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# ARE THERE ANY HUMAN RIGHTS?

BY

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CONTRARY to John Rawls,<sup>1</sup> a question such as “Are there any human rights?” cannot be answered independently of certain answers provided in other areas of philosophical inquiry.<sup>2</sup> We must begin by considering whether standards exist by reference to which we can determine whether some supposed thing or type of entity could exist. Then we need to consider what the specific standards are concerning the kind of thing we are supposing to exist. Then we must examine what reason there might be for supposing that this type of thing exists and determine whether these are sufficient reasons. In between several metatheoretical problems need to be handled, for instance, what counts as sufficient reason pertaining to a determination of the existence of the kind of thing we are supposing.

Human rights are rights we are supposed to have by virtue of being human beings. In other words, we might have rights as students, members of faculty council, citizens of Great Britain, soldiers, etc. We might also have rights of the sort that we can claim in courts of law, namely positive rights, those a government would accept because it has conferred them on us. Thus certain people have the right to drive cars, others trucks, and yet others are entitled to fly airplanes. Some have the right to administer medical treatment, others to render verdicts, and still others to store and consume dangerous drugs, simply because the government has said so.

Human rights are different, if they exist at all. Presumably a human right concerns certain entitlements we hold simply because we are human. To know which these entitlements might be requires a conception of human nature. If no defensible conception of human nature is possible, then the idea of human rights is necessarily shaky, at best conventional—i.e., derived from what has been widely accepted as the meaning of “human” with no necessary connection between that meaning and certain facts concerning us.

It is well known that human rights theory had prominence as natural rights theory. Subsequently human rights theory lost prominence, although here and there philosophers tried to defend a conception of human rights independently of the content of natural rights theory.<sup>3</sup> Natural rights theory explicitly adhered to some idea of human nature. Accordingly John Locke, for example, believed that by nature we are all in a “state of perfect freedom to order [our] actions and dispose of [our] possessions and persons as [we] think fit, within the bounds of the law of nature. . . .”<sup>4</sup> While the thesis is not explicit, Locke seemed to conceive of

realizes this when he hints at the natural law foundations of his theory of rights. Nozick, following Locke (in part) admits outright the gap in his political theory left by the lack of moral foundations.<sup>10</sup> Nevertheless, to do justice to the present task, some effort will be made to provide the basis for human rights as here understood.

To know whether a moral theory is a good one it is necessary to know what a moral theory is. It is an answer to a basic question, namely "How should we, as human beings, conduct ourselves in life?" For present purposes the doctrine of free will must be accepted, for ethical and political issues involving what people ought to do or refrain from doing generally presuppose that human beings can make choices concerning their conduct.<sup>11</sup>

What is now at issue is the standard by which we can judge which ethical position is the correct or best one of those proposed. Given an understanding of the nature of morality, the best moral position would have to be a system of guidelines all human beings can implement and apply—although it may be that very few actually make use of it. And the best *bona fide* moral position would have to be the most comprehensive, consistent, and generally theoretically powerful among those proposed. In this respect ethics must meet criteria similar to those that must be satisfied in science and technology.

Traditionally natural rights theory is linked to various forms of egoism,<sup>12</sup> but as part of a comprehensive normative theory only *ethical* egoism could give human rights a firm foundation. This consideration undermines both Hobbes' and Locke's theories of rights, as pointed out by Leo Strauss and C. B. Macpherson recently.<sup>13</sup> Locke did, however, mention the natural inclination human beings have toward their own happiness,<sup>14</sup> and this admittedly somewhat vague egoism managed to give his natural rights theory something like an ethical foundation. (As to whether "natural inclination" was supposed to mean some sort of psychological drive or something akin to the classical, Aristotelian idea that by nature human beings are properly directed toward happiness is not clear from Locke's own discussion.) This link between natural human rights and certain versions of egoism provides a clue to where we might find some support for the existence of human rights.

In fact, however, no form of modern egoism, based on an essentially mechanistic conception of human nature and action, can give support to human rights. Such egoism is false, both because of its reductionistic view of human nature (as complex Newtonian machines) and because it is ultimately incapable of making sense of the concept "ought."<sup>15</sup>

A form of egoism I shall call classical will succeed in the "competition" for the best ethical system. It is the egoism we find in Aristotle.<sup>16</sup> It holds that each person has as his or her proper goal in life his or her happiness, the achievement of which requires adhering to a standard derived from an understanding of human nature. Happiness, the successful life of a rational animal, is each person's natural and proper goal, and its achievement is ensured by living in accordance with a code or standard of conduct based on what human nature is.

Since human nature is free and rational—i.e., each individual can initiate or choose to engage in rational thought—it is such principles of conduct that are in accord with the requirement of a free and rational life that each person should invoke in life.

The principles of conduct are numerous. Their interpretation probably infinite,

theory<sup>18</sup>—then standards of conduct enabling each person to achieve his or her happiness define the proper domain of liberty in a human community.

For example, if we should pursue our happiness, then we may not be means to others' ends, and our lives must be for us to live. To deny this would be to allow that it is proper for a person to have the conduct of his or her life be determined *for* another's purposes, another's happiness, *by* another person. So each person possesses the natural human right to life—to the unobstructed effort to exist on his or her own. Thus no one's life ought to be taken (except when that life becomes an unavoidable threat to one's own, which is implicit in the universalizable character of any human right).

Again, the right to liberty is necessary to choose one's conduct and what goals will be pursued for the sake of achieving one's proper end, namely happiness. This has been indicated as implicit in any ethical system, but it now becomes directly wedded to classical egoism. Because one's happiness requires one's own choice to live by the moral standards that make happiness possible, the proper moral sphere includes liberty of conduct (again, universalized).

Furthermore, being a biological, living entity, one's happiness or success as the sort of thing one is requires achieving goals suited to biological beings, namely nourishment, shelter, pleasure, joy, security, health, etc. Combined with the needs and delights proper to a rational being, e.g., creativity, love, education, culture, travel, etc., it is appropriate for each person to live productively, to produce, acquire, trade, bequeath, and receive what can be made useful for these purposes. That is to say, each person possesses the natural human right to property—to produce, to acquire, to trade, etc.

Related to more particular circumstances, for instance the machinations of civil society, these rights may well entail others, for instance what we know as civil rights.<sup>18</sup> To act in liberty can involve speaking, writing, assembling, producing, composing, publishing, and a host of other varieties of human action that could be specified in elaborate codes of law. But these are relative to the age in which one lives, one's professional expertise, one's special endeavors, etc. Nevertheless, the special rights one may acquire in civil society can be traced to certain natural human rights—as, for instance, the rights of union members derive from contractual involvement, a course of conduct each person has a right to pursue as a human being living in the community of others.

My task here has been to give a brief outline of the case for the existence of human rights in the tradition of Locke, based on the natural law or naturalistic moral tradition of Aristotle, with the special addition of what I have called classical egoism to enable me to specify the rights such a theory would specify. I must emphasize that this has been an outline, although here and there I have endeavored to elaborate on several of the points I could only introduce in the present paper.

Instead of considering the objections here, I leave to critics the task of showing the weaknesses of the thesis before them. Hopefully such efforts will produce additional work on the topic at hand.

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human nature as characterized by freedom of choice and the capacity to reason, somewhat along the lines of Aristotle's rational animal.

I have argued elsewhere that an obstacle to Locke's views on natural rights is not moral theory *per se*. Lockean naturalism relied on the nature of something that proved vulnerable from Humean scepticism. The thrust of Bentham's attack on natural rights is not moral but epistemological. Natural rights are considered too fixed to serve as guidelines to action. They must be flexible, so it could not have a moral foundation consisting of principles that rest on a fixed human nature.<sup>6</sup>

In our day empiricism, the major foe of classical naturalism and the metaethics of natural rights theory—is no longer viewed as self-evident. Perhaps natural rights can now be reexamined.

Natural rights may indeed be rights we possess by virtue of our nature. But what are rights, precisely?

In Locke, as well as in ordinary conceptions and some recent philosophical positions, rights are principles of social justice. Vlastos says that rights have a "fundamental place . . . in our scheme of justice."<sup>7</sup> Nozick agrees. In legal documents, the U.S. Constitution and the U.N. Declaration of the Rights included, treat rights as basic principles of social life.

A more precise expression of what a right is may be that right is a condition within a social context (thought to be) proper for the good life. When we speak of the rights of students, union members, doctors, patients, or blacks, when we refer to their rights, we tend to mean those conditions others must make possible for them which enable them to act to their benefit. (Of course, enabling someone to act in this fashion does not imply that the actions available will in fact be taken. A right to use the faculty club does not entail that one will or one will not use the club.)

If rights are as here conceived, human rights might best be understood as those conditions others should make possible for us in virtue of our nature, or to enable us to act to our benefit as human beings. In other words, a human right would be a social condition that should obtain because it is in the interest of human beings and could, within that condition, achieve goals appropriate to human beings.

None of this shows that human rights exist. Only what they would have to be if they did exist.

Now we need to turn briefly to what it might be for a human being to have a right. Henry Aiken warns that to answer this question "*simpliciter*, out of context, inquiry or concern [will] entangle you in a murky swamp of speculation about the nature of being *qua* being, or reality as reality."<sup>8</sup> He adds that " . . . turn out invariably to be disguised queries about the meaning and uses and roles in our discourse of the words 'being,' 'existence' . . ."

The context of the question is moral and political theory. In political theory the question pertains to whether certain principles of conduct are true. In moral theory the question about whether human rights exist is a question about whether in certain communities everyone should act to ensure certain conditions for the members. So is there any condition that everyone should ensure?

This question cannot be answered without reference to a moral theory.

depending on circumstances individuals encounter in living. Such virtues as courage, moderation, prudence, justice, integrity, honesty, self-respect, and productivity, loyalty, generosity, etc. might be among the set of rational moral standards that each person must live by in order to achieve the goal proper to each human being, namely happiness.

This classical egoism is hinted at in the human rights traditionally associated with the American political tradition, when we note that each person has the unalienable right to pursue happiness.

Whether the human right to the pursuit of happiness exists can only be determined by learning whether the best moral system available to us would imply that in society each person should abstain from preventing others to pursue their happiness—i.e., to act in terms of the virtues specified in the classical egoist system. In other words, whether the right to the pursuit of happiness exists depends on whether classical egoism is the right ethical system.

At this stage it will not be possible to prove that classical egoism is the right—as right can be in this field of inquiry—system of ethics. What is possible is to consider what at the minimum would any system of ethics imply as proper social conditions, principles appropriate for living in a community. I need to make clear that even that minimum requires more than can be done here—for supposing that each ethical system requires that certain courses of conduct be chosen by moral agents, i.e., that each person must choose to be good and cannot be made good, it is still inadequate to have this be demonstrated unless the conception of good presupposed in ethics as such is explicated.

Nevertheless, assuming that some system of ethics is correct, it is necessary for any system of ethics that morality be a matter of choice. Both Aristotle, the egoist in the sense I use the term, and Kant, the anti-egoist, would require this much of any *bona fide* ethical system.

If that is so, then the very possibility of the existence of certain ethical principles—i.e., the truth of certain basic moral judgments—would imply certain social conditions as proper for a human community. Each person's sphere of moral authority would be appropriately left unabridged, unviolated. In short, each individual's natural human right to liberty is implied in any *bona fide* moral system. I have already indicated that any ethical system must impose the responsibility for moral choices on each human being. Therefore, we have achieved more than what Hart has in his paper where he proves only a conditional claim, namely that *if* there exist moral rights, *then* the natural right to liberty must exist.<sup>17</sup> Because some system of ethics must be correct—the meaningfulness and naturalness of the central question of ethics imply that much—and any *bona fide* system requires moral responsibility, the social condition of such responsibility, namely liberty, is right for each person.

To specify the moral sphere of each person it is necessary, however, to accomplish more. Some ethical system must be proven correct so as to determine what standards of conduct we should invoke in guiding our conduct. This will in turn enable us to identify the sphere or realm of conduct where our liberty is to be respected—protected and preserved.

If I am correct that classical egoism is right—and I have elsewhere tried to demonstrate this much by requiring that any *bona fide* ethics be naturalistic and by showing that among naturalistic ethics classical ethical egoism is the best

## NOTES

<sup>1</sup>John Rawls, "The Independence of Moral Theory," *Proceedings of the American Philosophical Association* (Newark, Delaware: University of Delaware, 1976), pp. 5-22.

<sup>2</sup>Cf., my "A Note on Independence," *Philosophical Studies*, 30 (1976) 419-421.

<sup>3</sup>For a historical sketch of these developments see my *Human Rights and Human Liberties* (Chicago: Nelson-Hall, 1975), Chapter i.

<sup>4</sup>John Locke, *Second Treatise on Civil Government* #II, Sec. 4.

<sup>5</sup>When Bentham assails natural rights theory, he rejects its absolutism. Bentham himself adheres to the theory of rights in its utilitarian, nonabsolutist version. But this amounts to a rejection not of natural rights but of their method of demonstration.

<sup>6</sup>For a resolution of this problem, as it is raised by Hans Kelson, see my "Law, Justice and Natural Rights," *Western Ontario Law Review* Vol. 14 (Fall 1975), pp. 119-130.

<sup>7</sup>Gregory Vlastos, "Justice and Equality," in A. I. Meldon (ed.) *Human Rights* (Belmont, California: Wadsworth Publishing Co., 1970), p. 82.

<sup>8</sup>Henry Aiken, "Rights, Human and Otherwise," *The Monist* (Oct. 1968), p. 519.

<sup>9</sup>*Ibid.*

<sup>10</sup>Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 9.

<sup>11</sup>For a defense of these views see my *The Pseudo-Science of B. F. Skinner* (New Rochelle, New York: Arlington House, 1974), especially Chapter 6 ("Man, Science and Freedom of Choice").

<sup>12</sup>In contemporary discussions of egoism—e.g., Nielsen's "On the Rationality of 'Rational Egoism'," *The Personalist* (Autumn 1974), pp. 398-400, Gauthier's "The Impossibility of Rational Egoism," *Journal of Philosophy*, August 15, 1974, pp. 439-455, or Baier's "Ethical Egoism and Interpersonal Compatibility," *Philosophical Studies*, vol. 24, 1973, pp. 357-368—the ego or self is regarded as a whimsical, helter-skelter entity the benefitting of which may be achieved by merely fulfilling the desires, passions, or will of the individual involved. The results of such an interpretation of the human ego or self may be appreciated from reading James Rachels' "Two Arguments Against Ethical Egoism," *Philosophia*, April/July 1974, pp. 297-313. Cf., my "Was Rachels' Doctor Practicing Egoism?" *Philosophia* 8:1-2 (1978). There is every reason to consider this atomistic conception of the human ego or self open to serious objections. A different conception of what the ego or self is will, it is very likely, yield very different conclusions as to what is to be understood by self-interest, egoism, or selfishness. See my "Recent Work in Ethical Egoism," *American Philosophical Quarterly* (forthcoming)

<sup>13</sup>Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1971), pp. 202-250, C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Clarendon Press, 1962).

<sup>14</sup>Locke, *An Essay Concerning Human Understanding*, Book I, 3, Sec. 26.

<sup>15</sup>Excepting very unusual cases, one cannot be said to have the responsibility, obligation or duty to do something (or refrain) if one cannot exercise choice in the matter.

<sup>16</sup>W. F. R. Hardie, "The Final Good in Aristotle's Ethics," *Philosophy*, Vol. XL (1965), pp. 277-295.

<sup>17</sup>H.L.A. Hart "Are There Any Natural Rights?" *Philosophical Review*, 64 (1955), pp. 175-91.

<sup>18</sup>Machan, *Human Rights and Human Liberties*, Chapters 2, 3 and 4.

<sup>19</sup>For some of the details of this theory pertaining to problems of justice, equality, welfare, and civil liberties, see Nozick's *Anarchy, State, and Utopia* and Machan's *Human Rights and Human Liberties*. For a very different, though at times compatible, discussion of rights see Ronald Dworkin's *Taking Rights Seriously* (London: Duckworth 1977). For Dworkin defends the right to treatment as an equal (Chapter 9), not the right to life, liberty, and property. My objection to this is that Dworkin treats rights as entitlements to administrative due process, leaving the issue of the relationship between individuals without guidance from a theory of rights. We do have the right to treatment as an equal from those (e.g., judges, policemen) who administer the law. But we do not have this right from, say, the coach of the New York Knicks, and rightly so, since we are not part of that team. Dworkin is misled, in my view, because he perceives only our equal status vis-à-vis the law. Our natural rights, however, need to be respected by other than legal authorities.