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# PERSPECTIVES ON RIGHTS

## WHAT IS A RIGHT?

*Antony Flew**

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 symposium on crime and punishment to make no mention of the eponymous masterpiece of Fedor Dostoevski, so we here are bound to begin by taking not of those most famous words of Jeremy Bentham. He, as we all remember, dismissed our present subject with truly Johnsonian finality. It is no more than 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."[1]

We here have all undertaken to investigate precisely and, indeed, only what Bentham rejected. Our concern, or our 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 with rights inasmuch as and insofar as these either do serve or could serve as a basis for criticizing types or tokens of individual conduct, and general principles or particular prescriptions of positive law. Such criticism must result in commending whatever respects, and condemning whatever violates, any (moral as opposed to legal) rights which — the Great Jeremy notwithstanding — there are.

1. *The Objectivity of Rights*: That last two-word phrase is, unequi-

* Professor of Philosophy, University of Reading, England. M.A., Oxford University; D.Litt., Keele University.

[1] 2 J. BENTHAM, THE WORKS OF JEREMY BENTHAM 501 (J. Bowring ed. 1843).

vocally and defiantly, both categorical and existential. It thus epitomizes the first conceptual truth about (moral) rights. 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 to be himself *Taking Rights Seriously*: "A great many lawyers are wary of talking about moral rights, even though they find it easy to talk about what is right or wrong for government to do, because they suppose that rights, if they exist at all, are spooky sorts of things that men and women have in much the same way as they have non-spooky things like tonsils."[2]

No doubt there is room for discussion about exactly how far and in what ways having a (moral) 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 unalienable 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 it is the first essential of any (moral) right that it must possess some kind of objectivity. If we are going to maintain, against Bentham and so many others, that there are such rights, then we 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."[3] Our natural and inalienable rights are thus

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[2] R. DWORKIN, TAKING RIGHTS SERIOUSLY 139 (1977).

[3] E. CORWIN, THE "HIGHER LAW" BACKGROUND OF AMERICAN CONSTITUTIONAL LAW 79 (1955)

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 here we have to object to this more on a quite different ground: neither maintaining, as atheists, that there are no positive theological facts; not, 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 law would not be rights of the kind which we are here to discuss. They could not, that is to say, be rights by reference to which all — repeat, all — prescriptions of positive law may be criticized.

The heart of this particular matter of logic was first laid bare by Plato's *Euthyphro*:[4] 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 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 are those things which 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.[5]

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

(quoting 3 ADAMS, LIFE AND WORKS 448-64).

[4] The key passage can be found, with some discussion of its importance, in A. FLEW, AN INTRODUCTION TO WESTERN PHILOSOPHY 26-33 (1971).

[5] H. GROTIUS, THE LAW OF WAR AND PEACE 23 (F. Kelsey trans. 1925).

> obligatory or not permissible, and so it is understood that necessarily they are enjoined or forbidden by God.[6]

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, so He cannot cause that that which is intrinsically evil be not evil."[7]

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, 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. For what are these intrinsic characteristics if not the "simple, non-natural qualities" of *Principia Ethica* — qualities which must as "non-natural" be paradigmatically "spooky?"[8]

(b) The enormous obstacle obstructing 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-centred. 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 centre 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

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[6] *Id.* at 38-39.

[7] *Id.* at 40.

[8] G.E. MOORE, PRINCIPIA ETHICA (1903).

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.[9]

In this Humean perspective it becomes almost impossible to admit as objective anything but straightforward, unspooky matters of 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 as such they are 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 that the slightest tincture of anthropology or sociology is enough to expose all value judgements as inherently and essentially arbitrary, relative, and subjective.

If we are to succeed in showing how (moral) 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 encouraging to ponder again the last words quoted earlier from Grotius. For 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

[9] For a development and defense of this not very controversial interpretation of Hume, see Flew, *Hume*, in D.J. O'CONNOR (ed.), A CRITICAL HISTORY OF WESTERN PHILOSOPHY 253 (1964).

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, a standard here which is in the sense explained objective. If the conclusion drawn does follow, then the inference is correct: and, if not, not.

Of course there may be, and very often are, difficulties and disagreements about the application of this standard. More to the present point, the general claim that there are rights, as well as less general claims about the subsistence of this or that particular right, seem to be far removed from the tautological truths of logic and mathematics. Certainly I have no wish to recommend — much less actually to embark upon — any project of developing the new moral geometry once envisioned by, among others, Locke.[10] (Notice however, parenthetically and in passing, that Kant himself proposed to deduce the categorical imperatives of morality from his concept of an ideally rational being; though without, I think, spelling out a clear reason why we, who are in this context at best potentially rational beings, should strive to become actually and ideally rational.) The point of the reference here to logically necessary truths is simply and solely, by indicating that the Universe does contain something like the sort of objectivity we need, to encourage our investigations. I think of all those — from Plato himself through St. Augustine up to and including, it is said, Elizabeth Anscombe as a schoolgirl — who, having first satisfied themselves of the reality of the Platonic Forms, then sought further species of the exotic and elusive genus *substantia incorporealis* with a fresh surge of confidence.

2. *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

[10] J. LOCKE, AN ESSAY CONCERNING HUMANE UNDERSTANDING, Book IV, Ch. iii, §§ 18-19 (1690) [pp. 273-75 in original text].

said to have the same right. Then there is, surely, no parallel necessity requiring that in both cases these be identically grounded.[11] 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. Thus it is perfectly proper to say that we all have (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;"[12] 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[13] — 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 not themselves so warranted.

It needs to be emphasized also that his grounding of rights upon facts about the bearers of those rights involves no violation of Hume's Law.[14] Conclusions about what ought to be are not being deduced — nor could they be validly so deduced — from premises

[11] Compare Honore, *Social Justice*, 8 McGill L.J. 78 (1962), *revised and reprinted in* R. Summers, Essays in Legal Philosophy 61 (1968). Honore argues that the rule "Treat like cases alike" does not entail "Treat unlike cases unlike." *Id.* at 68.

[12] Benn, *Human Rights — For Whom and For What?*, in E. Kamenka & A.E-S. Tay (eds.), Human Rights 59, 64 (1978).

[13] See my *Who are the Equals?* to appear first in Philosophia (Ramat-Can, Israel), then, considerably later and drastically revised, in my The Procrustean Ideal: Philosophical Essays on Liberty, Equality and Socialism (London: Temple Smith, forthcoming).

[14] *See* D. Hume, A Treatise of Human Nature, Book III, part i, § 1 (1754). 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 D. Hume, An Enquiry Concerning Human Understanding § IV, part i (1777) — between propositions stating, or purporting to state, "matters of fact and real existence," and others stating, or purporting to state, "the relations of ideas."

themselves purely neutral and detached, premises stating non-committally only what is the case. It may appear that this impossibility is occurring, especially if we continue to attend to the example of promising. Indeed it has so appeared, as a very forceful and confident illumination, to an able philosopher.[15] 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 itself 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.)

(a) 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 again . . . not *merely* at words . . . but also at the realities we use the words to talk about: we are using a sharpened awareness of words to sharpen our perception of . . . the phenomena."[16]

The general truth is that in appraising and valuing — as opposed either to 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;[17] to say nothing of the still more implausible suggestion that it means instead something like, "She is a woman: horray!"

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[15] Searle, *How to Derive "Ought" from "Is"*, 75 PHILOSOPHICAL REV. 43 (1964).

[16] J.L. AUSTIN, PHILOSOPHICAL PAPERS 182 (2d ed. 1970).

[17] Notice here Hume's still much under-appreciated comparison between terms which can and cannot be so analyzed, in D. HUME, AN INQUIRY CONCERNING THE PRINCIPLES OF MORALS § 9, part ii (1754).

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 into their provocations, we still cannot allow that they are like colours. 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.

(b) Against at least my next, jumbo-sized, subsection I hope that the final charge pressed by Aelius Aristides will not be sustained. We philosophers, he complained in his *Oration on the Four,* "never write useful articles, organize conventions, honour the Gods, comfort the afflicted, arbitrate in civil disputes, counsel the young (or anyone else), or give any thought in what they write to considerations of the public good."[18]

The no doubt modest public good considered is the suggestion that it is scarcely possible to justify the nowadays widely popular identification of the imposition of a universal equality of condition with the enforcement of (a kind of) justice. If this identification is indeed incorrect, then the protagonists of the former ideal — who are today so numerous and so influential among "the clerisy of power"[19] — should in honesty abandon the legitimizing and propaganda advantages of appeals to justice. Let them instead make bold to proclaim in general — as in the particular context of penal policy some of their spiritual kin already do[20] — that the whole notion of justice is atavistic, confused, backward-looking, reactionary, gothic: that scientifically enlightened public policy is necessarily directed to quite other ends.

Certainly, if we ignore for the moment all overtones of approval

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[18] David Cooper of the University of Guildford showed me this passage, which I take my first chance to share. The Greek text can be found in W. DINDORF, AELIUS ARISTIDES (1964).

[19] Nisbet, *The Fatal Ambivalence of an Idea,* ENCOUNTER, Dec. 1976, at 10.

[20] For a forthright denunciation of justice by the sometime high priest of North American orthopsychiatry — a denunciation couched in very much the terms indicated in the text — see K. MENNINGER, THE CRIME OF PUNISHMENT (1968), and compare A. FLEW, CRIME OR DISEASE? (1973).

or disapproval, the contrast between the forward-looking and the backward-looking is absolutely right. For any version of this ideal of equalizing future conditions is concerned precisely with achieving and maintaining those conditions of equality; regardless of any differences between what people have or will have been, or done, or suffered. Justice, on the other hand, is essentially backward-looking. It is concerned with deserts and entitlements — which have to be grounded on facts about the deservers and the bearers of entitlements, upon what these have done or not done, upon what they are, and upon what has happened to them.

All these I take to be conceptual matters,[21] with no immediate implications for what anyone's deserts or entitlements actually and substantially are; (though it is perhaps worth remarking that the first phrase of the traditional definition — *suum cuique tribuere, eminem laedere, honeste vivere* — would sound a trifle awkward if for each their own were always the same and equal). If we are going to say that everyone has some rights which are the same as those of everyone else, then we must find some appropriate common characteristics upon which to ground these basic human rights; and, to ensure that these characteristics really are universal, prudence recommends that they be or be made defining.

Suppose now that someone wants to maintain that it is justice which requires an equality of condition, then they have somehow got to get rid of all inequalities of both desert and entitlement. No doubt there could be more than one way of approaching this objective: one might, for instance, taking a strong line on Original Sin insist that human deserts are equally and irreparably abysmal. But today there is one uniquely popular strategy. This is to try to discredit the whole idea of desert, to discount possibly different individual entitlements, and to assert either a fundamental universal right to equality of condition, or a collection of such fundamental rights in fact summing to equality. Thus, in order to represent the imposing of their ideal as the enforcing of justice, egalitarians of outcome have to maintain that they are thereby securing everyone's deserts and entitlements, or deserts or entitlements.[22] But then, in order to en-

[21] It is, therefore, odd that critics should describe the whole package of views propounded in R. NOZICK, ANARCHY, STATE, AND UTOPIA (1974) as "an entitlement theory of justice." Would they call the statement that marriage is essentially concerned with sexual relations a theory of marriage?

[22] For some development of the distinction between this and two other very different dimensions of equality, and for the point that to "the clerisy of power" the present egregiously

sure that these are as requisite equal, they have to make out that our basic rights as people, which must of course as such be the same, either include or add up to a right to equality of condition — a conclusion which necessarily excludes any individual, and hence presumably diverse, entitlements or deserts.

Against diverse deserts the obvious line of attack is frontal. If either the concept of desert is incoherent or it can have no application to creatures such as we in fact are, then there can be no question of our having either equal or unequal deserts. This line — as usual without clearly distinguishing between its two versions — has in the present context been taken by, for instance, Lars Ericsson and Stuart Hampshire: the first in a book entitled *Justice in the Distribution of Economic Resources* published in Stockholm; the second in a long rave review of John Rawls' *A Theory of Justice* for *The New York Review of Books*.[23]

Ericsson argues on the basis of a general determinism inconsistent with the reality of choice, whereas Hampshire here follows the more particularly Skinnerian line that all human conduct is really the work of the environment.[24] But if they were successful in driving their offensive home, then, as Skinner himself is well aware, it would undermine the whole structure of moral thought and activity, and in particular — what is essential to the moral idea of justice — the idea of people as both themselves having entitlements, and being by the same token morally obliged to respect the entitlements of others.[25] For, whether or not it is intelligible to ascribe some kind of rights to the brutes or to plants, surely it must be senseless to make an assertion of rights against anything other than rational agents, capable of acting by choice in one way rather than another, and of having their own reasons for so doing?

Rawls himself follows a different line. His enormous book has

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bureaucratic vision is always one to be imposed by the compulsions of social engineering, rather than pursued by voluntary effort and their own sacrificial example, see my *The Procrustean Ideal* in ENCOUNTER for March 1978 (Vol. L No. 3), pp. 70-79. Contrast the strictly voluntary and self-imposed equalities of the Israeli kibbutz.

[23] L. ERICSSON, JUSTICE IN THE DISTRIBUTION OF ECONOMIC RESOURCES (1976); Hampshire, Book Review, N.Y. REV. OF BOOKS, Feb. 24, 1972, at 34.

[24] *See* B.F. SKINNER, BEYOND FREEDOM AND DIGNITY (1972), and compare A. FLEW, A RATIONAL ANIMAL 140-50 (1978).

[25] Ponder the words of an authentic Great Sage, who may perhaps by now have been rehabilitated in his own country. 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?' " THE ANALECTS OF CONFUCIUS, edited and translated by W.E. Soothill, T'aiyuanfu [Shansi, 1910], XV S.23.

been hailed "as the long-awaited successor to Rousseau's *Social Contract,* and as the rock on which the Church of Equality can properly be founded in our time."[26] As we all know, it begins by reviving the idea of a social contract, to be notionally and timelessly negotiated behind a Veil of Ignorance: "It is assumed," Rawls explains

> . . . that . . . no one knows his place in society, his class position or social status . . . his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. Nor, again, does anyone know his conception of the good . . . . More than this, I assume that the parties do not know the particular circumstances of their own society . . . . The persons in the original position have no information as to which generation they belong.[27]

(Is there, by the way, any system of positive law under which the courts would allow such wretched zombies — we can scarcely rate them persons — to be minimally competent to make a contract?)

It is usual to discuss this comprehensive blinkering as having been stipulated in order to secure impartiality; which makes the whole exercise — as R.M. Hare, for instance, suggested[28] — a dramatization of traditional appeals to the ideally impartial spectator. Certainly Rawls does mention this as one purpose: "We should insure further that particular inclinations and aspirations, and persons' conceptions of their good do not affect the principles adopted."[29] But his stated primary purpose is wholly different. The point is that all human particularities are, he thinks, irrelevant:

> Once we decide to look for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstance as counters in quest for political and economic advantage, we are led to these principles. *They express*

[26] Nisbet, *The Pursuit of Equality,* in THE PUBLIC INTEREST, No. 35, Spring 1974, pp. 103-20.

[27] J. RAWLS, A THEORY OF JUSTICE 137 (1971). Curiously, since the book was compiled in the United States in the sixties, it never seems in so many words to rule out knowledge of either sex or colour. But Dr. Virginia Held has shown me a passage, Rawls, *The Justification of Civil Disobedience,* in H. BEDAU (ed.), CIVIL DISOBEDIENCE 240, 242 (1969), where Rawls actually says that "they do not know . . . whether they are . . . man or woman," and so on.

[28] See the first part of his cool Critical Study, Hare, *Rawls' Theory of Justice* (pt. 1), 23 PHILOSOPHICAL Q. 144 (1973).

[29] J. RAWLS, *supra* note 27, at 18.

> *the result of leaving aside those aspects of the social world that seem arbitrary from a moral point of view.*[30]

Having, for the two reasons elucidated in our previous paragraph, hung up the Veil of Ignorance, Rawls puts the basic question to his hypothetical contracting parties. After the endearing frankness of his confession that "We want to define the original position so that we get the desired solution,"[31] it comes as no surprise that they cannot but "acknowledge as the first principle of justice one requiring an equal distribution. Indeed, this principle is so obvious that we would expect it to occur to anyone immediately."[32] Given that the zombies have deliberately been rendered ignorant of all those particularities of actual, flesh and blood, historically situated, humanly related, individuals upon which possibly unequal claims might be grounded: to them it must indeed seem obvious.

Notice now that this supposedly so manifest "first principle of justice" is being offered: not as a defeasible methodological presumption, but as a substantive moral commitment; not as a ruling of prudence for those in the original position, but as a — indeed the — fundamental moral judgement. Certainly Rawls is talking prudence in the words immediately preceding those just quoted: "Since it is not reasonable . . . to expect more than an equal share in the division of social goods . . . and . . . not rational . . . to agree to less, the sensible thing . . . to do . . .," and so on. But what they are thus supposed to acknowledge is, equally certainly, a matter of morality; and the primary stated reason for fixing the cognitive blindfolds always was to make the hypothetical contracting parties into sound and reliable moral judges.

Of course it is not exactly with this most radically egalitarian "first principle" that Rawls himself wants to end: I have elsewhere both spelled out some of its unlovely consequences and argued that his own rather less harsh Difference Principle cannot be derived in the way in which he seems to want to derive it;[33] and I hope later

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[30] *Id.* at 15.

[31] *Id.* at 141.

[32] *Id.* at 150-51.

[33] *See* Flew, *Equality or Justice?*, 3 MIDWEST STUDIES IN PHILOSOPHY 176 (1978).

It is bizarre that, having made this assumption from the beginning, Rawls should believe his system to be neutral on the question of socialism. Rawls should realize that in practice the priority of liberty cannot consist with either the particular allocative system of *A Theory of Justice* or any other requiring similarly monistic economic presuppositions.

Neither for the first nor for the last time I beg all those who, while working for socialism, still claim to be friends of liberty to ponder the burden of such statements as the following

and again elsewhere to develop the point that the differences sanctioned by that Difference Principle cannot be shown to be just (justicized), as opposed to justified (on utilitarian grounds), if the differences of individual endowment which are to be thus exploited for the common good are properly and in the first instance collective rather than individual assets. But what we do need to underline here is the fundamental point that the entire Rawls procedure is set up to presuppose that the grounds of all just claims must be common to all. So these grounds will presumably have to be found in the universal and essential nature of humanity, never in any individual particularities. It is entirely consistent with this presupposition for Rawls "to regard the distribution of natural abilities [and of everything else too — AF] as a collective asset so that the more fortunate are to benefit only in ways that help those who have lost out."[34] On the other hand, what is incongruous to the point of the bizarre is the unselfcritical innocence which allows Rawls to reproach what he sees as the Utilitarian competition because, as indeed is true, "[i]t does not take seriously the distinction between persons"![35] (And, similarly, whatever basis can there be for the individual self-respect which Rawls so rightly allows to be important, if everything which can distinguish one individual from another is a collective asset, or a collective liability, rather than something truly integral to that individual?)

It is precisely his own systematic and explicit insistence that everything by which one person may be distinguished from another is morally irrelevant, which prejudices the claims of *A Theory of Justice* to be what it falsely advertizes itself as being. (It must, however, in fairness and in parenthesis, be allowed: that inside the package Rawls indicates, without actually saying, that the contents have been too broadly described; and that he does introduce a qualifying adjective, though without undertaking to explain how the par-

from the Institute of Marxism-Leninism in Moscow. The Institute was outlining and recommending "Broad Left" or "United Front" tactics — the tactics in fact later to be followed in Chile, France and elsewhere; "Having once acquired political power, the working class implements the liquidation of the private ownership of the means of production. . . . As a result, under socialism, there remains no ground for the existence of any opposition parties counter-balancing the communist party." THE ECONOMIST, June 17, 1972, at 18, 23 (quoting Institute of Marxism-Leninism, *The Falsifiers of the Theory of Scientific Communism*). The monopoly socialist party does not, of course, have to be called a communist party; and it may even tolerate the purely nominal existence of other political organizations, so long as these are vestigial, impotent, and paralyzed.

[34] J. RAWLS, *supra* note 27, at 179.

[35] *Id.* at 27.

ticular kind thus picked out either relates or fails to relate to whatever other kinds are thereby excluded. "Our topic," he says, "is that of *social* justice.")[36]

Nor does Rawls offer much support for his insistence upon excluding from consideration everything by which one person might be distinguished from another. This appears to be one of several principlies which — however unfamiliar, or even perverse, they might have appeared to the wise and good of earlier days — "we" find plumb obvious. When Rawls does offer an argument, it is nothing but the brisk erection and demolition of a straw man: "Perhaps some will think that the person with greater natural endowments deserves those assets and the superior character that made their development possible. Because he is more worthy in this sense, he deserves the greater advantages that he could achieve with them. This view, however, is surely incorrect. It seems to be one of the fixed points of our considered judgments that no one deserves his place in the distribution of native endowments, any more than one deserves one's initial starting place in society."[37]

Yes, certainly: no one deserves his place "in the distribution of native endowments." Who has been maintaining that any do? Yet this does not begin to prove, either that no one person has any deserts different from those of anyone else, or that we ought "to regard the distribution of natural abilities as a collective asset . . . ." Those who are so unfashionable as still to employ the concept of desert think of deserts as arising from what people do or fail to do, rather than from their natural constitutions. Nor has Rawls said anything at all to show that there cannot be, and are not, individual entitlements both unearned and undeserved, unless we count the hint here that this "distribution of native endowments" is itself "arbitrary from a moral point of view."

The word "individual" has to go in there because his present claim precisely is a claim to an unearned and undeserved collective

[36] *Id.* at 7 (emphasis added). A cynic might say that, if only Rawls had added this adjective to his title, my objection could not have been sustained, on the grounds that everyone must know that social justice has as little to do with justice without prefix or suffix as People's Democracy has with democracy or Bombay duck with duck. But such a cynic would have to be referred to those like A. Honore who do make room for some inequalities of desert. These in his account may override the first principle of social justice; that "all men considered merely as men and apart from their conduct or choice have a claim to an equal share in all those things . . . which are generally desired and are in fact conducive to their well being." Honore, *supra* note 11, at 62-63.

[37] J. RAWLS, *supra* note 27, at 104.

entitlement: what ought to be regarded as a collective asset just is, surely, a collective entitlement. From the beginning too the entire Rawls contractual project tacitly presupposes that all tangible or intangible goods — whether already at hand or to be produced or discovered later — all goods of every kind arising within the artificially unknown state borders of the artificially unknown territories being or to be inhabited by his thought-experimental group, everything is collective property, available for distribution or redistribution at the absolute discretion of the group. But of these various goods all those inherited by the present generation must constitute unearned, while all those produced by it will presumably be earned, collective entitlements.

Rawls, like so many others, is inclined to speak as if there had been an active distribution of talents, temperaments, and bodily parts and as if the authorities had in this distribution done a scandalously unfair job. Yet there never was nor could have been any such active distribution. Who are or were the legatees of our genetic inheritances, or of the sums of our bodily parts; and to what antecedently existing persons could the Great Distributor have allocated such things? The truth is that most of the elements which Rawls sees as constituting morally arbitrary individual inheritances — inheritances which ought to be regarded as adding up to a single collective asset — are themselves integral to the various persons composing any actual human collective.

For suppose — with acknowledgments to Nozick[38] — a population of which half is born ordinarily two-eyed and half with no eyes at all. Suppose further that it became possible, safe, and easy to effect eye-transplants. Then is Rawls so absolute and so far-gone a collectivist that he would be prepared to maintain that for a two-eyed person to submit to a transplant operation is obedience to an imperative of justice, rather than an expression of supererogatory and overflowing charity? But if it is once allowed that we all have unearned and undeserved entitlements to our own constitutive bodily parts, then how can parallel claims about our talents or our relative lack of them, and about our rights over the possibly productive employment of all these things, be rationally resisted? Yet, if any of these several claims goes through, then it must be goodbye to any contention that the separate sums of the rights of all individuals separately, as opposed to those of their universal

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[38] R. NOZICK, *supra* note 21, at 206.

rights simply as human beings, are the same and equal.

3. *The General Reciprocity and a Particular Non-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."[39] 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.[40] For 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. (UNESCO has plenty of time and energy available — time and energy studiously saved by not attending to outrages against humanity in the Democratic Republic of Kampuchea, or in any of those other UN member countries contriving so effectively by their favoured political or racial colour to immunize themselves against international protest.)

This new declaration, supposedly set to become UN law by 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

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[39] J.L. AUSTIN, *supra* note 16, at 185.

[40] I wish to say here that I had to start writing before receiving my copy of Alan Gewirth's *Reason and Morality*. But I hope and expect that my remarks in the present subsection will serve as a kind of "trailer" to his symposium contribution.

animals is genocide."[41]

The proposal that rights should be ascribed only to potential claimers and respecters of the same does not, of course, foreclose 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?"[42] 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, 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 me promising you to give that, or to do that, to him. My promise creates your moral rights to its fulfillment, but gives him no new moral rights or duties. Another favourable and scarcely controversial example is the 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 (anti-voluntary 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."[43]

In our century, but especially since the end of World War II,

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[41] *A Sense of Proportion*, WALL ST. J., Oct. 25, 1978, at 26, col. 2. Cicero was in his day no doubt on target when he wrote: "We do not speak of justice in the case of horses or lions." Quoted in H. GROTIUS, *supra* note 5, at 41.

[42] J. BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION, Ch. XVII, § 4, footnote (1789).

[43] The General Practitioner of London for 26/XI/76.

people have become increasingly inclined to affirm that we all have rights to whatever it is thought that it would be good for everyone to have. It is significant that modern declarations of human rights are much longer — as well as being far less well-written — than those adopted in the American and French Revolutions of the eighteenth century. 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). Oh yes, and be sure not to miss 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 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 lies in putting forward as universal human rights demands which it would not be sensible to make except against a modern industrial state. The traditional political rights — such as the famous three specified in the American Declaration of Independence — are rights to non-interference. As such they could be and are rights against all comers, rights which everyone must have a corresponding duty to respect. But the proposed new rights are rights to provision, and there surely cannot be corresponding duties on everyone else to make these provisions. The former may be distinguished as option and the latter as welfare rights.

In 1960 in the United States the Democratic Party promised in its platform that, if elected, its administration would "reaffirm the economic bill of rights which Franklin Roosevelt wrote into our national conscience sixteen years ago." That platform listed eight great rights of provision, including "(1) The right to a useful and

remunerative job in the industries or shops or farms or mines of the nation[,] (2) The right of every farmer to raise and sell his products at a return which will give him and his family a decent living [, and] (5) The right of every family to a decent home."[44] The comment of Ayn Rand, in the chapter of *The Virtue of Selfishness* from which I borrow these quotations, strikes to the heart of the matter: "A single question added to each of the above eight clauses would make the issue clear: *At whose expense?*"[45]

One consequence of this enormous extension — and I would say overextension — of the area of supposed universal human rights is a parallel extension — and overextension — of the scope of justice. If all the new legal rights created by late twentieth-century welfare states, as well as such others as they may from time to time in the future decide to create, always were everyone's moral rights also, then almost everything which might conceivably be made a matter of public policy falls within the scope of justice — (social) justice. Morality too becomes, for practical purposes, coextensive with the enforcement of this all-embracing ideal.

Rawls provides a piquant illustration of the consummation of the process. For his milder modification and elaboration of a radical egalitarianism of outcome is by him presented as a proud contemporary rival to classical Utilitarianism. An account of justice-as-fairness takes the field: not against, for instance, J. S. Mill's particular and local struggles in the final Chapter V of *Utilitarianism*;[46] but against general Utilitarianism as a whole. It is altogether typical of the sheltered parochialism pervading *A Theory of Justice* that Rawls sees nothing at all remarkable in so curious a mismatch.

In the Preface his account of the big fight is a muddle: "During much of modern moral philosophy the predominant systematic theory has been some form of utilitarianism."[47] This has indeed had well-girded opponents. "But they failed, I believe to construct a workable and systematic moral conception to oppose it . . . . What I have attempted to do is . . . to offer an alternative systematic account of justice that is superior, or so I argue, to the dominant utilitarianism of the tradition."[48] But, if I may refresh our memories, Mill makes it clear from the beginning that he is concerned not with

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[44] A. RAND, THE VIRTUE OF SELFISHNESS 128-29 (1961).

[45] *Id.* at 129.

[46] J.S. MILL, UTILITARIANISM (1897).

[47] J. RAWLS, *supra* note 27, at vii.

[48] *Id.* at viii.

any particular part, however important, but with the whole. Thus his very first paragraph puts "the question concerning the *summum bonum,* or, what is the same thing, concerning the foundation of morality."[49]

Perhaps, having said so much, I should also mention the possibility of erring in the opposite direction. Simply to respect other people's rights is not, I would indeed agree, to fulfil the whole duty of man. Maybe Ayn Rand, her few followers, and some others, actually have, by maintaining that it is, erred in this opposite direction. Nevertheless, even if they have, we must not, in our love of seeing ourselves as taking a sensibly Aristotelian middle way between two opposite faults, make the mistake of thinking that such opposite errors are always equally tempting and equally well-patronized.[50] In fact — in this particular case — the overwhelming weight, both of sheer numbers and of academic prestige, lies on the side of going wrong with Rawls rather than in what is often but perhaps wrongly believed to be Rand's way.

On the relations and differences between the world of rights and the rest of morality I have little to offer; which, this late in my day, is just as well. However, if we are to maintain such a distinction, then the weight of what the old Roman lawyers used to call the *mos majorum,* and what the new Austinians see more particularly as the verbal habits formed and tested through generations of experience, is for accepting that justice and rights are fundamentally concerned with not doing and not suffering actual harm or injury; "to allow to each their own, to harm no one, to live honourably." The key notion appears to be non-interference; and where rights to receive more positive goods arise, these are less fundamental, being derived from promises and contracts. (The rights of children to support by their

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[49] J.S. Mill, *supra* note 46, at 1.

[50] Perhaps there is no call to make this point before an American audience. But in my own country in its decline and fall it is as common as it is ruinous to see the path of political wisdom as necessarily equidistant between two opposite and always equally matched extremes of left and right. Since, while there are in fact very many totalitarian socialist extremists, often entrenched in powerful positions in the trades unions and their Labour Party, there is not any correspondingly numerous dedicated and influential counterforce of absolute antisocialists, the clients of this inept model have to identify Prime Minister Margaret Thatcher and Sir Keith Joseph as their right-wing extremist bogeypersons. Positioning themselves, therefore, equidistant between such mild conservatives and the mass of authentically Leninist ultras, their middle road is always the road to full Clause IV and 1984 socialism; but taken less fast then the ultras would wish. Compare, on the error of the popular misguiding doctrine that truth is always in the middle, A. Flew, Thinking Straight §§ 2.30-2.33 (1977).

parents are created by the unspoken promises to this effect made by parents in the process of bringing their children into existence.) The rest of morality is, correspondingly, concerned with doing actual positive goods, goods which, though they no doubt ought to be done, are not owed to anyone as of right.

Distinctions of the kind indicated seem in the last fifty years or so to have dropped out of moral philosophy, or at least receded very much into the background, casualties no doubt of the concurrent, explosive, imperial expansion of the truly neo-colonialist concept of (social) justice. But it is relevant to notice that during the thirties in a book called *The Two Moralities* A.D. Lindsay preached a sermon on the Pauline text: "love is the fulfilling of the law;" the word "fulfilling" involving, of course, in this context supplementation rather than implementation.[51] In older, more regular and mainstream, philosophy we may think of Kant's most characteristic contributions as referring most happily to the particular sphere of justice and rights; while Humean sympathy belongs rather to that other morality of love.

All this provides a second sufficient reason for excluding any peculiarly welfare-state imperatives from all lists of universal human rights. But — especially if we remember that Lindsay's "love" is the *agape* of the Greek *New Testament,* and that in turn the *caritas* of the Latin *Vulgate* — it also raises a familiar frightful bogey: "No charity! Every benefit a right." There are many things which I should like to say about this, and which upon some other occasion I will perhaps say. But here I will simply note without further com-

[51] A D. LINDSAY, THE TWO MORALITIES (1930). At the very beginning of the decade there had of course been W.D. ROSS, THE RIGHT AND THE GOOD (1930), while very recently D.D. Raphael noticed that "[t]he gradual extension of the scope of rights means that the concept of justice gradually takes over more of what formerly came under the concept of charity." Raphael, *The Rights of Man and the Rights of the Citizen,* in D.D. RAPHAEL (ed.), POLITICAL THEORY AND THE RIGHTS OF MAN 101, 117 (1967).

Nevertheless, or perhaps consequently, Raphael asks in a contribution to a similar volume,

> Would anyone say that the Welfare State is a *charity* organization, or deny that it is a more *just* . . . society than one in which the relief of basic needs is left to private generosity? Would anyone say that the provision of uneconomic transport services to remote, sparsely populated areas of Britian is charitable rather than fair?

Raphael, *Conservative and Prosthetic Justice,* 12 POLITICAL STUDIES 149 (1964), *reprinted in* A. DE CRESPIGNY & A. WERTHEIMER, CONTEMPORARY POLITICAL THEORY 177, 190 (1970).

Well, since he presses me, and in full and rueful awareness that I must by so untrendy and eccentric an answer be forever excluding myself from acceptance as one of "we," I will say that and only that "just" just is not the word. (For the no doubt underprivileged outsider the often underdeprived "we" are they.) But please notice again that a policy can be many more things, even good things, besides either just or charitable.

ment the incongruity of the fact that, at least in my own country, those who habitually describe welfare state provisions as fulfilling the norms of (social) justice, nevertheless attack those wanting to slow or reverse the expansion of the state welfare machine: not as would-be doers of injustice; but rather as lackers of compassion.

4. *Rights and Liberty:* Bernard Mayo maintains, apparently as conceptual theses, both that what I claim as my right must be in my interests, and that claims to rights must be claims against the state or other competent institution.[52] He offers no support for the second thesis other than the never to be minimized truth that institutions and states in particular constitute the main threats (as well as the main supports) to the rights most usually asserted. It is obvious that this reason by itself is not good enough. Even the fundamental and universal human rights can be, and in fact are, asserted against all comers.

It is more difficult to discover the truth about Mayo's first thesis. But this thesis surely cannot go through unless liberty is always in my interests, which would, I suppose, be perfectly consistent with his sound observation that a claim for something which is in our interests may nevertheless be a claim to something we in fact do not want. I confess, without a trace of shame, to resonating to Herbert Hart's assertion that the notion of a right is "peculiarly . . . connected with the distribution of freedom of choice."[53] If I have any light to throw on these issues it will be by raising the question whether it is coherent to proclaim a right while at the same time insisting that its exercise is to be compulsory.

Whether coherently or not, this is very often in fact done. In Britain, for instance, the industrial Trades Union Congress and its political creature the Labour Party never miss any chance of demanding and proclaiming the workers' unalienable rights to form and to join labour unions.[54] But they also demand and, so far as they can, enforce closed shops. Thus British Rail and other state monopolies have — with the full support of the TUC, the Pariliamentary Labour Party, and the Cabinet, indeed at their behest — dismissed many employees with records of long and impeccable service on the

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[52] Mayo, *What are Human Rights?*, in D.D. RAPHAEL (ed.), *supra* note 51, at 68, 74-78.

[53] Hart, *Are There Any Natural Rights?*, 64 PHILOSOPHICAL REV. 175, 184 (1955).

[54] Not actually the strict truth: for when recently there were reports from the USSR that some heroes were trying to form a genuine labour union independent of the party and the government, it proved almost 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.

sole grounds that these enemies of the people 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 UN 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 every expression of (Western) European supra-nationalism, and certainly it is true that efforts are even now being made to get the related judicial institutions to condemn tyrannical violations of this right by British socialists. 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."

Another equally contentious but less party-political illustration is provided by what the Founding Fathers put first, the right to life. Clearly this is at least the right not to be killed by anyone else, unless and until I forfeit that right by, for instance, myself doing murder. But is that minimum itself part of a wider right to go on living, or not, as I choose? More specifically, and crucially, is the right to life necessarily and by the same token the right to death: the right, that is, to suicide, and to the assisted suicide that is voluntary euthanasia?

My own answer is an unhesitating, even passionate, "Yes"; and I am actively engaged in campaigns to give legal effect to the contentious correlates of both the right to join trades unions and the right to life. But I can scarcely deny that the usage which permits the exclusions which I find so repugnant is established, even dominant. So within my own brief as an under-labourer instructed to finish only the preliminary logical geographizing, and short of the development of that theory of rights which I look forward to finding in some later article, I cannot think of any decisive argument to demonstrate that my answer is correct.

So, since allowing for the notes I am already pushing well past the prescribed upper limit for length, I end now by quoting an item from a recent issue of that doughtily libertarian little 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."