

## HUMAN RIGHTS

## I

I want to attempt here something which is no doubt over ambitious. I want to ask, as bluntly as I can, are there human rights? That is, are there natural and inalienable rights which any human being anywhere, anytime can apparently lay claim to no matter what his situation in life and no matter in what society he finds himself? Bentham tells us that "Natural rights is simple nonsense: natural and imprescriptable rights rhetorical nonsense — nonsense upon stilts". But in our time some able and analytically oriented moral philosophers have again defended, albeit not without modifications, this ancient notion. So I shall return to this notion and see what is involved in believing in human rights or natural rights and whether there in fact are any inalienable human rights. I shall here avoid arguments which turn on an appeal to the so-called natural moral law. I have elsewhere said the central things I want to say about it and I want here to see what can be said for a doctrine of natural rights or human rights independently of such obscure theologically based or metaphysically based conceptions.<sup>1</sup> I am perfectly aware that some philosophers (Stuart Brown and W. K. Frankena for example) give demythologized accounts of natural law.<sup>2</sup> But it seems to me that what they are in really trying to show is that there are certain natural rights or fundamental, moral principles, e.g. 'We have a right to the protection of our person' or 'We ought to show respect and concern for our fellowmen' which would hold — at least as *prima facie* rights or duties — for any person in any society. It is such a question that I wish to discuss and I shall say nothing at all about natural law.

Following Gregory Vlastos and taking 'natural rights' to mean simply 'human rights', that is, rights which we have simply in virtue of being human beings, I want first to ask if it is true that there are any such rights that all humans anytime and anywhere always have a right to exercise without forfeit or hindrance under all conditions.<sup>3</sup> A. E. Murphy has claimed that "there are . . . rights that an inalienable and duties that are absolutely binding". He goes on to remark, with utilitarianism in mind, that "an ethics that would dispense with them makes no normative sense".<sup>4</sup> There are inalienable rights, Murphy claims, which can never be justly or rightly forfeited or even sacrificed to any larger good no matter what the circumstance. In fine, Murphy's remark, if accepted, would commit us to a doctrine like Locke's in which we would be claiming that human beings ("the poorest he" as well as "the greatest he") have "certain rights quite universally and without exception, and that these rights are his just because he is a human being, and that they are altogether independent of recognition by the state or any society".

If this way of putting it is objected to, since people are inextricably social animals and since we could hardly speak of moral right or wrong where human beings did not exist, we could put what I believe is essentially the same claim, as follows: there are rights — valid claims — which any society whatsoever at any time and at any place must always recognize for all human beings. This alternative way is, I believe, a better way of talking about such matters, for human rights are plainly mythical notions if they are taken literally as pre-existent to society. The major practical point in enunciating them is no doubt to put moral pressure on states and corporations which flout them to acknowledge them and to act in accordance with them.

However, the crucial philosophical question remains: are there any rights which any society, morally speaking, must acknowledge for all human beings at all times? If she is a

human being, no matter where she lives or what her condition is, she always is entitled to exercise these rights; these rights, the claim goes, are such that they never can be justifiably overridden for any reason. No catastrophe is great enough to justify overriding them.

## II

Are there such rights? Some defenders of human rights or natural rights claim that there are. I doubt that this is true. That is to say, I doubt that there are any rights which are inalienable in the sense that they can never be justifiably overridden by any other moral considerations. I shall try to show why my skepticism here is well-taken.

However, I must first do a bit of spade work to avoid a confusion which would muddy the waters. It is probably analytic (true by definition) to say 'Human rights are inalienable'. But just as the analyticity of 'God is eternal' does nothing to show that there is or even could be any eternal beings or indeed the putative reality called 'God', so the recognition that human rights are inalienable does not show that there are any rights which are inalienable or that there are any human rights. The crucial question is 'Are there any inalienable rights?'

Even with that straightened out, we need to engage in another disambiguation. I think it is also true by definition to say that an inalienable right (if there are any) is an unforfeitable right. This means that it is a right that you cannot give up or lose or have taken away from you. But from this it does not follow that the unforfeitable right cannot be overridden and in that sense sacrificed. Sometimes people in speaking of rights as inalienable mean that they could not justifiably be overridden, but that is probably misleading way to talk about inalienable rights; at least it does not sit perfectly with ordinary language. They are rights that cannot be lost, be given up or have taken from you. That is what makes them unforfeitable.

But unforfeitable rights can still be overridden, though whether they can be justifiably overridden is another question again. Suppose I have an unforfeitable right to speak my piece. Someone still can prevent me from doing it, and in that way plainly in a *de facto* sense at least override my right. But I have not therefore forfeited or lost my right. I have just been prevented from exercising it.

There may well be rights which are unforfeitable and if that is all Murphy and defenders of human rights mean in saying that certain rules are inalienable, then they have said something which seems very likely to be true but is all the same a truism or a commonplace. The crucial question raised by Murphy's remarks is whether there are any rights which can never be overridden no matter what. Are there certain things that the state of society must never prevent people from doing or having or which it must never allow, where it can be prevented, to happen to them, such as never preventing them from speaking freely or never allowing them to be tortured?

### III

Typically a right is a claim which can only be exercised or claimed in virtue of a valid rule which entitles a certain class of people or people placed in a certain condition to exercise that right. This works well for legal rights. But in speaking of human rights we are trying to speak of a right which does not exist simply or necessarily at all in virtue of some legal rule or tribal custom but it is an absolutely universal norm applying to all human beings everywhere and at all times and admits of no exceptions which would be morally tolerable. That is, in speaking of human rights, we are speaking of moral rights which have, as Ralph Blake puts it, a 'higher validity' than legal rights or rights resting merely on custom. They exist as inalienable claims independently "of any positive enactments of men".<sup>5</sup> That is to say, a natural right or a human right, is a moral right: a

claim the recognition of which is called for by moral principles or by the principles of an enlightened conscience.

Presumably these principles are universal and they are, as well, principles which would be accepted by all humans were they carefully and impartially to reflect and to take the matter to heart. My question, put in the previous section, should be understood as asking whether there are any such rights which can never be justifiably overridden from *the* moral point of view or at least from *a* rationally defensible moral point of view. The moral point of view in question, for my question to be significant, must be one which is from a cluster of similarly justifiable moral points of view, in accordance with reason. That is to say, a reasonable person can adopt one of them and a reasonable person can, depending on where he is, adopt any one of these moral viewpoints which are mutually compatible and in accordance with reason.

It is first worthwhile noting that as a matter of historical fact that many different things have been taken in different historical epochs to be natural or human rights. What seems plainly a human right to one group at one time will not always seem to be such a right to another group at another time. The application of our conceptions of human rights always takes place in a distinctive social order with the variable conceptions of morality extant in that society. The declarations of rights in the 18th Century were still mainly concerned with overcoming the lingering feudal abridgements of rights. In our century the United Nations Declaration of Universal Human Rights adds social and economic rights to the older conception of civil and political rights. But to attain cross-cultural rational consensus on just what should be included on the list and about their scope of application appears at least to be quite impossible. But these facts of cultural relativity, philosophers are quick to point out, do not in themselves establish the moral relativity of our conceptions of human rights. It is quite pos-

sible that many people are mistaken about what they take to be human rights; there may be important factual errors in their understanding of human beings and of society and they may suffer badly from ethnocentric bias as did one country's delegate to the United Nations Commission on Human Rights, when he remarked, "I assume that when we speak of the rights of man we mean what we say. My government, of course, could not agree to extend these rights to women". Only if there were some sound argument to the effect that no statement of human rights could be in any reasonable sense objective would such *de facto* diversity pose an insuperable stumbling block to the claim that there are universal human rights. Yet faced with this *de facto* cultural diversity about what is to go on the list of human rights and faced with a lack of any kind of coherent account about how we would establish (a) that we have human rights and (b) what human rights we have, we have, at the very least, a theoretical problem about human rights.

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#### NOTES

1. Kai Nielsen, "An Examination of the Thomistic of the Natural Law", *Natural Law Forum*, Vol. IV (1959), pp. 63-71; and Kai Nielsen, "The Myth of Natural Law" in Sidney Hook (ed.), *Law and Philosophy* (New York: New York University Press, 1964), pp. 122-143.
2. Stuart Brown, "Huntsman, What Quarry?", pp. 177-186 and W. K. Frankena, "On Defining and Defending Natural Law" both in Sidney Hook (ed.), *Law and Philosophy* (New York: New York University Press, 1964).
3. Gregory Vlastos, "Justice and Equality" in Richard B. Brandt (ed.), *Social Justice* (Englewood Cliffs, NJ: Prentice-Hall, 1962), pp. 31-72.
4. A. E. Murphy, "Blanshard On Good in General", *The Philosophical Review*, Vol. LXXII, No. 2 (April, 1963), p. 237.
5. R. M. Blake, "On Natural Rights", *Ethics*, Vol. 36 (1925), p. 87.