

# Could There Be Universal Natural Rights?

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Perhaps it is not exactly a matter of "a decent respect to the opinions of mankind." Nevertheless, just as it would be uncultivated and indecorous for a paper on crime and punishment to make no mention of the eponymous masterpiece of Fedor Dostoevsky, so the present essay has properly to begin by repeating certain famous words of Jeremy Bentham. He, as all will remember, dismissed the topic of natural rights with a truly Johnsonian finality. The whole thing is just one of the *Anarchical Fallacies*: "Right is the child of law; from real laws come real rights, but from imaginary law, from 'laws of nature', come imaginary rights. Natural rights is simple nonsense, natural and imprescriptible rights rhetorical nonsense, nonsense upon stilts."<sup>1</sup>

I am here undertaking to investigate precisely, and indeed only, what Bentham rejected. My concern, or my direct concern, is not with those rights which are in fact realized or recognized, endorsed or created, by various systems of positive law. It is instead with natural rights, and then only with such of these as may or might be universal. It is with rights, that is, in as much and in so far as these either do serve or could serve as a basis for criticizing both types or tokens of individual conduct, and general principles or particular prescriptions of positive law. Such moral criticism must result in commending whatever respects, and condemning whatever violates, whatever natural and universal rights there are.

Finally, in the beginning, let it be emphasized that the title of the present paper provides a true index of its limited scope. It is, solely, a consideration of whether there could be such universal and natural human rights, or whether such a suggestion is indeed "simple nonsense." So on this occasion no attempt will be made definitively to establish what, if any, there actually are.

## I. The Objectivity of Rights

The phrase "objectivity of rights" is, unequivocally and defiantly, both categorical and existential. It thus epitomizes the first conceptual truth in this area. This is at the same time the reason why so many modern-minded people are inclined to follow Bentham in dismissing the whole business. The point has been well put by one who claims — I must confess that I almost wrote "pretends" — to be himself *Taking Rights Seriously*: "A great many lawyers are wary of talking of moral

rights, even though they find it easy to talk about what it is right or wrong for governments to do, because they suppose that rights, if they exist at all, are spooky sorts of things that men have in much the same sort of way that they have non-spooky things like tonsils."<sup>2</sup>

No doubt there is room for discussion about exactly how far and in what ways having a natural right is or would be like having tonsils. But the wary lawyers of whom Dworkin speaks are not wrong in thinking that an affirmation of rights is necessarily an affirmation that certain entitlements possess some kind of objectivity. Take, for instance, what are for us the key words of that most famous and most important of all such declarations: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights. . . ."

At least for present purposes it is unfortunate that the Founding Fathers spoke of these rights as an endowment from the Creator, thus suggesting that they are, if only under the Divine Law, also legal. But what does come out with total clarity is that they saw themselves as at this point asserting truths rather than making demands, as reporting revelations of the natural light rather than announcing decisions of revolutionary policy. I conclude, therefore, that the first essential of any natural right is that it must possess some kind of objectivity. If anyone is going to maintain, against Bentham and so many others, that there are such rights, then they have somehow got to show: both how this can be possible; and that it is the case.

(a) It appears that in the past these were often not seen to be problems or, if they were so seen, they were considered to be soluble — as the Signers thought to solve them — by some reference to the Creator. In the Declaration itself the reference is perfunctory. But in that same year 1776 John Adams was speaking of "Rights antecedent to all earthly government — Rights that cannot be repealed or restrained by human laws — Rights derived from the great legislator of the universe."<sup>3</sup> Our natural and inalienable rights are thus endowments from God, and their objectivity is the objectivity of a prime theological fact. That is a kind of fact, or a putative kind of fact, which Dworkin's wary lawyers might perhaps be pardoned for eschewing as "spooky." But we have to object to this move here on a quite different ground: neither maintaining, as atheists, that there are no positive theological facts; nor, as agnostics, contending that, even if such there be, it is impossible for us to know what they are. Our present objection has to be that rights conferred under God's prescriptive and positive law would not be rights of the kind presently under discussion. They could not, that is to say, be rights by reference to which all prescriptions of positive law — repeat, all — might in principle be criticized.

The heart of this particular matter of logic was first laid bare by Plato's *Euthyphro*:<sup>4</sup> if you define a word such as "good" in terms of the will of God, then you thereby disclaim all possibility of praising that will as itself good. So the words "God is good" become on your lips the expression of only the most empty and formal of custom-built<sup>5</sup> necessary truths.

It is clear that Grotius too was master of the crucial points. He was writing in general about the law of nature, not particularly about the rights arising either under that law or independently of it. He stresses first the necessary objectivity of that law: its principles, "if only you pay strict heed to them, are in themselves manifest and clear, almost as evident as the things we perceive by the external senses; and the senses do not err if the organs of perception are properly formed and if the other conditions requisite to perception are present."<sup>6</sup> He then goes on to insist that this objective law is no sort of function or creature of the will of God: "The law of nature is a dictate of right reason, which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity; and that, in consequence, such an act is either forbidden or enjoined by the author of nature, God. The acts in regard to which such a dictate exists are, in themselves, either obligatory or not permissible, and so it is understood that necessarily they are enjoined or forbidden by God."<sup>7</sup> The last and most emphatic words, insisting both on the objectivity of the law of nature and on its total independence from the will of the Creator, draw a comparison with the truths of logic and pure mathematics: "The law of nature, again, is unchangeable — even in the sense that it cannot be changed by God. . . . Just as even God . . . cannot cause that two times two should not make four, . . . He cannot cause that that which is intrinsically evil be not evil."<sup>8</sup>

Before leaving both Grotius and the rejected suggestion that moral rights could be creatures of the Creator's will, there are two things to underline. First, both in identifying prescriptive laws of nature as dictates of right reason and in comparing them with the truths of pure mathematics Grotius can be seen as indicating — a century before Kant was born — a Kantian route towards the solution of our objectivity problem. That, in correspondingly Kantian terms, is to show how rights are possible — how there can be, and that there are, such Popperian Third World entities as objective entitlements. Second, in insisting that actions have in them "a quality of moral baseness or moral necessity," that they are, in themselves, either not permissible or obligatory, Grotius can be seen as signposting, before the birth of G. E. Moore — this time not one but two and a half centuries before — what we must surely recognize to have been a blind alley. After all, what are these intrinsic characteristics if not the "simple, non-natural qualities" of *Principia Ethica* — qualities which must as "non-natural" be paradigmatically "spooky"?<sup>9</sup>

(b) The enormous obstacle to any attempt to show how (moral) rights can possess some kind of objectivity, and to show that and what these rights are, is the whole great Humean tradition of philosophy and social science. Epitomized in the proverbial nutshell, it is the glory of Hume to have developed a world-outlook through and through secular, this-worldly, and man-centered. To us the most relevant aspect of all this is Hume's anti-Copernican counter-revolution. Copernicus was said to have knocked man and his Earth from the center of the Universe, by revealing that what appears to be the diurnal circulation of the heavens above us and around us really is a movement of our own peripheral planet. Hume took as

his model a supposed discovery of the new science of Galileo and Newton, the supposed discovery that secondary qualities are not really qualities of things in themselves, but are instead reactions in our own minds, reactions which, by a false projection, we commonly but mistakenly attribute to those things. Guided or misguided by this seductive model, Hume hoped to demonstrate that the same applies to much else which we might uninstructedly have believed to be characteristic of the Cartesian external world: in particular, causal connection, the necessity of descriptive laws of nature, and moral and aesthetic values.<sup>10</sup>

In this Humean perspective it becomes almost impossible to admit as objective anything but straightforward, unspooky matters of natural fact about that external world; while the norms and values which are somehow projected functions of individual or collective human desire appear as correspondingly subjective. It is easy then to proceed, although Hume himself would never have dreamed of so proceeding, to the demoralizing conclusion that they are as such to be despised and dismissed as *merely* human creations. It is upon philosophical assumptions of this kind, and in the same sort of understanding of the findings of the social sciences, that today so many of the young, and of the not so young, believe the slightest tincture of anthropology or sociology is enough to expose all value judgments as inherently and essentially arbitrary, relative, and subjective.

If we are to succeed in showing how natural rights are possible, by providing for them a kind of objectivity, then we have either to circumvent or to overcome the particular subjective/objective dichotomy which is the form of representation in the previous paragraph. We have to find a way in which something can be objective, in the rather different but sufficient sense of being independent of our self-interested and capricious wills, while at the same time in some way authoritative over those wills; without that something's being just a matter of brute fact about either non-human or human nature.

Here it should be instructive to ponder again the last words quoted earlier from Grotius. Logically necessary truths are objective in precisely the sense just explained, and they neither are nor state facts about either human or non-human nature. It is a matter of individual or collective human choice — though certainly not by that token merely a matter of arbitrary choice — what concepts we use, and what words we employ to express those concepts. But it is not a matter of choice, whether human or Divine, what follows or does not follow from this or that proposition. We have therefore, truths here which are in the required sense objective. If the conclusion drawn does follow, then the inference is correct; and if not, not.

Of course the general claim that there are natural rights, as well as less general claims about the subsistence of this or that particular right, seem to be far removed from the abstract truths of logic and mathematics. Nevertheless, and without aspiring to produce the sort of system of casuistical moral geometry once envisioned by John Locke,<sup>11</sup> it does look as if, given the basic concepts of morality, it might be possible to deduce some conclusions about rights. Let this reference to other examples of the sort of objectivity we crave serve to encourage our philosophical investigations.

## II. The Groundedness of Rights

The first conceptual truth about rights is that they are entitlements which must possess some kind of objectivity. The second is that they are entitlements which have to be grounded in — which is not to say deduced from — some fact or facts about their bearers. Suppose that two bearers of rights are to be said to have different rights. Then this difference has to be justified by reference to some dissimilarity between what each has done, or suffered, or is.

Suppose, on the other hand, that two bearers of rights are to be said to have the same right. Is there then no parallel necessity that in both cases these be identically grounded?<sup>12</sup> Two or more different foundations might conceivably give rise to one and the same right; a particular sum, for instance, might have been promised as the reward for two quite disparate performances; indeed in one or the other case it might have been promised unconditionally.

That all this is so — if indeed it is all so — is a purely formal truth. It places no substantial restriction on the respects in which bearers of rights must themselves either be or have been similar or different if they are to be said to have the same or different rights. It is also a formal truth about all rights, and not only about any which may be both universal and natural. Thus it is perfectly proper to say that we all have acquired moral rights to the fulfillment of any promises made to us; notwithstanding that the only facts about us on which these particular rights have to be grounded are the facts that we are the people to whom these promises were in fact made; and notwithstanding that the original selection by the promisors of us as the promisees could conceivably have been wholly random and gratuitous. A right, as Stanley Benn nicely puts it, “is a normative resource”;<sup>13</sup> and I may acquire such a resource without any antecedent desert or entitlement to warrant this acquisition. Indeed, since the notion of desert surely presupposes that of entitlement<sup>14</sup> — entitlement, that is, to whatever personal factors are exercised in the conduct producing that desert — there could be no entitlements at all unless some of these were themselves unwarranted by desert.

It needs to be emphasized also that this grounding of rights upon facts about the bearers of those rights involves no violation of Hume’s Law.<sup>15</sup> Conclusions about what ought to be are not being deduced — nor could they be validly so deduced — from premises themselves purely neutral and detached, premises stating non-committally only what is the case. It may appear that this impossibility is being actualized, especially if we continue to attend to the example of promising.<sup>16</sup> Can we not, it may be asked, more or less brashly, deduce “Brenda has a right to receive \$100 from Burl” from “Burl promised Brenda to give her \$100”?

Yes, indeed we can. But the premise in this valid deduction is no more purely neutral and detached than the conclusion. Both express commitment to the institution of promising. What would not legitimate the move to “Brenda has a right to receive \$100 from Burl” would be any one of the corresponding reports by some truly non-participant social observer, such as the report: “Burl said to Brenda, ‘I promise to give you \$100.’ ” (Compare, and perhaps contrast too, the way in which the truth of that dull proposition *p* can be deduced from the truth of the

proposition 'Letitia knows p'; whereas from the truth of the likes of the very different proposition, 'Letitia said, "I know p"', it cannot.)

This second conceptual truth about rights is one particular case of a much more general truth about all appraisal and valuation. So, in making both the particular and the general point we are, as "the implacable Professor" J. L. Austin used to say, "looking not *merely* at words . . . but also at the realities we use words to talk about: we are using a sharpened awareness of words to sharpen our perception of the phenomena."<sup>17</sup>

The general truth is that in appraising and valuing — as opposed to either stating our likes and dislikes or simply reacting with squeals of delight or howls of anger — we are engaged in an essentially rational activity; albeit an activity which is, as far as the present point is concerned, essentially rational only in the thin sense that in it we necessarily commit ourselves to returning the same verdicts in all other similar cases. Even this is by itself sufficient to rule out all analyses of, for instance, "She is a good woman" in terms simply of anyone's likes or dislikes;<sup>18</sup> to say nothing of the still more implausible suggestion that it means instead something like, "She is a woman: hooray!"

Another corollary is the elimination of Moore's account of value in *Principia Ethica*, at least in its most famous formulation. Whatever we conclude about Hume's contention that value characteristics are really reactions in our minds, falsely projected out onto their provocations, we still cannot allow that they are like colors. For two objects may be for all practical purposes identical, save that one is yellow while the other is not: it happens all the time. Yet it cannot happen that two objects are similarly identical, save that one is a good one and the other is not. It must, I conclude, be by the same token incoherent to maintain that, of two people who are the same in respect of whatever may be allowed to constitute the grounds of some right, one is, and the other is not, endowed with that normative resource.

### III. The Reciprocity of Rights

In a methodological manifesto which is at the same time an exquisite philosophical masterpiece, J. L. Austin concluded a paragraph on "the Last Word" with the willing concession: "Certainly, then, ordinary language is *not* the last word: in principle it can everywhere be supplemented and improved upon and superseded. Only remember, it *is* the *first* word."<sup>19</sup> The conceptual truths about rights presented in the two previous sections are, I believe, firmly grounded upon established usage of the word "right". But some points in this third section do involve some supplementing, improving and superseding.

(a) This is surely true of the proposal that rights be attributed only to those capable of — or, to allow for infants, capable of becoming capable of — themselves claiming rights for themselves, and in and by that claim undertaking the reciprocal obligation to respect the rights of others. Some people do in fact speak about the rights of the brutes, and even of trees; and any deficiency which they display in so doing is not one of basic word-training. The United Nations

Educational Scientific and Cultural Organization, for instance, recently adopted, with all customary brouhaha, a Universal Declaration of the rights of Animals.

This new declaration, which was supposed to become U.N. law in 1980, begins by asserting "that all animals are born with an equal claim on life and the same rights to existence." It then proceeds to spell out the human duties implied by these brute rights: "No animal shall be exploited for the amusement of man," for one; and, for another, "scenes of violence involving animals shall be banned from cinema and television." To no one's surprise the charter skirts the awkward issue of killing animals for food. Yet it makes up for this with a bold declaration that "any act involving mass killing of wild animals is genocide."<sup>20</sup>

The proposal that rights should be ascribed only to potential claimers and protectors of the same does not, of course, foreclose on the possibility of insisting that all cruelty is wrong. Here the question is indeed, as Bentham urged, not "Can they *reason*?" nor "Can they *talk*?" but, "Can they *suffer*?"<sup>21</sup> It could be — I affirm that it is — that we should treat the brutes with a kindness and restraint which they have no right to demand; just as, as we shall shortly be reminding ourselves, we have some duties to persons which those persons have no right to demand.

(b) The previous subsection suggested that a universal reciprocity should be made essential to the idea of rights: that is, that rights should be ascribed only to those capable of themselves claiming rights for themselves, and in and by that claim undertaking the reciprocal obligation to respect the rights of others. The present subsection brings out that and how it might be a good thing that someone should have something, or should be treated in some way, and even that it might be someone's duty to secure these objectives, without its being the case that the beneficiary has a right to be provided with that something, or to be treated in that way. The most obvious, least controversial, yet by itself decisive example is that of my promising you to give something, or to do something, to him. My promise creates your rights to its fulfillment, but gives him no new rights or duties. Another favorable and scarcely controversial example is that of man drowning; it may be my duty as a chance passerby to effect a rescue; but it is not his right that I should. The upshot is that whereas all rights generate some corresponding duties — the duties, namely, of respecting those rights — it is not inconsistent to speak of duties without any corresponding rights. The Chairman of the (antivoluntary euthanasia) Human Rights Society was not, therefore, formally contradicting himself when he announced recently: "There are no such things as rights. You are not entitled to anything in this Universe. The function of the Human Rights Society is to tell men their duties."<sup>22</sup>

In our century, and especially since the end of World War II, people have become increasingly inclined to affirm that we all have rights to whatever it is thought would be good for everyone to have. It is significant that modern declarations of human rights are much longer than those adopted in the American and French Revolutions of the eighteenth century — as well as being far less well-written. The most notorious, that adopted by the General Assembly of the United

Nations in December 1948, covers in my text six printed pages. Among many other things, it tells us: that "Everyone, as a member of society, has a right to social security" (Article 22); that "Everyone has the right to . . . periodic holidays with pay" (Article 24); and that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family . . . and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control" (Article 25). And it states further (Article 26): "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory," and so on, through a clause specifying that it must "further the activities of the United Nations," to the slightly incongruous afterthought conclusion that "Parents have a prior right to choose the kind of education that shall be given to their children."

To someone detecting, and objecting to, a note of unfashionably reactionary ridicule in the previous paragraph, my reply must be that any formulation of such claims, and any reporting of them, is bound to sound absurd. This is so for the excellent Groucho Marxist reason that they are absurd. The absurdity derives from three connected causes. First, no even halfway systematic rationale is or, it seems, could be offered to justify the inclusion of all and only those members actually admitted into this particular miscellany of claims. Second, they are put forward as universal and natural, notwithstanding that many if not most are demands which it would not be sensible to make against anything but a modern industrial state. Third, nearly all the items on the U.N. list are welfare rather than option rights; claims, that is, that everyone must be supplied with some good — educational services, perhaps, or a holiday with pay — rather than claims that in some directions everyone must be left to their own devices.

The three famous option rights of the American Declaration of Independence are rights only to non-interference. As such they must be and are rights against all comers, everywhere and at all times, rights which everyone else has corresponding and completely reciprocal duties to respect. My rights to do whatever I wish provided only that I harm no one else become the grounds for everyone else's rights to do the same; and the other way about. It was because reciprocity is and has to be the secret of any systematic rationalization of natural rights that I was in the previous subsection 3(a) so reluctant talk of the rights of brutes.

But the proposed U.N. welfare rights are rights to provision to which there surely cannot be corresponding and reciprocal moral duties.<sup>23</sup> It may perhaps be all very well to maintain that all these welfare rights ought to be legally established whenever and wherever it becomes practically possible to guarantee so ambitious a distribution. But if we are going to say that anyone has a moral right to any such goods, then we surely have to explain upon which individuals the duty falls to provide just which of these various goods, and to whom — and why. Since there is, surely, no possibility of excogitating an answer to this challenge which would be in any degree plausible or precise, I conclude that any natural and universal rights cannot be of the welfare kind.<sup>24</sup>



#### IV. Rights and Compulsions

Herbert Hart once asserted that the notion of a right is "peculiarly connected with the distribution of freedom of choice."<sup>25</sup> Of welfare rights this is scarcely true. There would, surely, be neither contradiction nor even paradox in the contention that every child of school age has a right to attend some educational institution; and, furthermore, that they should all be effectively compelled so to do. But of option rights Hart's thesis is both true and necessarily true. There are, however, many whom its truth has escaped, and does still escape. This is in part because the practical implications are in some cases both very important and to many uncongenial, and in part because the basic distinction between two possible kinds of rights has not been taken.

Now consider two such cases. These two cases, about both of which I propose to go to town, possess a salutary complementarity. Those sympathetic in one are most unlikely to be sympathetic in the other. Yet if both these option rights are conceded there is no escape from accepting both implications.

(a) First, in Britain both the industrial Trades Union Congress and its political creature, the Labour Party, lose no opportunity of insisting upon the workers' inalienable rights to form and to join labor unions.<sup>26</sup> But they also demand and, so far as they can, enforce closed shops. Thus British Rail and other state monopolies — with the full support of the TUC, the Parliamentary Labour Party, and the Cabinet, indeed at their behest — have during the seventies dismissed many employees with records of long and impeccable service on the sole grounds that they were so cross-grained, or so principled, as to refuse to join the approved (and, of course, Labour Party affiliated) trades union.

In proclaiming the general right of association, both the U.N. Universal Declaration of Human Rights and the later specifically European version make it quite clear that this right is the right to join or not to join, at will. Carping critics have even suggested that this is one reason why the TUC and the Labour Party are so hostile to the institutions of the European Community; and certainly it is true that efforts are even now being made to get the related judicial institutions to condemn the British socialists' tyrannical violations of this right. The same critics would explain the failure to extend the hostility to the UNO by pointing out that, in its in any case largely disingenuous declaration, while Article 23(4) reads specifically, "Everyone has the right to form and to join trades unions for the protection of his interests," it is only elsewhere in Article 20(2), that the correlative general freedom not to join gets a mention: "No one may be compelled to belong to an association."

(b) A second, equally contentious but less parochially British-political illustration is provided by what the Founding Fathers put first, namely, the right to life. If this is, as it surely is, an option rather than a welfare right, then it must embrace a complementary right to death. What is the right to life if it is not the right, so long as nature permits, to go on living, or not, as I choose? Certainly it is at least the right not to be killed by anyone else; unless and until I forfeit that right

by, for instance, doing murder. But surely, as an option right, it must also and necessarily keep open the alternative of suicide, and even of the assisted suicide that is voluntary euthanasia.<sup>27</sup> Nor is it to the point to insist that few if any of the Signers thought that they were putting their names to a demand for the decriminalization of suicide and assistance to suicide. Maybe they did not, any more than many of them saw that their demands must apply also to women and to blacks. But what these or any other utterances actually imply is determined by their conventional meanings rather than by the fleeting intentions of particular utterers.

To round off this part of the discussion, let us ponder a short item from a recent issue of that doughtily libertarian magazine *Reason*: "Our second Doublespeak Award goes to Mr. James Loucks, President of Crozer Chester Medical Center of Chester, Pennsylvania. Loucks got a court order allowing his hospital to give a Jehovah's Witness a blood transfusion. The woman had requested in writing that the hospital respect her religious beliefs and not give her a transfusion under any circumstances, but Loucks says he ignored her wishes 'out of respect for her rights.' "

### V. Moral Fundamentals and Option Rights

As was emphasized from the beginning, the present paper will make no attempt definitively to establish what, if any, natural and universal rights there are. It must suffice simply to suggest, in the light of the points thus far raised, that it should be possible to demonstrate from a commitment to the application of the fundamental moral ideas that something very like the option rights doctrine of the American Declaration of Independence must follow. Suppose we allow, as we surely must, that Immanuel Kant approached very close to an understanding of these moral essentials. Then consider "The Formula of the End in Itself." After taking "rational nature" as "something *whose existence has in itself* an absolute value," Kant's Categorical Imperative becomes: "*Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.*"<sup>28</sup>

These formulations as they stand will, of course, not do. One sufficient reason why they will not do was urged by Kant's admiring critic Schopenhauer. It is, strictly, incoherent to speak of "ends in themselves." There can no more be "ends in themselves" unrelated to the persons whose ends they are, than there can be sisters in themselves, unrelated to any siblings of whom they are the sisters.<sup>29</sup> Again, Kant's talk of "rational natures" and of "rational beings" is likely to suggest nothing but creatures who are rational as opposed to irrational, or who are intellectual and unemotional as opposed to lowbrow and emotional. But the rational beings to all of whom the imperatives of morality apply, and "*whose existence*" might be said to have "*in itself* an absolute value", are not an exclusive band of Platonic dialecticians. Nor are they, what nothing could be, ends in themselves. What they are is the very creatures we all are: creatures, that is, which are able to, and cannot but, form ends for themselves and which in

giving to themselves or to others their reasons for acting thus but not thus are, however irrational or non-rational those reasons, rational beings.

From these familiar non-moral facts of our human nature nothing can be immediately deduced about either any rights which must be possessed by, or any obligations which must be incumbent on, beings such as we. However, to borrow another characteristic concept from Kant, "as legislating members of the Kingdom of Ends," as creatures prescribing laws to apply to all such creatures, creatures adopting and pursuing ends for themselves, we ourselves can lay it down that all rational agents are to be respected in their pursuit of their own chosen ends; or, in the favorite words of a more recent generation, their doings of their own things. Indeed, if we are committed to prescribing principles to apply equally to all such beings, principles which as ourselves such beings we could will to become universal law, then it would seem that we can scarcely fail to prescribe: both that all individuals must have the right to pursue their own ends, save in so far as this pursuit violates the equal rights of others; and that everyone must be under the reciprocal and corresponding obligation to respect those equal rights of everyone else.

The notions of equality and of reciprocity enter here because no one can consistently claim such universal human rights for themselves save in so far as they concede to others the same rights, the same liberties. The content of such rights cannot but in consequence be the same for all. An agreeably unhackneyed statement is provided by the 1945 constitution of Kemalist Turkey: "Every Turk is born free and lives free. He has liberty to do anything which does not harm other persons. The natural right of the individual to liberty is limited only by the liberties enjoyed by his fellow citizens." The practice presents every kind of problem. The principle is luminous.

## NOTES

1. *The Collected Works of Jeremy Bentham*, ed. J. Bowring (London, 1843), 2:501.
2. Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977), p. 139.
3. Quoted by E. S. Corwin, *The Higher Law Background of American Constitutional Law* (Ithaca, N.Y.: Great Seal, 1955), p. 79.
4. The key passage can be found, with some discussion of its importance, in my *An Introduction to Western Philosophy* (Indianapolis, Ind.: Bobbs-Merrill, 1971), pp. 26ff.
5. I hope that my information that this is the American English equivalent of the English English "made-to-measure" is correct.
6. Hugo Grotius, *The Law of War and Peace*, trans. F. W. Kelsey, with an introduction by J. B. Scott (Indianapolis, Ind.: Bobbs-Merrill, 1925), p. 23.
7. *Ibid.*, pp. 38-39.
8. *Ibid.*, p. 40.
9. G. E. Moore, *Principia Ethica* (Cambridge: Cambridge University Press, 1903), *passim*.
10. For a development and defense of this not very controversial interpretation of Hume, see the relevant chapter of D. J. O'Connor, ed., *A Critical History of Western Philosophy* (New York: Free Press of Glencoe, 1964).
11. John Locke, *An Essay concerning Human Understanding*, bk. 4, chap. 3, sec. 18-19.
12. Compare A. M. Honoré, "Social Justice," in R. S. Summers, ed., *Essays in Legal Philosophy*

- (Berkeley and Los Angeles: University of California Press, 1968). Honoré argues that the rule "Treat like cases alike" does not entail "Treat unlike cases unlike" (p. 68).
13. Stanley Benn, "Human Rights — for Whom and for What?" in E. Kamenka and A.E.S. Tay, *Human Rights* (London: Edward Arnold, 1978), p. 64.
  14. See, for instance, my *The Politics of Procrustes* (London and Buffalo: Temple Smith, and Prometheus, 1981), chap. 4, sec. 1.
  15. See David Hume, *A Treatise of Human Nature*, bk. 3, chap. 1, sec. 1. Hume's Law should not be confused with Hume's Fork: the second expression refers to the aggressive employment of his distinction — made most clearly in *An Inquiry concerning Human Understanding*, sec. 4, pt. 1 — between propositions stating, or purporting to state, "matters of fact and real existence," and others stating, or purporting to state, "the relations of ideas."
  16. J. R. Searle, "How to Derive Ought from Is," *Philosophical Review* 73 (1964): 43–58.
  17. J. L. Austin, *Collected Papers*, 2nd ed. (Oxford: Oxford University Press, 1970), p. 182.
  18. Notice here Hume's still much under-appreciated comparison between terms which can and cannot be so analyzed, in *An Inquiry concerning the Principles of Morals*, sec. 9, pt. 1.
  19. Austin, *Collected Papers*, p. 185.
  20. *Wall Street Journal*, October 25, 1978, editorial entitled "A Sense of Proportion." Cicero was in his day no doubt on target when he wrote: "We do not speak of justice in the cases of horses or lions" (quoted in Grotius, *Law of War and Peace*, p. 41).
  21. Bentham, *Principles of Morals and Legislation*, vol. 17, *Collected Works*, p. 4n (emphasis in original). John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. vii–viii.
  22. *General Practitioner* (London), November 26, 1976.
  23. Ponder here one excellent saying of a perhaps no longer disfavored Sage. A pupil once asked Confucius whether his rule of conduct might not perhaps be epitomized in a single word: "The Master replied, 'Is not "reciprocity" the word?' " See *The Analects*, trans. and ed. W. E. Soothill (Taiyuanfu, Shansi: Soothill, 1910), bk. 15, sec. 23.
  24. It is, presumably, because he is himself thinking only of welfare rights, and is either indifferent about or even hostile to liberty — or at least to liberties for enemies of socialism — that Kai Nielsen in a recent article on "Grounding Rights" makes an otherwise unintelligibly perverse remark: "I am, speaking personally, committed through and through to such a conception of the moral equality of persons. However, I differ from many . . . in believing that it requires socialist institutions for anything even approximating its implementation" (*Inquiry* 25, no. 3 [1982]: 178).
  25. Herbert Hart, "Are There Any Natural Rights?" *Philosophical Review* 64, no. 2 (1955): 184.
  26. This is not actually the strict truth: for when recently there were reports from the U.S.S.R. that some heroes were trying to form a genuine labor union independent of the party and the government, it proved impossible to screw out of the General Council of the TUC even the faintest murmur of sympathy or support for these Tolpuddle Martyrs of our own time.
- When later the genuine free Polish trades union Solidarnosc was being formed, a TUC official delegation was on its way to Poland, and was spared the embarrassment of visiting the Headquarters of the popularly repudiated government unions only by a last minute withdrawal of the original Communist invitation.
27. I have developed this argument in "The Right to Death," a paper first presented to a Gerontological Institute at Sangamon State University in Springfield, Illinois. It was first published in *Reason Papers*, no. 6 (Santa Barbara, Calif.: Reason Foundation, 1980), and is to be reprinted in the *Proceedings* of that Institute (New York: Human Sciences, forthcoming).
  28. Immanuel Kant, *Groundwork of the Metaphysics of Morals*, in *The Moral Law*, trans. H. J. Paton (London: Hutchinson, 1948), pp. 90, 91 (italics and capitalization in original).
  29. Schopenhauer, *On the Basis of Morality*, trans. E. R. J. Payne (Indianapolis, Ind.: Bobbs-Merrill, 1965), p. 95.