

Human Rights Reaffirmed

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There have been a number of attacks on the idea of human rights recently, both in the course of political and diplomatic encounters across the globe, as well as in the more systematic literature of political philosophy. These attacks do not always distinguish between the Lockean, negative and the more recent positive rights traditions. For example, at the 1993 summer conference on Human Rights in Vienna, Austria, many diplomats from different regions of the world raised such questions as 'When we speak of human rights, are these conditions that everyone everywhere ought to enjoy?' 'Is it perhaps the case that human rights are one thing for people in one part of the globe and another for those in another part?' These questions were raised in large part about the rights spelled out in the United Nations Declaration of Universal Human Rights, including both (so called) negative and positive rights—e.g., the rights to freedom of expression and to public education, respectively. Still what many leaders of Third World Countries claim is that human rights cannot be understood in the same way when applied to their societies as they when mentioned in the context of Western liberal democracies. Why? Because their societies require more direction by the state, more planning by government so as to handle their particular and unique circumstances, fewer chances for redistribution of goods and services, etc.

In the literature of political philosophy questioning the soundness of the concept of 'human rights' or of its original incarnation, 'natural rights', is familiar. The quip with which Jeremy Bentham dismissed such rights, namely, that they are 'nonsense upon stilts' is known by nearly everyone. Following its fullest development in modern philosophy at the hands of John Locke, the idea that everyone, by virtue of possessing a human nature, has certain fundamental, unalienable rights suffered severe philosophical assaults at the hands of empiricism, scientism, scepticism, holism, etc.

Yet, the idea that certain unifying principles of social conduct based on our understanding of what it is to be human deserves systematic protection by means of legal enforcement—indeed the sort that must itself be guided by those principles—is certainly resilient. This idea has been designated as 'human rights', in one

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metaethics.) From this it would seem both hopeless and undesirable to forge and sustain a society by relying on human rights. One such critic of the natural rights stance, namely, van den Haag, goes on to argue that utilitarian ethical or political theory provides us with better results in our efforts to understand our moral problems in life than does the natural rights theory. The reason given is, mainly, that the latter view is philosophically flawed while the former is not and is, for purposes of ethics and public policy, no worse than the latter when it comes to handling difficult problems. At any rate, whether this is a good or bad strategy, it is one of utilitarianism's supposed advantages that in the wake of the failure of natural human rights theory, it can address the problems in need of solution more successfully. Some in this positivist traditions also object that liberty itself, which natural rights theorists claim to be concerned about, is at risk with a theory that relies on some stable conception of human nature. Finally, van den Haag also argues that anomalies are handled more adequately in utilitarian theory than with ones proposing the existence of natural rights.

2. Sceptical Criticism of Human Rights

Another criticism comes from foundational sceptics. Their objection has three main parts. First, it is claimed that naturalism has been invalidated by contemporary empirical science.⁶ (This is supposed to be especially true as far as the naturalist depends on some type of teleological thesis.) Second, the sceptic finds fault with the most recent attempt to develop a case for liberalism, based on an ethics of individual flourishing drawn from Aristotle. For example, John Gray tells us that 'Writing in an age of mass democracy and wage-labour, Aristotle's latter-day liberal followers prescribe a life of bourgeois virtue—of thrift, industry, prudence, and creative work. However one assesses these ideals, the salient point is that in each of them the content given to human flourishing is taken wholly from the conventional norms of the theorist's local culture. It is far from clear what is the claim on reason attributed to these ideals.'⁷ He also maintains that 'The attribution to Aristotle of a belief in the moral centrality of choice-making . . . is all the more incongruous in that the belief

⁶ John Gray, *Liberalism* (Minneapolis, Minn: University of Minneapolis Press, 1986),. 43.

⁷ John Gray, *Liberalisms* (London: Routledge, 1989), 258. This claim is akin to that offered by Nelson, to be examined shortly.

ural or human rights theorists may be valid, it is *unsound* because human nature is not what a vital premise of the argument contends. In particular, the neo-Aristotelian efforts—aiming to supplement Locke's incomplete development of the foundation of individual rights—fail when it is claimed that human nature consists of the fact that human beings are rational beings or rational animals.

Both Locke, and especially his contemporary neo-Aristotelian natural rights followers argue that in every human community the same kind of beings reside. Thus they require certain conditions so that everyone may embark upon a fully human life, upon flourishing. And since human nature involves, at its very essence, rationality—something the exercise of which involves making free choices—human rights to life, liberty and property amount to the proper constituents of a human polity.

If, however, as the critics argue, no consistent, non-contradictory human nature exists, certainly not one that may be identified in certain universal and stable terms, these human rights must amount to myths. So the premise of the argument that refers to human nature renders the case for universal human rights unfounded.

Responses:

1. Against Utilitarian Criticism

There are two lines of argument that I will suggest against the conservative/utilitarian position. First, I will respond to the objection to meta-ethical naturalism. Second, I will argue that the position offered as its better replacement requires something of a naturalist foundation to be coherent and complete.

The is/ought gap troubles moral philosophy only if we accept a questionable, albeit prominent, theory of what it is both to be and to know something, as well as the belief that a rational argument must have a deductive form. Thus, first, the empiricism underlying this scepticism begs the question of what there can be—to wit, it holds that only beings which are capable of being sensed can be ascertained to exist. This rules out *a priori* but *ad hoc* any type of existence that could involve characteristics we associate with values and morality. Since the empiricist-materialist view is open to serious doubt and there is reason to believe that a more pluralistic ontology would be more sound—based on ordinary awareness and its integration into a logically coherent order of existence—the is/ought gap suggested by empiricism need not be accepted as

between some authoritarian conceptions of moral and political virtue and the libertarian natural rights position. But sometimes a lot hinges on small differences.

What about ethical and political anomalies facing natural rights theories? Some utilitarians believe that their defence of the anti-naturalist/positivist stance is helped a great deal by recalling these. They seem to think that these sorts of cases cannot be handled by the natural law/rights position, which would be a failing since they evidently occur and need to be handled. If a moral/political/legal framework cannot guide us in this task, that framework is seriously flawed.

There are peculiarities about anomalous cases. These may cast them in a different light from that which favours the utilitarian position. To begin with, each anomalous case in ethics or politics involves an emergency. That is to say, it places people in unique circumstances that no ethical theory is able to render easily manageable. Typical are desert island or life boat examples so often raised in judging ethical theories. Ethical principles are *general* guidelines to human conduct, based on a supposedly sound comprehensive ethical theory. So if they cannot handle the desert island or life boat examples, they must fail as ethical theories. So, even though it is argued, for example along Kantian lines, that honesty is a duty. If there is a reasonable case where it is not, the theory that so maintains must fail.

In the neo-Aristotelian support given to natural human rights, the rigid rule ethics vulnerable to the criticism based on anomalies is rejected. For example, industry might be a virtue but sometimes one ought, first, to practice the virtue of courage. Moderation is sound policy but clearly not in preference to justice. Yet, some very fundamental moral imperative, such as right reason or *phronēsis*, will enable one to rank these virtues of particular cases and make it possible to manage anomalies, accordingly. In other words, it is not possible to find any kind of specific behaviour or conduct, outside of following the very general policy of being rational, that will always be the right one for the situation, especially when the situation is extraordinary.

A point to recall here about natural rights is that they are supposed to guide the formation of law and government, not personal conduct. Natural rights are the application of ethics to public policy, so necessarily they apply only in circumstances where *public* life is possible. Some examples of the alleged inadequacy of natural rights theory as applied in practice presuppose that such rights are to guide conduct at the individual, personal level. So these simply fail to appreciate the purpose of natural rights theory,

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Second, Aristotle does address the issue of choice-making in his distinction between the intellectual and the moral virtues. The latter require choice—which makes sense, since morality involves self-responsible conduct or neglect, something that could not be without the capacity for choice.¹² Aristotle did have a doctrine of free will—only it was not a major aspect of his moral theory. He located freedom of the will in the process of deliberation. As Jaeger notes, ‘Aristotle’s notion of free will is the exact complement of the notion of most perfect deliberation in the *Epinomis*’.¹³ And David Ross notes that ‘On the whole we must say that [Aristotle] shared the plain man’s belief in free will but that he did not examine the problem very thoroughly, and did not express himself with perfect consistency.’¹⁴

In the main, most sceptics do not bother to investigate these issues at any greater length and thus it is not possible to argue with them. Suffice it to say that many of the sceptical claims which are advanced directly against natural rights theory are unsupported and some are evidently false.

We should add that, no doubt, a normative naturalist would have to invoke a teleological conception of human behaviour—where else would the standards of right and wrong, good or evil come from? If by nature human beings are not destined—i.e., it would not be more healthy or suitable or fitting for them—to be doing one thing rather than another, why insist that doing it is a good or right thing? The only alternative would be a theistic doctrine, which of course also embraces some variety of teleology and would, thus, come under similar fire from some allegedly devastating empiricist thesis.

Only there is no such devastating empiricism around, no decisive blow against teleology, and it is no surprise that one of those sceptics who directly attacks natural rights theory does not even offer a footnote to indicate why naturalists ought to abandon their project. Given all the new philosophizing about metaphysics, epistemology, philosophy of mind, etc., one would have to be rather steeped in a discredited logical positivism to think that teleology can be dismissed so cavalierly and thus normative naturalism (i.e., natural law and right ethics and politics) (swept away with ease).

¹² Roger W. Sperry, ‘Changing Concepts of Consciousness and Free Will,’ *Perspectives in Biology and Medicine*, Vol. 9 (Autumn 1976), 9–19. See, also, Tibor R. Machan, ‘Applied Ethics and Free Will, Some Untoward Results of Independence,’ *The Journal of Applied Philosophy*, Vol. 10 (1993), 59–72.

¹³ Werner Jaeger, *Aristotle* (Oxford University Press, 1934), 152.

¹⁴ David Ross, *Aristotle* (Methuen & Co. Ltd., 1964), 201.

might so characterize human nature is that with their capacity for rationality—which entails, of course, their freedom not to exercise reason, to do so sporadically, to apply it to extremely diverse situations, etc.,—people are likely to live very diverse lives, develop diverse cultures, and generally defy many simple categorizations. Yet, this does not deny the presence of precisely the kind of nature that human rights theorists, who stress the function of choice in human affairs, have identified as human. Quite the opposite. Just that source of immensely wide diversity needs to be taken full account of, its existence is to be given a paramount place in understanding what it is to be human. And human rights theorists have done just that.

For example, many cultural differences can and need to be honoured. But they do not have to do with human rights, which are sound basic principles of human community life anywhere, any time, allowing for variations based on certain advances in conceptual development. And we are well aware of this fact in how we view other cultures—even as we may be mistaken in our judgments and evaluations. We know, for example, that cultural differences are morally acceptable only where they include peaceful practices, customs, mores, etiquette, styles, tastes and so forth. This is because we know, from our understanding of what it is to be human—a fact about us that gives rise to many such differences but also limit them to those that do not thwart our flourishing—that peace (i.e., the conditions that secure it) is right for us all, required for us to engage in self-directed conduct. But beyond this, different cultures often exhibit the fact that people possess distinct styles, temperaments tastes, habits, customs. Accordingly, there will be diversity in the arts, cuisine, sports, and the creative and productive orientation of different cultures, based on different personalities, histories, climates, and other factors.

The validity of certain cultural differences may be established by reference to facts about the cultures that influence behaviours that are, from the point of view of being human, optional. Whether one should wear a turban or a hat, kilts or pants, whether one ought to dance the Czardas or mash potato, whether it is pasta, paprikas csirke or tacos that should comprise one's menu—all such matters are optional, within limits, because one's human nature gives no particular guidance of how to act in these realms other than to, say, protect oneself against the elements, part take of the performing arts, undertake nourishment, etc. But within these broad limits the climate, the prevailing temperament, the sounds and sights surrounding the people and similar highly varied factors will be decisive.

or another of its incarnations.¹ It probably parades where in the disciplines of human knowledge air certain broad, unifying, comprehensive principles. Humanism has been with us since the time of Socrates, and it is very probable that each generation will continue to enter the matter, enter and make contributions to the on-going matter about the matter.²

I want here to address some recent attempts, a while others sharply distinguishable, at disabusing the possibility of developing any sound idea of 'humanism'. In these we find those who advance to their conclusions on the basis of mental scepticism about knowing nature as such. Some objections based on the comparative superiority of certain cultures and on certain versions of moral scepticism.⁴ And others who find fault with a specific (albeit recently wide-spread) argument for the soundness of the ideas of 'humanism'.

Charges:

1. Conservative-Utilitarian Objections to Humanism

A prominent conservative-utilitarian criticism of the rights position begins with the point that it may be possible to identify various necessary conditions that are required for human well-being, health, happiness, and flourishing or excellence, yet it does not follow that from these (or from knowing these) it is possible to derive any norms or virtues or principles of human conduct. This is a restatement of the is/ought gap thesis of David Hume, which was subsequently reinforced by the empiricist/positivist movement in epistemology.

¹ See, Tibor R. Machan, 'Some Recent Work in Moral Theory' and Rex Martin and James W. Nickel 'Recent Work on the Concept of Rights,' in Kenneth G. Lucey, (ed.), *Philosophy* (Totowa, NJ: Rowman & Allanheld, 1983). This was a very successful effort between the 1940s and 1980s in the Anglo-American philosophical community.

² Leo Strauss *Natural Right and History*, 2nd ed. (Chicago: University of Chicago Press, 1970).

³ E.g., Richard Rorty, *Objectivity, Relativism and Truth* (New York: University Press, 1991), 31, 177. John Gray, *Post Liberalism* (London: Routledge 1993).

⁴ E.g., Ernest van den Haag, 'Against Natural Rights,' *Philosophy* No. 23 (Winter 1983), 143-175.

⁵ E.g., John O. Nelson, 'Against Human Rights,' *Philosophy* (1990), 341-348.

plainly presupposes an affirmation of the freedom of the will which Aristotle does not make.⁸

Third and last, the sceptical critic is doubtful about applying the ideals of classical liberalism to different cultures, thus denying their universalizability, certainly implicit in natural (human) right theories. The critic can claim, for example, the individualism involved in the West's political legacy will probably not—and certainly need not—apply to a tribal culture. Therein, the critic can point out, individuals—or, at least, their chosen goals, projects, tastes, desires, preferences, etc.—are not regarded to be important. Individuals are important only as members of the group.

This is a point very similar to that made by some historicist critics of the natural rights position.⁹ They argue that Western liberal political thought rests on the alleged fallacy of seeking some stable, transhistorical foundation for political justice. They argue, implicitly, at least, that standards of justice, of goodness, etc., are going to have to be relative to given stages of human(nity's) historical development.

The historicist objects, for example, to the natural rights theory's reliance on an individualism in the Lockean doctrine and claims that such individualism is merely an invention (ideology) of a certain historical period. This criticism, reminiscent of Marxist objections to bourgeois ethics, politics and law, contends that the self or ego is something certain intellectuals created so as to rationalize certain public institutions and policies. Based on what we have learned from the history of ideas, political history, and cultural anthropology, we can see, the argument goes, that the idea of the individual self, the autonomous or sovereign person, is a modern contrivance, instead of a successful identification or true discovery of some fact about the human species.

3. The Criticism Against Human Nature

What is central about this third line of criticism is the challenge against one of the crucial premises of an argument for the existence of human rights. This premise states what human nature is supposed to be. But supposedly, as John O. Nelson responds, human nature is not in fact simple or regular or even consistent in its components. It is much more like a crazy quilt than a triangle.¹⁰ The point is that while the argument advanced by some nat-

⁸ Ibid.

⁹ For example, Rorty, *op. cit.*

¹⁰ *Op. cit.*, Nelson, 'Against Human Rights', 344.

binding on a serious effort to inquire into the issue of values and rights. Furthermore, the sceptic assumes that the formation of valid concepts could only proceed by way of deducing ideas from other ideas that fully contain them already. But this denies evident growth and improvement of human knowledge. So accepting that the sting of the is/ought arguments cuts much too deep—it undermines not just morality but all substantive (non-autological) claims to knowledge.

There is, of course, an additional problem with the subjective utility or positivist approach to understanding values. This is that it leaves undecidable whether to embrace that theory. Whether a theory should be embraced is itself something of a normative question. The positivist—in economics or in law, not to mention in ethics—is, after all, advocating something. The positivist is addressing us with the proposal that what *we ought to do* is to embrace a theory about values and virtues that has it that values and virtues are all subjective, a matter of personal taste or preference. But then why would not the positivist's own theory come to anything more than something we ought to embrace if we like it but not if we do not?

There is also the suggestion some positivists make that the framework of natural law and rights (i.e. objective morality and politics) poses a threat to human ('negative') liberty. But that is a justified concern only with an *intrincisist* conception of values and moral goodness. This view has it that in and of themselves, by virtue of certain innate properties, some beings are good and command support from those capable of seeing their goodness. The stress is on an enforceable, obligatory command which may be acted on by anyone, including someone who understands the command as it bears on another and can coerce this other's adherence.

The crucial difference between this intrincisist conception of goodness and the naturalist view is that the former omits from consideration *the relational element of choice* involved between a human individual and the values appropriate for him or her to pursue. Intrinsicism holds that regardless of whether one chooses to act in certain ways, the mere behaviour or movement further some goal can count as morally adequate since that alone will satisfy the implication that the good should be pursued. Yet, of course, if 'ought implies can', as it must, this intrincisist view stumbles very badly. Having made someone behave so that this behaviour promotes some good goals has not succeeded in producing *moral* value (e.g. justice), since the latter is dependent on *choosing* the appropriate behaviour, that is, on acting rightly. Of course, there appears to be only a somewhat cumbersome technical difference

namely, to guide the formations of laws, to form constitutions. Specifically, libertarian natural rights theorists have taken their clue from John Locke who distinguished between situations 'where peace is possible'¹¹ as distinct from those where it is not.

But there is also the consideration that some anomalies illustrate that it is past moral wrongs that make a case such that we seem to be faced with a dilemma. Thus one might be persuaded that someone's rights should be violated so as to correct a previous wrong—as in affirmative action policies—and thus accept the view that rights are not compossible.

(4) The general thrusts of the natural law/rights approach in handling anomalies may be summarized as follows: The purpose of ethics or moral systems is to provide for the guidance of human living with political ethics or moral systems is to provide for the guidance of human living, with political ethics and law to provide for the guidance of human life in the community of other human beings. To the extent that an ethical and/or political system helps achieve the purpose it naturally has—i.e., the purpose assumed in asking the question that gives rise to it as one of the many competing answers—it is a sound system. But even a sound system of ethics and/or politics can face difficulties, so the question is whether one or another faces them more successfully—more comprehensively, with greater integrity, etc.

2. Against Political Scepticism

Both of the central points advanced by the sceptic can be answered. First, Aristotle, as the representative of the objectivist and universalist stance in ethics and politics is the first to admit that not everything that is morally right and wrong is universalizable, even though fundamental virtues may be. And in my own position, as well as in the positions of those who share it, *rationality* is the central virtue—just as in Aristotle, *right reason* fills that role. Other virtues are more contextual—which is entirely consistent with Aristotle and with an Aristotelian approach to moral theory. Moreover, all the virtues spelled out by 'latter day liberal followers' can be conceptually related to the original virtues spelled out by Aristotle. (What is added, can be defended, as well, and this may simply show some learning in the field, not relativism at all.)

¹¹ This is H. L. A. Hart's phrase, attributed to Locke without reference in 'Are There Any Natural Rights?' *Philosophical Review*, Vol. 64 (1955), 175-91.

Furthermore, anti-naturalists are also afraid of free will, once again because of their scientist—thinking that somehow the belief in free will is anti-science, anti-empirical, anti-cool! Poppycock! No more so than many other doctrines and, by my lights, far less so than any other. Science is fully compatible with the free will idea.¹⁵ Empiricism in epistemology need not be taken as decisive about anything.

3. Human Nature Exists

Let me begin my response to the criticism of natural rights theories based on the unavailability of a cogent definition of human nature and, therefore, the human good, by recalling a point made by Laszlo Versenyi some time ago:

If human nature is unknowable then so is human good and it is impossible to talk about human excellence in general. Indeed it is impossible to talk about man as such, since man as such could not even be identified. Barring all knowledge of human nature—that which makes a man a man—the word man would mean nothing and we could not even conceive of man as a definite being distinguishable from all other beings. Consequently anything we might say about man would be necessarily meaningless, including the statement that human nature as such is unknowable to man. Thus the postulate of the strict unknowability of man is self-contradictory. To the extent that we talk about man we obviously hold that his nature is, in some respect at least, knowable.¹⁶

As I have argued elsewhere, natural rights theory does not presuppose a Platonistic type of essentialism or the timelessness or finality of definitions or natures. All it requires is the most comprehensive, consistent statement of what something must be to be human, a point that deflates the objection based on the charge that human rights 'conflate temporalities with timelessness.'¹⁷ But a contextualist conception of natures, including human nature, seems to me to avoid the problem here faced by those who believe in having identified human nature as something unalterable.

But even if this be granted, what of the claim that human nature is a crazy quilt? Well, this point is unclear. Indeed, one reason one

¹⁵ See, e.g. op. cit., Sperry, 'Changing Concepts of Consciousness and Free Will'. See, also, Huw Price, 'A neglected Route to Realism about quantum mechanics', *Mind*, vol. 103 (July 1994), 303–336.

¹⁶ Laszlo Versenyi, 'Virtue as a Self-Directed Art', *The Personalist*, Vol. 53 (Summer 1972), 282.

¹⁷ Op. cit., Nelson, 344.

When it comes to practices such as the sacrifice of the first born son or virgin daughter, the subjection of one's child to the religious ritual involving poisonous snakes, the refusal of medical care to one's infant child, the murder of one's wife so as to obtain a new dowry, the enslavement of conquered neighbours, and the like, there human nature itself is being violated. These practices of different cultures are no longer optional but evil, period, and we can determine this by reference to whether the individual members of the culture will flourish as human beings when they are in force.

To put it differently, human rights are based on universal human attributes—that explains the wording of the United Nations' Declaration on *Universal Human Rights*. Indeed, universal human rights concern the basic freedoms that people ought to have protected so as to make peaceful choices for themselves in all walks of life, including whether to follow various cultural mores. So, indeed, it is only if such rights are given full protection that the valuable as distinct from destructive differences based on the highly diverse circumstances in people's lives can be fully exploited and realized.¹⁸

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¹⁸ Some of the material in this paper is drawn from my 'Justice, Self and Natural Rights', in James Sterba, *Morality and Social Injustice* (Lanham, MD: Rowman and Littlefield Publishers, 1994).