independently of the declaration, or that subsequent governments who did not take part in the declaration must consider themselves bound by it.

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It is important not to confuse the claim (1) that everyone *has* a right to X with the claim (2) that everyone *ought* to have a right to X, or the claim (3) that everyone *ought to have X*. Let us take the proposition that everyone has a right to an old-age pension. This right exists in most western countries, and the term 'right' is clearly in place here. The right owes its existence to certain legal enactments, which brought it about that one party (people of a suitable age) has a legitimate claim against another (the government) in virtue of those enacments. Now it might be claimed that the right to a pension is a universal one—that everyone has this right, even where no such undertaking has been given. But what would this mean? We might agree that (3) every old person who needs it *ought* to get a pension, that this is desirable and ought to be done wherever possible; but to speak of it as 'a right' would add nothing unless we can identify someone, or some agency, who has this duty in virtue of some undertaking or other relationship.[33] One might also agree, in accordance with (2), that people ought, as far as possible, to be *given* that right, and that agencies should be created with the duty of providing that benefit. Then the people concerned could claim what they need by way of an entitlement and not request it as a favour; and this might make the provision more regular and effective, as well as avoiding feelings of indignity on the part of recipients. But these arrangements would be justified by utilitarian considerations and not from a recognition of pre-existing rights.

According to Thomas Pogge, a commitment to human rights involves one in recognizing that human persons have certain basic needs, and that these needs give rise to weighty moral demands; they are to be recognized as giving rise to human rights. But a mere 'commitment to human rights' does not entail that the satisfaction of basic needs is a human right. One may be committed to human rights—to respecting them and supporting their enforcement—without accepting that claim. To support the claim, it would have to be shown that all those whose basic needs are not satisfied have a justified grievance against all those, however remote, who might contribute to satisfying them but do not do so.

A person with a right to X can properly demand X from others, but one is not in this position merely because one's basic needs are unsatisfied. And those who are willing to help such people can properly deny that they have a *right* to be helped. Suppose a drug company agrees to supply expensive drugs to a third-world country

[33] Cf. Onora O'Neill, *Towards Justice and Virtue* (CUP, 1996), ch. 5.

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at half-price. 'So', we say to the company's manager, 'you accept that those people have a right to the reduction.' The response might be: 'No, I don't. We do it because their need is great, and not because they have a right to the reduction.' One might also describe this as an act of charity. To donate money out of charity (and also *to* charities) is reasonable because the recipients need help but not because they have a right to it. The expression 'a right' might of course be used here, and this might be effective in persuading people to donate; but this would be using 'a right' in a diluted sense. This is not to say that the reasons for providing what is needed must be less urgent than in cases where a right clearly exists; it is merely to warn against confusing one kind of moral reasoning with another.[34]

A similar caution is appropriate for the use of 'duty'. It is often said that we have a *duty* to relieve the hardship of people in remote countries with whom we have no relationship, by giving money or other means. From this it would follow that people who do not do this are guilty of failing to do their duty. But is this really a duty? What is undeniable is that many people *feel* it to be a duty; but that is not sufficient for claiming that it *is* a duty—in contrast to cases where the existence of a duty is undeniable. But here again, this is not to deny that the relief of hardship in those cases is a reasonable and worthy activity.

A confusion is also liable to occur when speaking of 'human rights advocates'. In a newspaper we read that in a particular society men have certain rights over women—rights that are contrary to western ideas of right and wrong. Their exercise of these rights is criticized by 'human rights advocates', who claim that they 'have no right' to treat their women as they do. But what does this mean? The fact is that they do have that right; they have it, let us supposed, by way of tradition. If such a man is challenged to say what gives him those rights, he can properly reply that they are part of the tradition to which he belongs. Whether those rights ought to be endorsed is what is really at issue in such debates. And this question is not to be answered merely by denying, in the name of 'human rights', that the men have them—nor, of course, by pointing out that they do have them.

[34] Cf. Melden, op. cit. 'The fact that a stranger needs my help does not in itself establish that he has a right to it; and granted that I ought to give him help it is not always or even generally true that I ought to do so because I am under an obligation to him. The fact that my help will benefit him is reason enough ...' (17).

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Rights have an essential and distinct role in moral reasoning, but they are not always sufficient or even appropriate for deciding moral questions. And this includes questions about what rights ought to be accorded, endorsed, respected or revoked; and what should happen when there is a conflict between rights, or between rights and other moral considerations.

Suppose that in a particular society wives may not leave the house without their husbands' permission, this being in accordance with tradition. Would this be an infringement of their right of non-interference? Suppose, first, that the women are content with this arrangement. In that case there is no interference and no cause for resentment. They would still *have* the right of non-interference, but it would not be applicable to this case. Suppose, on the other hand, that they do resent the arrangement, but the latter is defended by reference to tradition and perhaps other reasons. In that case, again, they would still *have* the right of non-interference, but, as with other rights, its exercise would be subject to competing rights and other moral considerations.

I have argued that a right cannot be human in the proper 'independent' sense, if its existence depends on the making or signing of a declaration. If a right is human in that sense, then the purpose of declaring it can only be to draw attention to its existence as part of the human condition and prior to any declaration. This seems to have been the view of those who wrote 'We hold these rights to be self-evident ...'. But where are such rights to be found? If A has promised something to B, then B has a right to receive what A has promised; this is self-evident; and the same is true of promises and declarations made by governments. But are there also self-evident rights that do not depend on particular undertakings, relationships or situations?

The rights of non-interference that I have reviewed appear to be human rights in this sense. The same is true of the right against unreasonable punishment and the right to be treated with respect. These rights are of course flouted by many governments. But could such governments deny that their citizens have them? What they usually deny in such cases is that the rights are being violated and not that people have them. Or they may claim that the violations are justified by special circumstances. When governments make such denials or claims, is this merely because they want to humour the moral preferences of dominant countries? Not necessarily: there is also the fact that people who suffer rights violations have a *reasonable* grievance against those who inflict them; and this cannot be denied, without absurdity, by the latter.

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Such rights are *imprescriptible* in both senses of the word: they can be neither bestowed ('prescribed') nor revoked.[35] A right that is bestowed by, say, a legal enactment, can be taken away by the same means; but this is not so with human rights. It is true that such rights can be, and often are, violated, and in such cases we may say that the victims have been 'deprived of their rights'. But this is wrong if it means that they no longer have them—as might be the case with merely legal rights that have been abolished. When people are, say, imprisoned for exercising the human right of free expression, this does not mean that they no longer have that right. Their right is being violated, but this could not be so if they did not have the right.

Reservations about the right of liberty

Rights, including human rights, leave us with problems that cannot be addressed by reference to rights themselves. This is true particularly of the right of liberty. In the writings of Mill and others this right is associated with the enlargement of choice for individuals. But that association is not as straightforward as it may seem, for enjoyment of the right of liberty is compatible with a life in which choice is largely constrained by custom and tradition.

Suppose someone lives in a society in which choices that most of us regard as matters of personal preference are foreclosed by tradition. That person may be living, nevertheless, in accordance with his personal preferences; for these might not go beyond what is regarded as proper in his tradition. Possibilities of a contrary kind may simply not occur to him. Moreover, he might prefer the life of tradition even if such possibilities did occur to him. According to Mill, 'he who does anything because it is the custom makes no choice'.[36] But a person may *choose* to live in accordance with custom, and he may indeed object to interference with that preference as a denial of his rights. In recent history there have been instances in which 'human rights activists' have tried to emancipate people from customary practices, especially when these are contrary to standards of modern western life; but the people

[35] Bentham, in his famous remark about 'nonsense upon stilts', took 'imprescriptible' in the negative sense: that such rights cannot be revoked; but the word also has, or had, the positive sense of 'being able to be prescribed'.

[36] 'On Liberty' in *Utilitarianism* (ed. M. Warnock, Collins 1962), 187.

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concerned, or others on their behalf, have resisted these efforts by claiming a right to live in accordance with their traditions. And this right cannot properly be denied, for the right to choose must include the choice of a life of traditional constraints in preference to one of greater liberty.

The preference for such a life is not peculiar, moreover, to people of highly traditional cultures; it is also widespread in Western countries in which the ties of tradition have been loosened or destroyed to a large extent. Sartre spoke in this connection of being 'condemned to be free'. In one of his novels he described the predicament of a man who, having espoused a life of maximum freedom, wishes he could subject himself to the principles and duties of the Communist Party. 'The Party', his communist friend tells him, 'doesn't need you ... But you need the Party ... You renounced everything in order to free ... Take one step further, renounce your own freedom'.[37] One might think that people who have thrown off the constraints of tradition and custom in favour of greater personal choice would lead happier lives. But we have become used to observing that this is not always so. A person who has greater freedom of choice may wish himself back in a world in which this was not so; or if he still inhabits such a world, he may resent attempts to interfere with his existing way of life.

An extreme case of voluntary constraint is that of selling oneself into slavery. This practice, as Mill observed, is not permitted in 'most civilized countries', where such transactions would be considered 'null and void'. The reasons for this he took to be obvious: 'by selling himself for a slave, he abdicates his liberty and foregoes any future use of it beyond that single act'; and 'the principle of freedom cannot require that he should be free not to be free' (235–6). This sounds as if there were something self-defeating about such an act, but that is not really so. A man may make this decision without being under any confusion about what he is doing or about the value of liberty. The right of liberty is a right of non-interference, and it is overridden if we compel someone to remain free in spite of his wishes. It is true that he might later regret his decision; but the same is true of many of our decisions, including some that are irreversible. It is also true that there may be social reasons for outlawing such practices. But these would be reasons for overriding the principle of liberty and would not be drawn from the principle itself, as Mill implies.

[37] *The Age of Reason*, (Penguin), 118.

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A different kind of reservation about the right of liberty concerns the desires on which we act. The right of liberty is the right to behave as we desire. But how do we come to have the desires we have? To some extent they belong to our nature as human beings and indeed animals. But to a large extent they have been moulded by practical possibilities. Let us consider how this works from early childhood. What we experience in this 'original position' is that while we are free to do what we want to some extent, there are also occasions when this is not so, owing either to physical obstacles or to interference by our elders. In due course we learn to distinguish kinds of behaviour in which obstruction is likely from those in which it is not; and then our desires become adapted to these realities. We may still wish we could do the 'naughty' things—'desire' to do them in that sense—but these are now idle desires, not connected with intention and action. In this way our desires are brought into harmony, to a large extent, with what is possible for us. We are able to do what we want because, to a large extent, we have learned to want only what we are able to do.

Consider some of the choices that one may reasonably expect to be able to exercise in our society, such as those of voting, opening one's own business, applying for a course at a university, travelling to other countries. For a person living in our society it would not be unreasonable to want to do such things; and he might have a justified grievance against anyone who tried to prevent him. But what if they were forbidden by the government? Then he could not reasonably expect to engage in them without interference. And then his desires might come to adjust themselves accordingly. And in a society in which expectations are kept to a minimum by control of education and the media, such desires might never arise in the first place. Yet the liberty of those people to do what they want might be no less, perhaps even greater, than in a society, such as ours, in which new expectations and choices proliferate. And the same is true of societies in which expectations, and hence desires, have long been circumscribed by custom.[38]

[38] Callicles, in Plato's *Gorgias*, tells us that a man 'should encourage his appetites to be as strong as possible' and then 'be able by means of his courage and intelligence to satisfy them in all their intensity by providing them with whatever they happen to desire.' Socrates succeeds in making fun of Callicles's position, but the opposite extreme is also not endorsed in the dialogue. Given the question 'Then the view that those who have no wants are happy is wrong?', Callicles is allowed to reply: 'Of course; at that rate stones and corpses would be supremely happy.' (492a-e)

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Let us consider the case of slavery in this light. What is wrong with slavery? Here one might think of the sufferings that have been inflicted on slaves such those on the American plantations. And the deprivation of liberty—taking away accustomed liberties—was certainly among these. But let us imagine a population of slaves who are not ill-treated and who have never known liberty; who have been brought up to regard their condition as normal, and to whom thoughts of liberation, or of resentment against their condition, would not occur. The principle of liberty—of being able to do what one desires—would not necessarily be infringed in such a society. And the same would be true of a world in which, as Aristotle believed,[39] some people are slaves by nature.

When considering populations for whom the range of reasonable expectations is much narrower than ours, it is tempting to conclude that their lives are inferior to ours in respect of liberty; but this would be a mistake. This is not to say that we must condone the situation of those people. We might object to it on grounds of 'human flourishing'—ideas, such as those also expressed by Aristotle, about realizing human potential, etc. On the other hand, ideas about human flourishing might also be invoked *against* the enlargement of choices. In any case, the right to do what we choose cannot be used in favour of such enlargement.

Confusions about this are liable to arise with some recent uses of 'liberation'. An example is that of 'women's liberation', which implies that women are not, or were not, as free as men to do what they wanted. This was indeed so to considerable extent, as we learn from the testimony of many women and other evidence. To a large extent, however, the change in the lives of women has not been one of greater freedom to do what they desired, but the inculcation of new desires which could hardly have occurred to most of them. And the same has been true of other social changes that have been brought about by reformers. To the statement that one is satisfied with life as it is, that one does not want the advantages in question, such reformers are apt to reply that one *ought not* to be satisfied; that it would be better if one desired things that one had not

[39] *Politics* 1252a34. See also Michael Levin, 'Natural Subordination', *Philosophy* 1997; and D.H.M. Brook, 'Dogs and Slaves', *PAS* 1987–8.

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desired. Now there may be good reasons for advocating such changes, but the right to do what one desires could not be among them.[40]

In the cases just considered the inculcation of new desires is done for paternalistic reasons, but in other cases it is done from motives of profit or political advantage; and here a major influence, especially since in an age of mass media, has been that of advertising. The economies of modern western countries are driven to a large extent by the satisfaction of desires that did not exist and, in the case of new kinds of products, could not have existed, prior to the information and, more importantly, persuasion, with which we are inundated by advertisers. By these means the scope of our desires is vastly enlarged and so, for many people, are the means of satisfying them; while, on the other side, there is a corresponding enlargement of the scope for disappointment and envy. Whether these changes have, on the whole, been for the better is certainly open to question. And to this question again the principle of liberty, which applies to existing desires, provides no answer.[41]

[40] Some Boy Scouts were asked by the Scoutmaster to report on their 'good deed for the day'. One boy said he had helped an old lady to cross the road, and was commended for doing so. A second boy reported that he had also helped the old lady to cross the road, for which he was also commended. But when the third and fourth boys reported likewise, the Scoutmaster was moved to ask whether it really took so many to help an old lady to cross the road. 'The trouble was', replied one of the boys, 'she didn't want to cross the road.'

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