

Human Rights:
An Anthology of Texts

60 YEARS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS:
ANNIVERSARY BOOK

VOLUME III

Human Rights: An Anthology of Texts

Editor

Jerzy Zajadło



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60 YEARS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ANNIVERSARY BOOK

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Volume Editor: *Professor Jerzy Zajadło*

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„The School of Athens” – the fresco painted between 1510 and 1511 at the request of Pope Julius II. Nearly every great Greek philosopher can be found within the painting. In the center of the fresco, there are the two main subjects, Plato on the left and Aristotle on the right.

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“The idea of law is in the end the idea of man”

A. Kaufmann

One cannot understand the impact of human rights as powerful ideas underneath contemporary legal thought or even social philosophy without an idea of man. The third volume of our collection, following volumes on historical and legal developments in the field of human rights, aims to add a philosophical perspective.

The broad historical spectrum covered by the texts contained in this book stretches from the sources of our Hellenic and Judeo-Christian civilization of the West, represented by Plato, Moses and Jesus, through the heritage of the Middle Ages, the Renaissance and the Enlightenment, ending with what are now considered classical 19th century thinkers and a variety of contemporary perspectives on human rights, including communitarian, libertarian, utilitarian, natural law, feminist, postmodernist, relativist and religious points of view.

We have included important political statements as well as philosophical texts in the strict sense of the term. The Polish contribution to the idea of human rights is also illustrated, albeit modestly. The collected texts identify the problem of human rights as pertaining to a view of man that lies somewhere between two extremes: between the idea of the human being as an autonomous person endowed with inalienable dignity, and that of the human being as conditioned and determined by a variety of factors: social, political, economic, religious, sexual and cultural.

Human rights are usually referred to as a project of modernity. According to some thinkers, e.g. J. Habermas, this project, although successful, remains unfinished. To others, such as A. MacIntyre, it has been a failure. Our anthology, however, shows that the debate about man, his freedoms, rights and duties, has a longer tradition, dating back to the earliest period of our civilization.

The second half of the 20th century witnessed some very fervent debates about human rights. The history of those debates can be organized into three stages. Typical examples of attitudes within each stage are selected in this book. After 1945 and up to the early 70s, the debate was characterized by a simplified a priori approach to human rights. In the 90s this was replaced

by cultural relativism and doubts about universality of human rights. Currently there are attempts to reconcile these two positions somewhat.

At the turn of the new millennium the Dutch international law scholar Peter R. Baehr tried to define the basic controversies about human rights in our times. He listed six essential problems. Among them are: the universality of human rights, the meaning of collective rights, the promotion of economic, social and cultural rights, the impact of transnational companies, responsibility for mass violations of human rights and the problem of humanitarian intervention.

Many of these problems are reflected in our daily lives, especially in the work of an ombudsman. In our culture, the principle of respect for persons is put in terms of rights which delimit human autonomy. Striking a balance between opposing rights and claims requires choices which cannot be made without some philosophical assumptions, especially those enshrined in our constitutions and legal cultures. They are not abstract, but deeply rooted in our morality and tradition.

The debate illustrated in our collection of texts is useful both for public authorities and for citizens. Views of the common good must be reconciled in our community. As new challenges abound, we are enjoined to think about the future of the debate on the human condition. In an age of demographic crisis and new inventions in biotechnology, we must reflect on the idea of man.

Whether that idea is clear or dim depends on one's perspective. The postmodern discussion of human rights is certainly multidimensional and pluralist. But one thing remains essential and inescapable, and that is the perennial question: *quid est homo?* – who is man?

Janusz Kochanowski
Commissioner for Civil Rights Protection
of the Republic of Poland

Moses

THE TEN COMMANDMENTS

Source: "Holy Bible"

And God spoke all these words, saying,

"I am the LORD your God, who brought you out of the land of Egypt, out of the house of slavery.

You shall have no other gods before me.

You shall not make for yourself a carved image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth. You shall not bow down to them or serve them, for I the LORD your God am a jealous God, visiting the iniquity of the fathers on the children to the third and the fourth generation of those who hate me, showing steadfast love to thousands of those who love me and keep my commandments.

You shall not take the name of the LORD your God in vain, for the LORD will not hold him guiltless who takes his name in vain.

Remember the Sabbath day, to keep it holy. Six days you shall labor, and do all your work, but the seventh day is a Sabbath to the LORD your God. On it you shall not do any work, you, or your son, or your daughter, your male servant, or your female servant, or your livestock, or the sojourner who is within your gates. For in six days the LORD made heaven and earth, the sea, and all that is in them, and rested on the seventh day. Therefore the LORD blessed the Sabbath day and made it holy.

"Honor your father and your mother, that your days may be long in the land that the LORD your God is giving you.

You shall not murder.

You shall not commit adultery.

You shall not steal.

You shall not bear false witness against your neighbor.

You shall not covet your neighbor's house; you shall not covet your neighbor's wife, or his male servant, or his female servant, or his ox, or his donkey, or anything that is your neighbor's."

Jesus Christ

THE SERMON ON THE MOUNT

Source: "Holy Bible"

Seeing the crowds, he went up on the mountain, and when he sat down, his disciples came to him.

And he opened his mouth and taught them, saying:

"Blessed are the poor in spirit, for theirs is the kingdom of heaven.

Blessed are those who mourn, for they shall be comforted.

Blessed are the meek, for they shall inherit the earth.

Blessed are those who hunger and thirst for righteousness, for they shall be satisfied.

Blessed are the merciful, for they shall receive mercy.

Blessed are the pure in heart, for they shall see God.

Blessed are the peacemakers, for they shall be called sons of God.

Blessed are those who are persecuted for righteousness' sake, for theirs is the kingdom of heaven.

Blessed are you when others revile you and persecute you and utter all kinds of evil against you falsely on my account. Rejoice and be glad, for your reward is great in heaven, for so they persecuted the prophets who were before you."

"You are the salt of the earth, but if salt has lost its taste, how shall its saltiness be restored? It is no longer good for anything except to be thrown out and trampled under people's feet.

"You are the light of the world. A city set on a hill cannot be hidden. Nor do people light a lamp and put it under a basket, but on a stand, and it gives light to all in the house. In the same way, let your light shine before others, so that they may see your good works and give glory to your Father who is in heaven."

"Do not think that I have come to abolish the Law or the Prophets; I have not come to abolish them but to fulfill them. For truly, I say to you, until heaven and earth pass away, not an iota, not a dot, will pass from the Law until all is accomplished. Therefore whoever relaxes one of the least of these commandments and teaches others to do the same will be called least in the

kingdom of heaven, but whoever does them and teaches them will be called great in the kingdom of heaven. For I tell you, unless your righteousness exceeds that of the scribes and Pharisees, you will never enter the kingdom of heaven.”

“You have heard that it was said to those of old, ‘You shall not murder; and whoever murders will be liable to judgment.’ But I say to you that everyone who is angry with his brother will be liable to judgment; whoever insults his brother will be liable to the council; and whoever says, ‘You fool!’ will be liable to the hell of fire. So if you are offering your gift at the altar and there remember that your brother has something against you, leave your gift there before the altar and go. First be reconciled to your brother, and then come and offer your gift. Come to terms quickly with your accuser while you are going with him to court, lest your accuser hand you over to the judge, and the judge to the guard, and you be put in prison. Truly, I say to you, you will never get out until you have paid the last penny.”

“You have heard that it was said, ‘You shall not commit adultery.’ But I say to you that everyone who looks at a woman with lustful intent has already committed adultery with her in his heart. If your right eye causes you to sin, tear it out and throw it away. For it is better that you lose one of your members than that your whole body be thrown into hell. And if your right hand causes you to sin, cut it off and throw it away. For it is better that you lose one of your members than that your whole body go into hell.”

“It was also said, ‘Whoever divorces his wife, let him give her a certificate of divorce.’ But I say to you that everyone who divorces his wife, except on the ground of sexual immorality, makes her commit adultery, and whoever marries a divorced woman commits adultery.”

“Again you have heard that it was said to those of old, ‘You shall not swear falsely, but shall perform to the Lord what you have sworn.’ But I say to you, Do not take an oath at all, either by heaven, for it is the throne of God, or by the earth, for it is his footstool, or by Jerusalem, for it is the city of the great King. And do not take an oath by your head, for you cannot make one hair white or black. Let what you say be simply ‘Yes’ or ‘No’; anything more than this comes from evil.”

“You have heard that it was said, ‘An eye for an eye and a tooth for a tooth.’ But I say to you, Do not resist the one who is evil. But if anyone slaps you on the right cheek, turn to him the other also. And if anyone would sue you and take your tunic, let him have your cloak as well. And if anyone forces

you to go one mile, go with him two miles. Give to the one who begs from you, and do not refuse the one who would borrow from you.”

“You have heard that it was said, ‘You shall love your neighbor and hate your enemy.’ But I say to you, Love your enemies and pray for those who persecute you, so that you may be sons of your Father who is in heaven. For he makes his sun rise on the evil and on the good, and sends rain on the just and on the unjust. For if you love those who love you, what reward do you have? Do not even the tax collectors do the same? And if you greet only your brothers, what more are you doing than others? Do not even the Gentiles do the same? You therefore must be perfect, as your heavenly Father is perfect.”

“Beware of practicing your righteousness before other people in order to be seen by them, for then you will have no reward from your Father who is in heaven.

Thus, when you give to the needy, sound no trumpet before you, as the hypocrites do in the synagogues and in the streets, that they may be praised by others. Truly, I say to you, they have received their reward. But when you give to the needy, do not let your left hand know what your right hand is doing, so that your giving may be in secret. And your Father who sees in secret will reward you.”

“And when you pray, you must not be like the hypocrites. For they love to stand and pray in the synagogues and at the street corners, that they may be seen by others. Truly, I say to you, they have received their reward. But when you pray, go into your room and shut the door and pray to your Father who is in secret. And your Father who sees in secret will reward you.

And when you pray, do not heap up empty phrases as the Gentiles do, for they think that they will be heard for their many words. Do not be like them, for your Father knows what you need before you ask him. Pray then like this: »Our Father in heaven, hallowed be your name. Your kingdom come, your will be done, on earth as it is in heaven. Give us this day our daily bread, and forgive us our debts, as we also have forgiven our debtors. And lead us not into temptation, but deliver us from evil.

For if you forgive others their trespasses, your heavenly Father will also forgive you, but if you do not forgive others their trespasses, neither will your Father forgive your trespasses.«”

“And when you fast, do not look gloomy like the hypocrites, for they disfigure their faces that their fasting may be seen by others. Truly, I say to you, they have received their reward. But when you fast, anoint your

head and wash your face, that your fasting may not be seen by others but by your Father who is in secret. And your Father who sees in secret will reward you.”

“Do not lay up for yourselves treasures on earth, where moth and rust destroy and where thieves break in and steal, but lay up for yourselves treasures in heaven, where neither moth nor rust destroys and where thieves do not break in and steal. For where your treasure is, there your heart will be also.

The eye is the lamp of the body. So, if your eye is healthy, your whole body will be full of light, but if your eye is bad, your whole body will be full of darkness. If then the light in you is darkness, how great is the darkness!

No one can serve two masters, for either he will hate the one and love the other, or he will be devoted to the one and despise the other. You cannot serve God and money.”

“Therefore I tell you, do not be anxious about your life, what you will eat or what you will drink, nor about your body, what you will put on. Is not life more than food, and the body more than clothing? Look at the birds of the air: they neither sow nor reap nor gather into barns, and yet your heavenly Father feeds them. Are you not of more value than they? And which of you by being anxious can add a single hour to his span of life? And why are you anxious about clothing? Consider the lilies of the field, how they grow: they neither toil nor spin, yet I tell you, even Solomon in all his glory was not arrayed like one of these. But if God so clothes the grass of the field, which today is alive and tomorrow is thrown into the oven, will he not much more clothe you, you of little faith? Therefore do not be anxious, saying, ‘What shall we eat?’ or ‘What shall we drink?’ or ‘What shall we wear?’ For the Gentiles seek after all these things, and your heavenly Father knows that you need them all. But seek first the kingdom of God and his righteousness, and all these things will be added to you.

Therefore do not be anxious about tomorrow, for tomorrow will be anxious for itself. Sufficient for the day is its own trouble.”

“Judge not, that you be not judged. For with the judgment you pronounce you will be judged, and with the measure you use it will be measured to you. Why do you see the speck that is in your brother’s eye, but do not notice the log that is in your own eye? Or how can you say to your brother, ‘Let me take the speck out of your eye,’ when there is the log in your own eye? You hypocrite, first take the log out of your own eye, and then you will see clearly to take the speck out of your brother’s eye.

Do not give dogs what is holy, and do not throw your pearls before pigs, lest they trample them underfoot and turn to attack you.”

“Ask, and it will be given to you; seek, and you will find; knock, and it will be opened to you. For everyone who asks receives, and the one who seeks finds, and to the one who knocks it will be opened. Or which one of you, if his son asks him for bread, will give him a stone? Or if he asks for a fish, will give him a serpent? If you then, who are evil, know how to give good gifts to your children, how much more will your Father who is in heaven give good things to those who ask him!”

“So whatever you wish that others would do to you, do also to them, for this is the Law and the Prophets.

Enter by the narrow gate. For the gate is wide and the way is easy that leads to destruction, and those who enter by it are many. For the gate is narrow and the way is hard that leads to life, and those who find it are few.”

“Beware of false prophets, who come to you in sheep’s clothing but inwardly are ravenous wolves. You will recognize them by their fruits. Are grapes gathered from thornbushes, or figs from thistles? So, every healthy tree bears good fruit, but the diseased tree bears bad fruit. A healthy tree cannot bear bad fruit, nor can a diseased tree bear good fruit. Every tree that does not bear good fruit is cut down and thrown into the fire. Thus you will recognize them by their fruits.”

“Not everyone who says to me, ‘Lord, Lord’, will enter the kingdom of heaven, but the one who does the will of my Father who is in heaven. On that day many will say to me, ‘Lord, Lord, did we not prophesy in your name, and cast out demons in your name, and do many mighty works in your name?’ And then will I declare to them, ‘I never knew you; depart from me, you workers of lawlessness.’”

“Everyone then who hears these words of mine and does them will be like a wise man who built his house on the rock. And the rain fell, and the floods came, and the winds blew and beat on that house, but it did not fall, because it had been founded on the rock. And everyone who hears these words of mine and does not do them will be like a foolish man who built his house on the sand. And the rain fell, and the floods came, and the winds blew and beat against that house, and it fell, and great was the fall of it.”

“And when Jesus finished these sayings, the crowds were astonished at his teaching, for he was teaching them as one who had authority, and not as their scribes.”

Aristotle

POLITICS AND NICOMACHEAN ETHICS

Source: "The Internet Classics Archive": <http://classics.mit.edu>

Every state is a community of some kind, and every community is established with a view to some good; for mankind always act in order to obtain that which they think good. But, if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aims, and in a greater degree than any other, at the highest good. [...]

Hence it is evident that the state is a creation of nature, and that man is by nature a political animal. And he who by nature and not by mere accident is without a state, is either above humanity, or below it; he is the Tribeless, lawless, hearthless one,' whom Homer denounces the outcast who is a lover of war; he may be compared to a bird which flies alone.

Man, having the gift of speech and the sense of right and wrong, is by nature a political animal.

Now the reason why man is more of a political animal than bees or any other gregarious animals is evident. Nature, as we often say, makes nothing in vain, and man is the only animal whom she has endowed with the gift of speech. And whereas mere sound is but an indication of pleasure or pain, and is therefore found in other animals (for their nature attains to the perception of pleasure and pain and the intimation of them to one another, and no further), the power of speech is intended to set forth the expedient and inexpedient, and likewise the just and the unjust. And it is a characteristic of man that he alone has any sense of good and evil, of just and unjust, and the association of living beings who have this sense makes a family and a state. [...]

Thus the state is by nature clearly prior to the family and to the individual, since the whole is of necessity prior to the part; for example, if the whole body be destroyed, there will be no foot or hand, except in an equivocal sense, as we might speak of a stone hand; for when destroyed the hand will be no better. But things are defined by their working and power; and we ought not to say that they are the same when they are no longer the same, but only that they have the same name. The proof that the state is a creation of nature and prior to the individual is that the individual, when isolated, is not self-sufficing; and therefore he is like a part in relation to the whole. But he who is unable to live in society, or who has no need because he is sufficient

for himself, must be either a beast or a god: he is no part of a state. A social instinct is implanted in all men by nature, and yet he who first founded the state was the greatest of benefactors. For man, when perfected, is the best of animals, but, when separated from law and justice, he is the worst of all; since armed injustice is the more dangerous, and he is equipped at birth with the arms of intelligence and with moral qualities which he may use for the worst ends. Wherefore, if he have not virtue, he is the most unholy and the most savage of animals, and the most full of lust and gluttony. But justice is the bond of men in states, and the administration of justice, which is the determination of what is just” , is the principle of order in political society. [...]

We see that all men intend by justice to signify the sort of habit or character that makes men apt to do what is just, and which further makes them act justly and wish what is just; while by injustice they intend in like manner to signify the sort of character that makes men act unjustly and wish what is unjust. [...]

Let us then ascertain in how many different senses we call a man unjust. Firstly, he who breaks the laws is considered unjust, and, secondly, he who takes more than his share, or the unfair man. Plainly, then, a just man will mean (1) a law-abiding and (2) a fair man. A just thing then will be (1) that which is in accordance with the law, (2) that which is fair; and the unjust thing will be (1) that which is contrary to law, (2) that which is unfair.

But since the unjust man, in one of the two senses of the word, takes more than his share, the sphere of his action will be good things – not all good things, but those with which good and ill fortune are concerned, which are always good in themselves, but not always good for us – the things that we men pray for and pursue, whereas we ought rather to pray that what is good in itself may be good for us, while we choose that which is good for us.

But the unjust man does not always take more than his share; he sometimes take less, viz. of those things which are bad in the abstract; but as the lesser evil is considered to be in some sort good, and taking more means taking more good, he is said to take more than his share. But in any case he is unfair; for this is a wider term which includes the other.

We found that the law-breaker is unjust, and the law-abiding man is just. Hence it follows that whatever is according to law is just in one sense of the word. [And this, we see, is in fact the case;] for what the legislator prescribes is according to law, and is always said to be just.

Now, the laws prescribe about all manner of things, aiming at the common interest of all, or of the best men, or of those who are supreme in the state (position in the state being determined by reference to personal excellence, or to some other such standard); and so in one sense we apply the term just to whatever tends to produce and preserve the happiness of

the community, and the several elements of that happiness. The law bids us display courage (as not to leave our ranks, or run, or throw away our arms), and temperance (as not to commit adultery or outrage), and gentleness (as not to strike or revile our neighbours), and so on with all the other virtues and vices, enjoining acts and forbidding them, rightly when it is a good law, not so rightly when it is a hastily improvised one.

Justice, then, in this sense of the word, is complete virtue, with the addition that it is displayed towards others. On this account it is often spoken of as the chief of the virtues, and such that “neither evening nor morning star is so lovely”; and the saying has become proverbial, “Justice sums up all virtues in itself.”

It is complete virtue, first of all, because it is the exhibition of complete virtue: it is also complete because he that has it is able to exhibit virtue in dealing with his neighbours, and not merely in his private affairs; for there are many who can be virtuous enough at home, but fail in dealing with their neighbours.

This is the reason why people commend the saying of Bias, “Office will show the man”; for he that is in office ipso facto stands in relation to others, and has dealings with them. This, too, is the reason why justice alone of all the virtues is thought to be another’s good, as implying this relation to others; for it is another’s interest that justice aims at – the interest, namely, of the ruler or of our fellow-citizens.

While then the worst man is he who displays vice both in his own affairs and in his dealings with his friends, the best man is not he who displays virtue in his own affairs merely, but he who displays virtue towards others; for this is the hard thing to do.

Justice, then, in this sense of the word, is not a part of virtue, but the whole of it; and the injustice which is opposed to it is not a part of vice, but the whole of it. How virtue differs from justice in this sense is plain from what we have said; it is one and the same character differently viewed: viewed in relation to others, this character is justice; viewed simply as a certain character, it is virtue. [...]

We have now to examine justice in that sense in which it is a part of virtue – for we maintain that there is such a justice – and also the corresponding kind of injustice. That the word is so used is easily shown. In the case of the other kinds of badness, the man who displays them, though he acts unjustly [in one sense of the word], yet does not take more than his share: for instance, when a man throws away his shield through cowardice, or reviles another through ill temper, or through illiberality refuses to help another with money. But when he takes more than his share, he displays perhaps no one of these vices, nor does he display them all, yet he displays a kind of

badness (for we blame him), namely, injustice [in the second sense of the word].

We see, then, that there is another sense of the word injustice, in which it stands for a part of that injustice which is coextensive with badness, and another sense of the word unjust, in which it is applied to a part only of those things to which it is applied in the former sense of “contrary to law.”

Again, if one man commits adultery with a view to gain, and makes money by it, and another man does it from lust, with expenditure and loss of money, the latter would not be called grasping, but profligate, while the former would not be called profligate, but unjust [in the narrower sense]. Evidently, then, he would be called unjust because of his gain.

Once more, acts of injustice, in the former sense, are always referred to some particular vice, as if a man commits adultery, to profligacy; if he deserts his comrade in arms, to cowardice; if he strikes another, to anger: but in a case of unjust gain, the act is referred to no other vice than injustice.

It is plain then that, besides the injustice which is coextensive with vice, there is a second kind of injustice, which is a particular kind of vice, bearing the same name as the first, because the same generic conception forms the basis of its definition; i.e. both display themselves in dealings with others, but the sphere of the second is limited to such things as honour, wealth, security (perhaps some one name might be found to include all this class), and its motive is the pleasure of gain, while the sphere of the first is coextensive with the sphere of the good man’s action.

We have ascertained, then, that there are more kinds of justice than one, and that there is another kind besides that which is identical with complete virtue; we now have to find what it is, and what are its characteristics.

We have already distinguished two senses in which we speak of things as unjust, viz. (1) contrary to law, (2) unfair; and two senses in which we speak of things as just, viz. (1) according to law, (2) fair.

The injustice which we have already considered corresponds to unlawful. But since unfair is not the same as unlawful, but differs from it as the part from the whole (for unfair is always unlawful, but unlawful is not always unfair), unjust and injustice in the sense corresponding to unfair will not be the same as unjust and injustice in the sense corresponding to unlawful, but different as the part from the whole; for this injustice is a part of complete injustice, and the corresponding justice is a part of complete justice. We must therefore speak of justice and injustice, and of that which is just and that which is unjust, in this limited sense.

We may dismiss, then, the justice which coincides with complete virtue and the corresponding injustice, the former being the exercise of complete virtue towards others, the latter of complete vice.

It is easy also to see how we are to define that which is just and that which is unjust in their corresponding senses [according to law and contrary to law]. For the great bulk, we may say, of the acts which are according to law are the acts which the law commands with a view to complete virtue; for the law orders us to display all the virtues and none of the vices in our lives.

But the acts which tend to produce complete virtue are those of the acts according to law which are prescribed with reference to the education of a man as a citizen. As for the education of the individual as such, which tends to make him simply a good man, we may reserve the question whether it belongs to the science of the state or not; for it is possible that to be a good man is not the same as to be a good citizen of any state whatever.

But of justice as a part of virtue, and of that which is just in the corresponding sense, one kind is that which has to do with the distribution of honour, wealth, and the other things that are divided among the members of the body politic (for in these circumstances it is possible for one man's share to be unfair or fair as compared with another's); and another kind is that which has to give redress in private transactions.

The latter kind is again subdivided; for private transactions are (1) voluntary, (2) involuntary. "Voluntary transactions or contracts" are such as selling, buying, lending at interest, pledging, lending without interest, depositing, hiring: these are called "voluntary contracts", because the parties enter into them of their own will.

"Involuntary transactions", again, are of two kinds: one involving secrecy, such as theft, adultery, poisoning, procuring, corruption of slaves, assassination, false witness; the other involving open violence, such as assault, seizure of the person, murder, rape, maiming, slander, contumely. [...]

Thus we have described that which is unjust and that which is just. And now that these are determined, we can see that doing justice is a mean between doing and suffering injustice; for the one is having too much, or more, and the other too little, or less than one's due.

We see also that the virtue justice is a kind of moderation or observance of the mean, but not quite in the same way as the virtues hitherto spoken of. It does indeed choose a mean, but both the extremes fall under the single vice injustice.

We see also that justice is that habit in respect of which the just man is said to be apt to do deliberately that which is just; that is to say, in dealings between himself and another (or between two other parties), to apportion things, not so that he shall get more or too much, and his neighbour less or too little, of what is desirable, and conversely with what is disadvantageous, but so that each shall get his fair, that is, his proportionate share, and similarly in dealings between two other parties.

Injustice, on the contrary, is the character which chooses what is unjust, which is a disproportionate amount, that is, too much and too little of what is advantageous and disadvantageous respectively.

Thus injustice, as we say, is both an excess and a deficiency, in that it chooses both an excess and a deficiency – in one's own affairs choosing excess of what is, as a general rule, advantageous, and deficiency of what is disadvantageous; in the affairs of others making a similarly disproportionate assignment, though in which way the proportion is violated will depend upon circumstances. But of the two sides of the act of injustice, suffering is a lesser wrong than doing the injustice. But since it is possible for a man to do an act of injustice without yet being unjust, what acts of injustice are there, such that the doing of them stamps a man at once as unjust in this or that particular way, e.g. as a thief, or an adulterer, or a robber?

Perhaps we ought to reply that there is no such difference in the acts. A man might commit adultery, knowing what he was about, and yet be acting not from a deliberate purpose at all, but from a momentary passion. In such a case, then, a man acts unjustly, but is not unjust; e.g. is not a thief though he commits a theft, and is not an adulterer though he commits adultery, and so on.

We have already explained the relation which requital bears to that which is just. But we must not fail to notice that what we are seeking is at once that which is just simply [or without any qualifying epithet], and that which is just in a state or between citizens. Now, this implies men who associate together in order to supply their deficiencies, being free men, and upon a footing of equality, either absolute or proportionate.

Between those who are not upon this footing, then, we cannot speak of that which is just as between citizens (though there is something that can be called just metaphorically). For the term just cannot be properly applied, except where men have a law to appeal to, and the existence of law implies the existence of injustice; for the administration of the law is the discrimination of what is just from what is unjust.

But injustice implies an act of injustice (though an act of injustice does not always imply injustice) which is taking too much of the goods and too little of the evils of life. And so we do not allow an individual to rule over us, but reason or law; for an individual is apt thus to take more for himself, and to become a tyrant.

The magistrate's function, then, is to secure that which is just, and if that which is just, then that which is equal or fair. But it seems that he gets no advantage from his office, if he is just (for he does not take a larger share of the good things of life, except when that larger share is proportionate to his worth; he works, therefore, in the interests of others, which is the reason why

justice is sometimes called “another’s good”, as we remarked before). Some salary, therefore, must be given him, and this he receives in the shape of honours and privileges; and it is when magistrates are not content with these that they make themselves tyrants. [...]

Justice, lastly, implies persons who participate in those things that, generally speaking, are good, but who can have too much or too little of them. For some – for the gods perhaps – no amount of them is too much; and for others – for the incurably vicious – no amount is beneficial, they are always hurtful; but for the rest of mankind they are useful within certain limits: justice, therefore, is essentially human.

Marcus Tullius Cicero

TREATISE ON THE LAWS

Source: *The Political Works of Marcus Tullius Cicero*: Comprising his Treatise on the Commonwealth; and his Treatise on the Laws. Translated from the original, with Dissertations and Notes in Two Volumes. By Francis Barham, Esq. London: Edmund Spettigue, 1841-42, Vol. 2.

It is therefore an absurd extravagance in some philosophers to assert that all things are necessarily just, which are established by the civil laws and the institutions of the people. Are then the laws of tyrants just, simply because they are laws? If the thirty tyrants of Athens imposed certain laws on the Athenians, and if these Athenians were delighted with these tyrannical laws, are we therefore bound to consider these laws as just? For my own part, I do not think such laws deserve any greater estimation than that past during our own interregnum, which ordained, that the dictator should be empowered to put to death with impunity, whatever citizens he pleased, without hearing them in their own defence.

There can be but one essential justice, which cements society, and one law which establishes this justice. This law is right reason, which is the true rule of all commandments and prohibitions. Whoever neglects this law, whether written or unwritten, is necessarily unjust and wicked.

But if justice consists in submission to written laws and national customs, and if, as the Epicureans persist in affirming, every thing must be measured by utility alone, he who wishes to find an occasion of breaking such laws and customs, will be sure to discover it. So that real justice remains powerless if not supported by nature, and this pretended justice is overturned by that very utility which they call its foundation.

But this is not all. If nature does not ratify law, all the virtues lose their sway. What becomes of generosity, patriotism, or friendship? Where should we find the desire of benefitting our neighbours, or the gratitude that acknowledges kindness? For all these virtues proceed from our natural inclination to love and cherish our associates. This is the true basis of justice, and without this, not only the mutual charities of men, but the religious services of the gods, would become obsolete; for these are preserved, as I imagine, rather by the natural sympathy which subsists between divine and human beings, than by mere fear and timidity. [...]

If the will of the people, the decrees of the senate, the adjudications of magistrates, were sufficient to establish justice, the only question would be

how to gain suffrages, and to win over the votes of the majority, in order that corruption and spoliation, and the falsification of wills, should become lawful. But if the opinions and suffrages of foolish men had sufficient weight to outbalance the nature of things, might they not determine among them, that what is essentially bad and pernicious should henceforth pass for good and beneficial? Or why should not a law able to enforce injustice, take the place of equity? Would not this same law be able to change evil into good, and good into evil?

As far as we are concerned, we have no other rule capable of distinguishing between a good or a bad law, than our natural conscience and reason. These, however, enable us to separate justice from injustice, and to discriminate between the honest and the scandalous. For common sense has impressed in our minds the first principles of things, and has given us a general acquaintance with them, by which we connect with Virtue every honourable and excellent quality, and with Vice all that is abominable and disgraceful.

Now we must entirely take leave of our senses, ere we can suppose that law and justice have no foundation in nature, and rely merely on the transient opinions of men. We should not venture to praise the virtue of a tree or a horse, in which expression there is an abuse of terms, were we not convinced that this virtue was in their nature, rather than in our opinion. For a stronger reason, it is mainly with respect to the moral nature of things, that we ought to speak of honour and shame among men.

If opinion could determine respecting the character of universal virtue, it might also decide respecting particular or partial virtues. But who will dare to determine that a man is prudent and cautious in his moral disposition, from any external appearances. For virtue evidently lies in perfect rationality, and this resides in the inmost depths of our nature. The same remark applies to all honour and honesty, for we judge of true and false, creditable and discreditable, rather by their essential qualities, than their external relations [...]

From what I have said on this subject, it may then easily be concluded, that Justice and Equity are desirable for their own sake. For all virtuous men love Justice and Equity, for what they are in themselves; and we cannot believe that such virtuous men should delude themselves by loving something which does not deserve their affection. Justice and Right are therefore desirable and amiable in themselves; and if this is true of Right, it must be true of all the moral virtues with which it is connected. What then shall we say of liberality? Is it to be exercised gratuitously, or does it covet some reward and recompense? If a man does good without expecting any recompense for his kindness, then it is gratuitous: if he does expect compensation, it is a mere matter of traffic. Doubtless, he who truly deserves the reputation of a generous and good-natured man, performs his philanthropical duties

without consulting his secular interests. In the same way the virtue of justice demands neither emolument nor salary, and therefore we desire it for its own sake, because it is its own reward. And for this reason we should entertain the same estimate of all moral virtues. [...]

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Marcus Aurelius

THE MEDITATIONS

Source: "The Internet Classics Archive": <http://classics.mit.edu>

Begin the morning by saying to thyself, I shall meet with the busy-body, the ungrateful, arrogant, deceitful, envious, unsocial. All these things happen to them by reason of their ignorance of what is good and evil. But I who have seen the nature of the good that it is beautiful, and of the bad that it is ugly, and the nature of him who does wrong, that it is akin to me, not only of the same blood or seed, but that it participates in the same intelligence and the same portion of the divinity, I can neither be injured by any of them, for no one can fix on me what is ugly, nor can I be angry with my kinsman, nor hate him, For we are made for co-operation, like feet, like hands, like eyelids, like the rows of the upper and lower teeth. To act against one another then is contrary to nature; and it is acting against one another to be vexed and to turn away.

That which rules within, when it is according to nature, is so affected with respect to the events which happen, that it always easily adapts itself to that which is and is presented to it. For it requires no definite material, but it moves towards its purpose, under certain conditions however; and it makes a material for itself out of that which opposes it, as fire lays hold of what falls into it, by which a small light would have been extinguished: but when the fire is strong, it soon appropriates to itself the matter which is heaped on it, and consumes it, and rises higher by means of this very material.

Men seek retreats for themselves, houses in the country, sea-shores, and mountains; and thou too art wont to desire such things very much. But this is altogether a mark of the most common sort of men, for it is in thy power whenever thou shalt choose to retire into thyself. For nowhere either with more quiet or more freedom from trouble does a man retire than into his own soul, particularly when he has within him such thoughts that by looking into them he is immediately in perfect tranquility; and I affirm that tranquility is nothing else than the good ordering of the mind. Constantly then give to thyself this retreat, and renew thyself; and let thy principles be brief and fundamental, which, as soon as thou shalt recur to them, will be sufficient to cleanse the soul completely, and to send thee back free from all discontent with the things to which thou returnest. For with what art thou discontented? With the badness of men? Recall to thy mind this conclusion, that rational

animals exist for one another, and that to endure is a part of justice, and that men do wrong involuntarily; and consider how many already, after mutual enmity, suspicion, hatred, and fighting, have been stretched dead, reduced to ashes; and be quiet at last. But perhaps thou art dissatisfied with that which is assigned to thee out of the universe. Recall to thy recollection this alternative; either there is providence or atoms, fortuitous concurrence of things; or remember the arguments by which it has been proved that the world is a kind of political community, and be quiet at last. But perhaps corporeal things will still fasten upon thee. Consider then further that the mind mingles not with the breath, whether moving gently or violently, when it has once drawn itself apart and discovered its own power, and think also of all that thou hast heard and assented to about pain and pleasure, and be quiet at last. But perhaps the desire of the thing called fame will torment thee. See how soon everything is forgotten, and look at the chaos of infinite time on each side of the present, and the emptiness of applause, and the changeableness and want of judgement in those who pretend to give praise, and the narrowness of the space within which it is circumscribed, and be quiet at last. For the whole earth is a point, and how small a nook in it is this thy dwelling, and how few are there in it, and what kind of people are they who will praise thee.

This then remains: Remember to retire into this little territory of thy own, and above all do not distract or strain thyself, but be free, and look at things as a man, as a human being, as a citizen, as a mortal. But among the things readiest to thy hand to which thou shalt turn, let there be these, which are two. One is that things do not touch the soul, for they are external and remain immovable; but our perturbations come only from the opinion which is within. The other is that all these things, which thou sees, change immediately and will no longer be; and constantly bear in mind how many of these changes thou hast already witnessed. The universe is transformation, life is opinion.

If our intellectual part is common, the reason also, in respect of which we are rational beings, is common: if this is so, common also is the reason which commands us what to do, and what not to do; if this is so, there is a common law also; if this is so, we are fellow-citizens; if this is so, we are members of some political community; if this is so, the world is in a manner a state. For of what other common political community will any one say that the whole human race are members? And from thence, from this common political community comes also our very intellectual faculty and reasoning faculty and our capacity for law; or whence do they come? For as my earthly part is a portion given to me from certain earth, and that which is watery from another element, and that which is hot and fiery from some peculiar source

(for nothing comes out of that which is nothing, as nothing also returns to non-existence), so also the intellectual part comes from some source. [...]

Consider that everything which happens, happens justly, and if thou observest carefully, thou wilt find it to be so. I do not say only with respect to the continuity of the series of things, but with respect to what is just, and as if it were done by one who assigns to each thing its value. Observe then as thou hast begun; and whatever thou doest, do it in conjunction with this, the being good, and in the sense in which a man is properly understood to be good. Keep to this in every action.

Do not have such an opinion of things as he has who does thee wrong, or such as he wishes thee to have, but look at them as they are in truth.

A man should always have these two rules in readiness; the one, to do only whatever the reason of the ruling and legislating faculty may suggest for the use of men; the other, to change thy opinion, if there is any one at hand who sets thee right and moves thee from any opinion. But this change of opinion must proceed only from a certain persuasion, as of what is just or of common advantage, and the like, not because it appears pleasant or brings reputation.

Hast thou reason? I have. Why then dost not thou use it? For if this does its own work, what else dost thou wish?

Thou hast existed as a part. Thou shalt disappear in that which produced thee; but rather thou shalt be received back into its seminal principle by transmutation.

Many grains of frankincense on the same altar: one falls before, another falls after; but it makes no difference.

Within ten days thou wilt seem a god to those to whom thou art now a beast and an ape, if thou wilt return to thy principles and the worship of reason.

Do not act as if thou wert going to live ten thousand years. Death hangs over thee. While thou livest, while it is in thy power, be good.

How much trouble he avoids who does not look to see what his neighbour says or does or thinks, but only to what he does himself, that it may be just and pure; or as Agathon says, look not round at the depraved morals of others, but run straight along the line without deviating from it.

He who has a vehement desire for posthumous fame does not consider that every one of those who remember him will himself also die very soon; then again also they who have succeeded them, until the whole remembrance shall have been extinguished as it is transmitted through men who foolishly admire and perish. But suppose that those who will remember are even immortal, and that the remembrance will be immortal, what then is this to thee? And I say not what is it to the dead, but what is it to the living? What is

praise except indeed so far as it has a certain utility? For thou now rejectest unseasonably the gift of nature, clinging to something else...

Everything which is in any way beautiful is beautiful in itself, and terminates in itself, not having praise as part of itself. Neither worse then nor better is a thing made by being praised. I affirm this also of the things which are called beautiful by the vulgar, for example, material things and works of art. That which is really beautiful has no need of anything; not more than law, not more than truth, not more than benevolence or modesty. Which of these things is beautiful because it is praised, or spoiled by being blamed? Is such a thing as an emerald made worse than it was, if it is not praised? Or gold, ivory, purple, a lyre, a little knife, a flower, a shrub?

If souls continue to exist, how does the air contain them from eternity? But how does the earth contain the bodies of those who have been buried from time so remote? For as here the mutation of these bodies after a certain continuance, whatever it may be, and their dissolution make room for other dead bodies; so the souls which are removed into the air after subsisting for some time are transmuted and diffused, and assume a fiery nature by being received into the seminal intelligence of the universe, and in this way make room for the fresh souls which come to dwell there. And this is the answer which a man might give on the hypothesis of souls continuing to exist. But we must not only think of the number of bodies which are thus buried, but also of the number of animals which are daily eaten by us and the other animals. For what a number is consumed, and thus in a manner buried in the bodies of those who feed on them! And nevertheless this earth receives them by reason of the changes of these bodies into blood, and the transformations into the aerial or the fiery element.

What is the investigation into the truth in this matter? The division into that which is material and that which is the cause of form, the formal.

Do not be whirled about, but in every movement have respect to justice, and on the occasion of every impression maintain the faculty of comprehension or understanding.

Everything harmonizes with me, which is harmonious to thee, O Universe. Nothing for me is too early nor too late, which is in due time for thee. Everything is fruit to me which thy seasons bring, O Nature: from thee are all things, in thee are all things, to thee all things return. The poet says, Dear city of Cecrops; and wilt not thou say, Dear city of Zeus?

Occupy thyself with few things, says the philosopher, if thou wouldst be tranquil. But consider if it would not be better to say, Do what is necessary, and whatever the reason of the animal which is naturally social requires, and as it requires. For this brings not only the tranquility which comes from doing well, but also that which comes from doing few things. For the greatest

part of what we say and do being unnecessary, if a man takes this away, he will have more leisure and less uneasiness. Accordingly on every occasion a man should ask himself, Is this one of the unnecessary things? Now a man should take away not only unnecessary acts, but also, unnecessary thoughts, for thus superfluous acts will not follow after.

Try how the life of the good man suits thee, the life of him who is satisfied with his portion out of the whole, and satisfied with his own just acts and benevolent disposition.

Hast thou seen those things? Look also at these. Do not disturb thyself. Make thyself all simplicity. Does any one do wrong? It is to himself that he does the wrong. Has anything happened to thee? Well; out of the universe from the beginning everything which happens has been apportioned and spun out to thee. In a word, thy life is short. Thou must turn to profit the present by the aid of reason and justice. Be sober in thy relaxation.

Either it is a well-arranged universe or a chaos huddled together, but still a universe. But can a certain order subsist in thee, and disorder in the All? And this too when all things are so separated and diffused and sympathetic.

A black character, a womanish character, a stubborn character, bestial, childish, animal, stupid, counterfeit, scurrilous, fraudulent, tyrannical.

If he is a stranger to the universe who does not know what is in it, no less is he a stranger who does not know what is going on in it. He is a runaway, who flies from social reason; he is blind, who shuts the eyes of the understanding; he is poor, who has need of another, and has not from himself all things which are useful for life. He is an abscess on the universe who withdraws and separates himself from the reason of our common nature through being displeased with the things which happen, for the same nature produces this, and has produced thee too: he is a piece rent asunder from the state, who tears his own soul from that of reasonable animals, which is one.

The one is a philosopher without a tunic, and the other without a book: here is another half naked: Bread I have not, he says, and I abide by reason. And I do not get the means of living out of my learning, and I abide by my reason.

Love the art, poor as it may be, which thou hast learned, and be content with it; and pass through the rest of life like one who has intrusted to the gods with his whole soul all that he has, making thyself neither the tyrant nor the slave of any man.

Consider, for example, the times of Vespasian. Thou wilt see all these things, people marrying, bringing up children, sick, dying, warring, feasting, trafficking, cultivating the ground, flattering, obstinately arrogant, suspecting, plotting, wishing for some to die, grumbling about the present, loving, heaping up treasure, desiring consulship, kingly power. Well then, that life of these people no longer exists at all. Again, remove to the times

of Trajan. Again, all is the same. Their life too is gone. In like manner view also the other epochs of time and of whole nations, and see how many after great efforts soon fell and were resolved into the elements. But chiefly thou shouldst think of those whom thou hast thyself known distracting themselves about idle things, neglecting to do what was in accordance with their proper constitution, and to hold firmly to this and to be content with it. And herein it is necessary to remember that the attention given to everything has its proper value and proportion. For thus thou wilt not be dissatisfied, if thou appliest thyself to smaller matters no further than is fit.

The words which were formerly familiar are now antiquated: so also the names of those who were famed of old, are now in a manner antiquated, Camillus, Caeso, Volesus, Leonnatus, and a little after also Scipio and Cato, then Augustus, then also Hadrian and Antoninus. For all things soon pass away and become a mere tale, and complete oblivion soon buries them. And I say this of those who have shone in a wondrous way. For the rest, as soon as they have breathed out their breath, they are gone, and no man speaks of them. And, to conclude the matter, what is even an eternal remembrance? A mere nothing. What then is that about which we ought to employ our serious pains? This one thing, thoughts just, and acts social, and words which never lie, and a disposition which gladly accepts all that happens, as necessary, as usual, as flowing from a principle and source of the same kind.

Willingly give thyself up to Clotho, one of the Fates, allowing her to spin thy thread into whatever things she pleases.

Everything is only for a day, both that which remembers and that which is remembered.

Observe constantly that all things take place by change, and accustom thyself to consider that the nature of the Universe loves nothing so much as to change the things which are and to make new things like them. For everything that exists is in a manner the seed of that which will be. But thou art thinking only of seeds which are cast into the earth or into a womb: but this is a very vulgar notion.

Thou wilt soon die, and thou art not yet simple, not free from perturbations, nor without suspicion of being hurt by external things, nor kindly disposed towards all; nor dost thou yet place wisdom only in acting justly.

Examine men's ruling principles, even those of the wise, what kind of things they avoid, and what kind they pursue.

What is evil to thee does not subsist in the ruling principle of another; nor yet in any turning and mutation of thy corporeal covering. Where is it then? It is in that part of thee in which subsists the power of forming opinions about evils. Let this power then not form such opinions, and all is well. And if that which is nearest to it, the poor body, is burnt, filled with

matter and rottenness, nevertheless let the part which forms opinions about these things be quiet, that is, let it judge that nothing is either bad or good which can happen equally to the bad man and the good. For that which happens equally to him who lives contrary to nature and to him who lives according to nature, is neither according to nature nor contrary to nature.

Constantly regard the universe as one living being, having one substance and one soul; and observe how all things have reference to one perception, the perception of this one living being; and how all things act with one movement; and how all things are the cooperating causes of all things which exist; observe too the continuous spinning of the thread and the contexture of the web.

Thou art a little soul bearing about a corpse, as Epictetus used to say.

It is no evil for things to undergo change, and no good for things to subsist in consequence of change.

Time is like a river made up of the events which happen, and a violent stream; for as soon as a thing has been seen, it is carried away, and another comes in its place, and this will be carried away too.

Everything which happens is as familiar and well known as the rose in spring and the fruit in summer; for such is disease, and death, and calumny, and treachery, and whatever else delights fools or vexes them.

In the series of things those which follow are always aptly fitted to those which have gone before; for this series is not like a mere enumeration of disjointed things, which has only a necessary sequence, but it is a rational connection: and as all existing things are arranged together harmoniously, so the things which come into existence exhibit no mere succession, but a certain wonderful relationship.

Always remember the saying of Heraclitus, that the death of earth is to become water, and the death of water is to become air, and the death of air is to become fire, and reversely. And think too of him who forgets whither the way leads, and that men quarrel with that with which they are most constantly in communion, the reason which governs the universe; and the things which daily meet with seem to them strange: and consider that we ought not to act and speak as if we were asleep, for even in sleep we seem to act and speak; and that we ought not, like children who learn from their parents, simply to act and speak as we have been taught.

If any god told thee that thou shalt die to-morrow, or certainly on the day after tomorrow, thou wouldst not care much whether it was on the third day or on the morrow, unless thou wast in the highest degree mean-spirited for how small is the difference? So think it no great thing to die after as many years as thou canst name rather than tomorrow.

Think continually how many physicians are dead after often contracting their eyebrows over the sick; and how many astrologers after predicting with

great pretensions the deaths of others; and how many philosophers after endless discourses on death or immortality; how many heroes after killing thousands; and how many tyrants who have used their power over men's lives with terrible insolence as if they were immortal; and how many cities are entirely dead, so to speak, Helice and Pompeii and Herculaneum, and others innumerable. Add to the reckoning all whom thou hast known, one after another. One man after burying another has been laid out dead, and another buries him: and all this in a short time. To conclude, always observe how ephemeral and worthless human things are, and what was yesterday a little mucus to-morrow will be a mummy or ashes. Pass then through this little space of time conformably to nature, and end thy journey in content, just as an olive falls off when it is ripe, blessing nature who produced it, and thanking the tree on which it grew.

Be like the promontory against which the waves continually break, but it stands firm and tames the fury of the water around it.

Unhappy am I because this has happened to me. Not so, but happy am I, though this has happened to me, because I continue free from pain, neither crushed by the present nor fearing the future. For such a thing as this might have happened to every man; but every man would not have continued free from pain on such an occasion. Why then is that rather a misfortune than this a good fortune? And dost thou in all cases call that a man's misfortune, which is not a deviation from man's nature? And does a thing seem to thee to be a deviation from man's nature, when it is not contrary to the will of man's nature? Well, thou knowest the will of nature. Will then this which has happened prevent thee from being just, magnanimous, temperate, prudent, secure against inconsiderate opinions and falsehood; will it prevent thee from having modesty, freedom, and everything else, by the presence of which man's nature obtains all that is its own? Remember too on every occasion which leads thee to vexation to apply this principle: not that this is a misfortune, but that to bear it nobly is good fortune.

It is a vulgar, but still a useful help towards contempt of death, to pass in review those who have tenaciously stuck to life. What more then have they gained than those who have died early? Certainly they lie in their tombs somewhere at last, Cadicianus, Fabius, Julianus, Lepidus, or any one else like them, who have carried out many to be buried, and then were carried out themselves. Altogether the interval is small between birth and death; and consider with how much trouble, and in company with what sort of people and in what a feeble body this interval is laboriously passed. Do not then consider life a thing of any value. For look to the immensity of time behind thee, and to the time which is before thee, another boundless space. In this infinity then what is the difference between him who lives three days and him who lives three generations?

Always run to the short way; and the short way is the natural: accordingly say and do everything in conformity with the soundest reason. For such a purpose frees a man from trouble, and warfare, and all artifice and ostentatious display.

He who acts unjustly acts impiously. For since the universal nature has made rational animals for the sake of one another to help one another according to their deserts, but in no way to injure one another, he who transgresses her will, is clearly guilty of impiety towards the highest divinity. And he too who lies is guilty of impiety to the same divinity; for the universal nature is the nature of things that are; and things that are have a relation to all things that come into existence. And further, this universal nature is named truth, and is the prime cause of all things that are true. He then who lies intentionally is guilty of impiety inasmuch as he acts unjustly by deceiving; and he also who lies unintentionally, inasmuch as he is at variance with the universal nature, and inasmuch as he disturbs the order by fighting against the nature of the world; for he fights against it, who is moved of himself to that which is contrary to truth, for he had received powers from nature through the neglect of which he is not able now to distinguish falsehood from truth. And indeed he who pursues pleasure as good, and avoids pain as evil, is guilty of impiety. For of necessity such a man must often find fault with the universal nature, alleging that it assigns things to the bad and the good contrary to their deserts, because frequently the bad are in the enjoyment of pleasure and possess the things which procure pleasure, but the good have pain for their share and the things which cause pain. And further, he who is afraid of pain will sometimes also be afraid of some of the things which will happen in the world, and even this is impiety. And he who pursues pleasure will not abstain from injustice, and this is plainly impiety. Now with respect to the things towards which the universal nature is equally affected for it would not have made both, unless it was equally affected towards both towards these they who wish to follow nature should be of the same mind with it, and equally affected. With respect to pain, then, and pleasure, or death and life, or honour and dishonour, which the universal nature employs equally, whoever is not equally affected is manifestly acting impiously. And I say that the universal nature employs them equally, instead of saying that they happen alike to those who are produced in continuous series and to those who come after them by virtue of a certain original movement of Providence, according to which it moved from a certain beginning to this ordering of things, having conceived certain principles of the things which were to be, and having determined powers productive of beings and of changes and of such like successions.

It would be a man's happiest lot to depart from mankind without having had any taste of lying and hypocrisy and luxury and pride. However to

breathe out one's life when a man has had enough of these things is the next best voyage, as the saying is. Hast thou determined to abide with vice, and has not experience yet induced thee to fly from this pestilence? For the destruction of the understanding is a pestilence, much more indeed than any such corruption and change of this atmosphere which surrounds us. For this corruption is a pestilence of animals so far as they are animals; but the other is a pestilence of men so far as they are men.

Do not despise death, but be well content with it, since this too is one of those things which nature wills. For such as it is to be young and to grow old, and to increase and to reach maturity, and to have teeth and beard and grey hairs, and to beget, and to be pregnant and to bring forth, and all the other natural operations which the seasons of thy life bring, such also is dissolution. This, then, is consistent with the character of a reflecting man, to be neither careless nor impatient nor contemptuous with respect to death, but to wait for it as one of the operations of nature. As thou now waitest for the time when the child shall come out of thy wife's womb, so be ready for the time when thy soul shall fall out of this envelope. But if thou requirest also a vulgar kind of comfort which shall reach thy heart, thou wilt be made best reconciled to death by observing the objects from which thou art going to be removed, and the morals of those with whom thy soul will no longer be mingled. For it is no way right to be offended with men, but it is thy duty to care for them and to bear with them gently; and yet to remember that thy departure will be not from men who have the same principles as thyself. For this is the only thing, if there be any, which could draw us the contrary way and attach us to life, to be permitted to live with those who have the same principles as ourselves. But now thou seest how great is the trouble arising from the discordance of those who live together, so that thou mayest say, Come quick, O death, lest perchance I, too, should forget myself.

He who does wrong does wrong against himself. He who acts unjustly acts unjustly to himself, because he makes himself bad.

He often acts unjustly who does not do a certain thing; not only he who does a certain thing.

Thy present opinion founded on understanding, and thy present conduct directed to social good, and thy present disposition of contentment with everything which happens that is enough.

Wipe out imagination: check desire: extinguish appetite: keep the ruling faculty in its own power.

Among the animals which have not reason one life is distributed; but among reasonable animals one intelligent soul is distributed: just as there is one earth of all things which are of an earthy nature, and we see by one light, and breathe one air, all of us that have the faculty of vision and all that have life.

All things which participate in anything which is common to them all move towards that which is of the same kind with themselves. Everything which is earthy turns towards the earth, everything which is liquid flows together, and everything which is of an aerial kind does the same, so that they require something to keep them asunder, and the application of force. Fire indeed moves upwards on account of the elemental fire, but it is so ready to be kindled together with all the fire which is here, that even every substance which is somewhat dry, is easily ignited, because there is less mingled with it of that which is a hindrance to ignition. Accordingly then everything also which participates in the common intelligent nature moves in like manner towards that which is of the same kind with itself, or moves even more. For so much as it is superior in comparison with all other things, in the same degree also is it more ready to mingle with and to be fused with that which is akin to it. Accordingly among animals devoid of reason we find swarms of bees, and herds of cattle, and the nurture of young birds, and in a manner, loves; for even in animals there are souls, and that power which brings them together is seen to exert itself in the superior degree, and in such a way as never has been observed in plants nor in stones nor in trees. But in rational animals there are political communities and friendships, and families and meetings of people; and in wars, treaties and armistices. But in the things which are still superior, even though they are separated from one another, unity in a manner exists, as in the stars. Thus the ascent to the higher degree is able to produce a sympathy even in things which are separated. See, then, what now takes place. For only intelligent animals have now forgotten this mutual desire and inclination, and in them alone the property of flowing together is not seen. But still though men strive to avoid this union, they are caught and held by it, for their nature is too strong for them; and thou wilt see what I say, if thou only observest. Sooner, then, will one find anything earthy which comes in contact with no earthy thing than a man altogether separated from other men.

Both man and God and the universe produce fruit; at the proper seasons each produces it. But if usage has especially fixed these terms to the vine and like things, this is nothing. Reason produces fruit both for all and for itself, and there are produced from it other things of the same kind as reason itself.

If thou art able, correct by teaching those who do wrong; but if thou canst not, remember that indulgence is given to thee for this purpose. And the gods, too, are indulgent to such persons; and for some purposes they even help them to get health, wealth, reputation; so kind they are. And it is in thy power also; or say, who hinders thee?

Labour not as one who is wretched, nor yet as one who would be pitied or admired: but direct thy will to one thing only, to put thyself in motion and to check thyself, as the social reason requires.

Today I have got out of all trouble, or rather I have cast out all trouble, for it was not outside, but within and in my opinions.

All things are the same, familiar in experience, and ephemeral in time, and worthless in the matter. Everything now is just as it was in the time of those whom we have buried.

Things stand outside of us, themselves by themselves, neither knowing aught of themselves, nor expressing any judgement. What is it, then, which does judge about them? The ruling faculty.

Not in passivity, but in activity lie the evil and the good of the rational social animal, just as his virtue and his vice lie not in passivity, but in activity.

For the stone which has been thrown up it is no evil to come down, nor indeed any good to have been carried up.

Penetrate inwards into men's leading principles, and thou wilt see what judges thou art afraid of, and what kind of judges they are of themselves.

All things are changing: and thou thyself art in continuous mutation and in a manner in continuous destruction, and the whole universe too.

It is thy duty to leave another man's wrongful act there where it is.

Termination of activity, cessation from movement and opinion, and in a sense their death, is no evil. Turn thy thoughts now to the consideration of thy life, thy life as a child, as a youth, thy manhood, thy old age, for in these also every change was a death. Is this anything to fear? Turn thy thoughts now to thy life under thy grandfather, then to thy life under thy mother, then to thy life under thy father; and as thou findest many other differences and changes and terminations, ask thyself, Is this anything to fear? In like manner, then, neither are the termination and cessation and change of thy whole life a thing to be afraid of.

Hasten to examine thy own ruling faculty and that of the universe and that of thy neighbour: thy own that thou mayest make it just: and that of the universe, that thou mayest remember of what thou art a part; and that of thy neighbour, that thou mayest know whether he has acted ignorantly or with knowledge, and that thou mayest also consider that his ruling faculty is akin to thine.

As thou thyself art a component part of a social system, so let every act of thine be a component part of social life. Whatever act of thine then has no reference either immediately or remotely to a social end, this tears asunder thy life, and does not allow it to be one, and it is of the nature of a mutiny, just as when in a popular assembly a man acting by himself stands apart from the general agreement.

Quarrels of little children and their sports, and poor spirits carrying about dead bodies, such is everything; and so what is exhibited in the representation of the mansions of the dead strikes our eyes more clearly.

Examine into the quality of the form of an object, and detach it altogether from its material part, and then contemplate it; then determine the time, the longest which a thing of this peculiar form is naturally made to endure.

Thou hast endured infinite troubles through not being contented with thy ruling faculty, when it does the things which it is constituted by nature to do. But enough of this.

When another blames thee or hates thee, or when men say about thee anything injurious, approach their poor souls, penetrate within, and see what kind of men they are. Thou wilt discover that there is no reason to take any trouble that these men may have this or that opinion about thee. However thou must be well disposed towards them, for by nature they are friends. And the gods too aid them in all ways, by dreams, by signs, towards the attainment of those things on which they set a value.

The periodic movements of the universe are the same, up and down from age to age. And either the universal intelligence puts itself in motion for every separate effect, and if this is so, be thou content with that which is the result of its activity; or it puts itself in motion once, and everything else comes by way of sequence in a manner; or indivisible elements are the origin of all things. In a word, if there is a god, all is well; and if chance rules, do not thou also be governed by it.

Soon will the earth cover us all: then the earth, too, will change, and the things also which result from change will continue to change for ever, and these again for ever. For if a man reflects on the changes and transformations which follow one another like wave after wave and their rapidity, he will despise everything which is perishable.

The universal cause is like a winter torrent: it carries everything along with it. But how worthless are all these poor people who are engaged in matters political, and, as they suppose, are playing the philosopher! All drivellers. Well then, man: do what nature now requires. Set thyself in motion, if it is in thy power, and do not look about thee to see if any one will observe it; nor yet expect Plato's Republic: but be content if the smallest thing goes on well, and consider such an event to be no small matter. For who can change men's opinions? And without a change of opinions what else is there than the slavery of men who groan while they pretend to obey? Come now and tell me of Alexander and Philip and Demetrius of Phalerum. They themselves shall judge whether they discovered what the common nature required, and trained themselves accordingly. But if they acted like tragedy heroes, no one has condemned me to imitate them. Simple and modest is the work of philosophy. Draw me not aside to indolence and pride.

Look down from above on the countless herds of men and their countless solemnities, and the infinitely varied voyagings in storms and calms, and the differences among those who are born, who live together, and die. And

consider, too, the life lived by others in olden time, and the life of those who will live after thee, and the life now lived among barbarous nations, and how many know not even thy name, and how many will soon forget it, and how they who perhaps now are praising thee will very soon blame thee, and that neither a posthumous name is of any value, nor reputation, nor anything else.

Let there be freedom from perturbations with respect to the things which come from the external cause; and let there be justice in the things done by virtue of the internal cause, that is, let there be movement and action terminating in this, in social acts, for this is according to thy nature.

Thou canst remove out of the way many useless things among those which disturb thee, for they lie entirely in thy opinion; and thou wilt then gain for thyself ample space by comprehending the whole universe in thy mind, and by contemplating the eternity of time, and observing the rapid change of every several thing, how short is the time from birth to dissolution, and the illimitable time before birth as well as the equally boundless time after dissolution.

All that thou seest will quickly perish, and those who have been spectators of its dissolution will very soon perish too. And he who dies at the extremest old age will be brought into the same condition with him who died prematurely.

What are these men's leading principles, and about what kind of things are they busy, and for what kind of reasons do they love and honour? Imagine that thou seest their poor souls laid bare. When they think that they do harm by their blame or good by their praise, what an idea!

Loss is nothing else than change. But the universal nature delights in change, and in obedience to her all things are now done well, and from eternity have been done in like form, and will be such to time without end. What, then, dost thou say? That all things have been and all things always will be bad, and that no power has ever been found in so many gods to rectify these things, but the world has been condemned to be found in never ceasing evil?

The rottenness of the matter which is the foundation of everything! Water, dust, bones, filth: or again, marble rocks, the callosities of the earth; and gold and silver, the sediments; and garments, only bits of hair; and purple dye, blood; and everything else is of the same kind. And that which is of the nature of breath is also another thing of the same kind, changing from this to that.

Enough of this wretched life and murmuring and apish tricks. Why art thou disturbed? What is there new in this? What unsettles thee? Is it the form of the thing? Look at it. Or is it the matter? Look at it. But besides these there is nothing. Towards the gods, then, now become at last more simple

and better. It is the same whether we examine these things for a hundred years or three.

If any man has done wrong, the harm is his own. But perhaps he has not done wrong.

Either all things proceed from one intelligent source and come together as in one body, and the part ought not to find fault with what is done for the benefit of the whole; or there are only atoms, and nothing else than mixture and dispersion. Why, then, art thou disturbed? Say to the ruling faculty, Art thou dead, art thou corrupted, art thou playing the hypocrite, art thou become a beast, dost thou herd and feed with the rest?

Either the gods have no power or they have power. If, then, they have no power, why dost thou pray to them? But if they have power, why dost thou not pray for them to give thee the faculty of not fearing any of the things which thou fearest, or of not desiring any of the things which thou desirest, or not being pained at anything, rather than pray that any of these things should not happen or happen? For certainly if they can co-operate with men, they can co-operate for these purposes. But perhaps thou wilt say, the gods have placed them in thy power. Well, then, is it not better to use what is in thy power like a free man than to desire in a slavish and abject way what is not in thy power? And who has told thee that the gods do not aid us even in the things which are in our power? Begin, then, to pray for such things, and thou wilt see. One man prays thus: How shall I be able to lie with that woman? Do thou pray thus: How shall I not desire to lie with her? Another prays thus: How shall I be released from this? Another prays: How shall I not desire to be released? Another thus: How shall I not lose my little son? Thou thus: How shall I not be afraid to lose him? In fine, turn thy prayers this way, and see what comes.

Epicurus says, In my sickness my conversation was not about my bodily sufferings, nor, says he, did I talk on such subjects to those who visited me; but I continued to discourse on the nature of things as before, keeping to this main point, how the mind, while participating in such movements as go on in the poor flesh, shall be free from perturbations and maintain its proper good. Nor did I, he says, give the physicians an opportunity of putting on solemn looks, as if they were doing something great, but my life went on well and happily. Do, then, the same that he did both in sickness, if thou art sick, and in any other circumstances; for never to desert philosophy in any events that may befall us, nor to hold trifling talk either with an ignorant man or with one unacquainted with nature, is a principle of all schools of philosophy; but to be intent only on that which thou art now doing and on the instrument by which thou doest it.

When thou art offended with any man's shameless conduct, immediately ask thyself, Is it possible, then, that shameless men should not be in the world? It is not possible. Do not, then, require what is impossible. For this man also is one of those shameless men who must of necessity be in the world. Let the same considerations be present to thy mind in the case of the knave, and the faithless man, and of every man who does wrong in any way. For at the same time that thou dost remind thyself that it is impossible that such kind of men should not exist, thou wilt become more kindly disposed towards every one individually. It is useful to perceive this, too, immediately when the occasion arises, what virtue nature has given to man to oppose to every wrongful act. For she has given to man, as an antidote against the stupid man, mildness, and against another kind of man some other power. And in all cases it is possible for thee to correct by teaching the man who is gone astray; for every man who errs misses his object and is gone astray. Besides wherein hast thou been injured? For thou wilt find that no one among those against whom thou art irritated has done anything by which thy mind could be made worse; but that which is evil to thee and harmful has its foundation only in the mind. And what harm is done or what is there strange, if the man who has not been instructed does the acts of an uninstructed man? Consider whether thou shouldst not rather blame thyself, because thou didst not expect such a man to err in such a way. For thou hadst means given thee by thy reason to suppose that it was likely that he would commit this error, and yet thou hast forgotten and art amazed that he has erred. But most of all when thou blamest a man as faithless or ungrateful, turn to thyself. For the fault is manifestly thy own, whether thou didst trust that a man who had such a disposition would keep his promise, or when conferring thy kindness thou didst not confer it absolutely, nor yet in such way as to have received from thy very act all the profit. For what more dost thou want when thou hast done a man a service? Art thou not content that thou hast done something conformable to thy nature, and dost thou seek to be paid for it? Just as if the eye demanded a recompense for seeing, or the feet for walking. For as these members are formed for a particular purpose, and by working according to their several constitutions obtain what is their own; so also as man is formed by nature to acts of benevolence, when he has done anything benevolent or in any other way conducive to the common interest, he has acted conformably to his constitution, and he gets what is his own.

Paul the Apostle

NEW TESTAMENT

Source: "Holy Bible"

Paul then stood up in the meeting of the Areopagus and said: "Men of Athens! I see that in every way you are very religious. For as I walked around and looked carefully at your objects of worship, I even found an altar with this inscription: TO AN UNKNOWN GOD. Now what you worship as something unknown I am going to proclaim to you.

The God who made the world and everything in it is the Lord of heaven and earth and does not live in temples built by hands. And he is not served by human hands, as if he needed anything, because he himself gives all men life and breath and everything else. From one man he made every nation of men, that they should inhabit the whole earth; and he determined the times set for them and the exact places where they should live. God did this so that men would seek him and perhaps reach out for him and find him, though he is not far from each one of us. 'For in him we live and move and have our being.' As some of your own poets have said, 'We are his offspring.'

Therefore since we are God's offspring, we should not think that the divine being is like gold or silver or stone – an image made by man's design and skill. In the past God overlooked such ignorance, but now he commands all people everywhere to repent. For he has set a day when he will judge the world with justice by the man he has appointed. He has given proof of this to all men by raising him from the dead."

Saint Augustine

THE CITY OF GOD

Source: "New Advent": <http://newadvent.org>

How Like Kingdoms Without Justice are to Robberies.

Justice being taken away, then, what are kingdoms but great robberies? For what are robberies themselves, but little kingdoms? The band itself is made up of men; it is ruled by the authority of a prince, it is knit together by the pact of the confederacy; the booty is divided by the law agreed on. If, by the admittance of abandoned men, this evil increases to such a degree that it holds places, fixes abodes, takes possession of cities, and subdues peoples, it assumes the more plainly the name of a kingdom, because the reality is now manifestly conferred on it, not by the removal of covetousness, but by the addition of impunity. Indeed, that was an apt and true reply which was given to Alexander the Great by a pirate who had been seized. For when that king had asked the man what he meant by keeping hostile possession of the sea, he answered with bold pride, What you mean by seizing the whole earth; but because I do it with a petty ship, I am called a robber, while you who does it with a great fleet are styled emperor.

Thomas Aquinas

DE REGNO AND THE SUMMA THEAOLOGICA

Source: Thomas Aquinas, *De Regno*, translated by Gerald B. Phelan, revised by I. Th. Eschmann, O.P., The Pontifical Institute of Mediaeval Studies, Toronto 1949; Thomas Aquinas, *The Summa Theologica*, translated by Fathers of the English Dominican Province, Benziger Bros. 1947.

The first step in our undertaking must be to set forth what is to be understood by the term king.

In all things which are ordered towards an end, wherein this or that course may be adopted, some directive principle is needed through which the due end may be reached by the most direct route. A ship, for example, which moves in different directions according to the impulse of the changing winds, would never reach its destination were it not brought to port by the skill of the pilot. Now, man has an end to which his whole life and all his actions are ordered; for man is an intelligent agent, and it is clearly the part of an intelligent agent to act in view of an end. Men also adopt different methods in proceeding towards their proposed end, as the diversity of men's pursuits and actions clearly indicates. Consequently man needs some directive principle to guide him towards his end.

To be sure, the light of reason is placed by nature in every man, to guide him in his acts towards his end. Wherefore, if man were intended to live alone, as many animals do, he would require no other guide to his end. Each man would be a king unto himself, under God, the highest King, inasmuch as he would direct himself in his acts by the light of reason given him from on high. Yet it is natural for man, more than for any other animal, to be a social and political animal, to live in a group. This is clearly a necessity of man's nature.

For all other animals, nature has prepared food, hair as a covering, teeth, horns, claws as means of defence or at least speed in flight, while man alone was made without any natural provisions for these things. Instead of all these, man was endowed with reason, by the use of which he could procure all these things for himself by the work of his hands. Now, one man alone is not able to procure them all for himself, for one man could not sufficiently provide for life, unassisted. It is therefore natural that man should live in the society of many.

Now since man must live in a group, because he is not sufficient unto himself to procure the necessities of life were he to remain solitary, it follows

that a society will be the more perfect the more it is sufficient unto itself to procure the necessities of life.

There is, to some extent, sufficiency for life in one family of one household, namely, insofar as pertains to the natural acts of nourishment and the begetting of offspring and other things of this kind. Self-sufficiency exists, furthermore, in one street with regard to those things which belong to the trade of one guild. In a city, which is the perfect community, it exists with regard to all the necessities of life. Still more self-sufficiency is found in a province because of the need of fighting together and of mutual help against enemies. Hence the man ruling a perfect community, i.e. a city or a province, is antonomastically called the king. The ruler of a household is called father, not king, although he bears a certain resemblance to the king, for which reason kings are sometimes called the fathers of their peoples.

It is plain, therefore, from what has been said, that a king is one who rules the people of one city or province, and rules them for the common good. Wherefore Solomon says [Eccl. 5:8]: “The king rules over all the land subject to him.”

Just as the government of a king is the best, so the government of a tyrant is the worst.

For democracy stands in contrary opposition to polity, since both are governments carried on by many persons, as is clear from what has already been said; while oligarchy is the opposite of aristocracy, since both are governments carried on by a few persons; and kingship is the opposite of tyranny since both are carried on by one person. Now, as has been shown above, monarchy is the best government. If, therefore, “it is the contrary of the best that is worst.” it follows that tyranny is the worst kind of government.

Further, a united force is more efficacious in producing its effect than a force which is scattered or divided. Many persons together can pull a load which could not be pulled by each one taking his part separately and acting individually. Therefore, just as it is more useful for a force operating for a good to be more united, in order that it may work good more effectively, so a force operating for evil is more harmful when it is one than when it is divided. Now, the power of one who rules unjustly works to the detriment of the multitude, in that he diverts the common good of the multitude to his own benefit. Therefore, for the same reason that, in a just government, the government is better in proportion as the ruling power is one—thus monarchy is better than aristocracy, and aristocracy better than polity – so the contrary will be true of an unjust government, namely, that the ruling power will be more harmful in proportion as it is more unitary. Consequently, tyranny is more harmful than oligarchy; and oligarchy more harmful than democracy.

Moreover, a government becomes unjust by the fact that the ruler, paying no heed to the common good, seeks his own private good. Wherefore

the further he departs from the common good the more unjust will his government be. But there is a greater departure from the common good in an oligarchy, in which the advantage of a few is sought, than in a democracy, in which the advantage of many is sought; and there is a still greater departure from the common good in a tyranny, where the advantage of only one man is sought. For a large number is closer to the totality than a small number, and a small number than only one. Thus, the government of a tyrant is the most unjust.

The same conclusion is made clear to those who consider the order of Divine Providence, which disposes everything in the best way. In all things, good ensues from one perfect cause, i.e. from the totality of the conditions favourable to the production of the effect, while evil results from any one partial defect. There is beauty in a body when all its members are fittingly disposed; ugliness, on the other hand, arises when any one member is not fittingly disposed. Thus ugliness results in different ways from many causes; beauty in one way from one perfect cause. It is thus with all good and evil things, as if God so provided that good, arising from one cause, be stronger, and evil, arising from many causes, be weaker. It is expedient therefore that a just government be that of one man only in order that it may be stronger; however, if the government should turn away from justice, it is more expedient that it be a government by many, so that it may be weaker and the many may mutually hinder one another. Among unjust governments, therefore, democracy is the most tolerable, but the worst is tyranny.

Law is nothing else but a dictate of practical reason emanating from the ruler who governs a perfect community. Now it is evident, granted that the world is ruled by Divine Providence, as was stated in the FP, Question [22], Articles [1],2, that the whole community of the universe is governed by Divine Reason. Wherefore the very Idea of the government of things in God the Ruler of the universe, has the nature of a law. And since the Divine Reason's conception of things is not subject to time but is eternal, according to Prov. 8:23, therefore it is that this kind of law must be called eternal. [...]

Since, however, good has the nature of an end, and evil, the nature of a contrary, hence it is that all those things to which man has a natural inclination, are naturally apprehended by reason as being good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance. Wherefore according to the order of natural inclinations, is the order of the precepts of the natural law. Because in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature: and by reason of this inclination, whatever is a means of preserving human life, and of warding off its obstacles, belongs

to the natural law. Secondly, there is in man an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals: and in virtue of this inclination, those things are said to belong to the natural law.

[...]

I answer that, Laws framed by man are either just or unjust. If they be just, they have the power of binding in conscience, from the eternal law whence they are derived, according to Prov. 8:15: "By Me kings reign, and lawgivers decree just things." Now laws are said to be just, both from the end, when, to wit, they are ordained to the common good – and from their author, that is to say, when the law that is made does not exceed the power of the lawgiver – and from their form, when, to wit, burdens are laid on the subjects, according to an equality of proportion and with a view to the common good. For, since one man is a part of the community, each man in all that he is and has, belongs to the community; just as a part, in all that it is, belongs to the whole; wherefore nature inflicts a loss on the part, in order to save the whole: so that on this account, such laws as these, which impose proportionate burdens, are just and binding in conscience, and are legal laws.

On the other hand laws may be unjust in two ways: first, by being contrary to human good, through being opposed to the things mentioned above – either in respect of the end, as when an authority imposes on his subjects burdensome laws, conducive, not to the common good, but rather to his own cupidity or vainglory – or in respect of the author, as when a man makes a law that goes beyond the power committed to him – or in respect of the form, as when burdens are imposed unequally on the community, although with a view to the common good. The like are acts of violence rather than laws; because, as Augustine says (*De Lib. Arb.* i, 5), "a law that is not just, seems to be no law at all." [...]

All law proceeds from the reason and will of the lawgiver; the Divine and natural laws from the reasonable will of God; the human law from the will of man, regulated by reason. Now just as human reason and will, in practical matters, may be made manifest by speech, so may they be made known by deeds: since seemingly a man chooses as good that which he carries into execution. But it is evident that by human speech, law can be both changed and expounded, in so far as it manifests the interior movement and thought of human reason. Wherefore by actions also, especially if they be repeated, so as to make a custom, law can be changed and expounded; and also something can be established which obtains force of law, in so far as by repeated external actions, the inward movement of the will, and concepts of reason are most effectually declared; for when a thing is done again and again, it seems to proceed from a deliberate judgment of reason. Accordingly, custom has the force of a law, abolishes law, and is the interpreter of law.

Stanisław of Skarbimierz

SERMON 46

“Wisdom is better than weapons of war.”

Because of the human propensity for committing sins, and also because of human greed, being the cause of innumerable matters of dispute, no community, no principality and no kingdom can really exist unless it is governed by clearly established laws. A law which ensures salutary government ought to be judicious, convincing and worthy of respect.

However, since the severity of all laws is in vain if they are not a reflection of divine law, as says Augustine in the sixth book of his “City of God”, all laws must ensue from divine law and they can never contradict it, in accordance with what Wisdom says through Solomon’s mouth: “Because of me, kings rule and legislators establish laws, which is just.”

Thus, only such a republic is well organised which in governing uses laws ensuing from divine law, because the state is then godly when the guiding force is truth, when the law is to love thy neighbour and when the rule is justice and equality. In truth there is no city, province or principality that does not possess laws by which people must be directed, like horses are steered by reins, but it is extremely rare to find a community that governs itself in such a way that it is deserving of the name of a godly state.

This happens because there is no faith, the truth dies in corners, there is no fear of God, no respect, no piety, no holiness, no innocence, no solicitude for the house of God and, finally, no justice, without which the republic cannot be governed. For indeed, if legal regulations are taken away from a man, what else would this man be but a “vessel of anger”? Remove justice from kingdoms and what will these kingdoms be but bands of robbers, as Augustine wrote (“City of God”, book IV, chapter 4)? Remove the fear of God and immediately the world will be filled with base behaviour to such an extent that it will be right to destroy it together with the earth on which it stands. Remove mutual kindness from the borders of the state and “every kingdom divided against itself is brought to desolation”, as is stated in the Gospel according to Matthew (chapter 12).

There is, therefore, no agreement except where love of one’s neighbour is the rule, which “from the many faithful makes one heart and one soul”. And there in turn, where there reigns unanimous kindness, the state is strong and terrifying to enemies like a compact fortified camp. For where no one

turns away in anger from another, where no one dupes others with words or deceives them with gestures and where everyone is ready to do a good deed to others, there justice has strong foundations. If, on the other hand, the readiness to bring help is gained by flattery or is bought for money, there justice changes suitably to the time and the circumstances. Thus, the only true helpfulness is that which flows from the love of God, to whom we owe reverence, bravery, subjection, respect and fear, or from the love of one's neighbour, to whom we owe on our part gentleness, support, protection, encouragement and consolation.

Thus, in order for the republic to grow in strength, it must be governed with divine laws and godly wisdom. And it should not boast of the plenitude of its weapons if it lacks wisdom, for "wisdom is better than weapons of war". This can be seen clearly when we consider wars conducted by the faithful, and in particular by the Machabees, when many thousands of pagans, terrifying on account of their weaponry and military experience, were defeated many times by a few of the faithful, rather by words and wisdom than by the force of arms. And that is why, as Judas Machabeus, the bravest of the warriors, wrote: "There is no difference in the sight of the God of heaven to deliver with a great multitude, or with a small company: for the success of war is not in the multitude of the army, but strength cometh from heaven." If God is our ally, who is he who could defeat us? If God, however, is not with us, who will stand by our side? [...]

What then will happen if it the sin not of one person but of all the members of a numerous community? Indeed, there should be fear of defeat in an army where the sins of many cry out to heaven for vengeance. "I will ...see", says the Lord, "whether they have done altogether according to the cry of it". And because it was so in fact, all from the greatest to the smallest, with the exception of Lot and his family, descended to hell consumed by fire and brimstone.

If the voice of the spilled blood of one man can be heard in heaven so that divine majesty can exact vengeance on the murderer, so how will the combined voices of the poor, the oppressed, the humiliated, the victims of prostitution and adultery, those dying from poverty and hunger, the sick and the unhappy inhabitants of the earth not be heard? Will this elude the unforgiving eyes of God? Never, for as the prophet says, "Lord God to whom vengeance belongeth". This God, as another prophet says, is "a jealous God visiting the iniquity of the fathers on the children to the third and fourth generation".

Will He leave unavenged the plundering of churches of their possessions, tithes and other goods, perpetrated in violation of divine law, canon law, military law, public law, private law and natural law? Under no circumstances, for when He sees dispersed the inheritance for which He had shed His own

blood, those who perpetrated these base acts will have to tremble for the sword sharpened on both sides not to fall onto them from the lips of Him who sits on the throne.

O, how no attention is paid in our times to the terrible divine judgements, by which God drove out of heaven the angel, “the seal of similarity, covered in all manner of precious stones”, for the sin of pride, by which for the sake of a piece of forbidden apple He drove out of paradise the first parents and all their children, by which He destroyed with a flood the whole world for all its base behaviour and drowned all the people, with the exception of just eight whom He saved, by which He destroyed five cities with reeking fire, by which for the idolatrous adoration of a calf cast in metal He took the lives in one day of twenty-two thousand people and by which for the sin of doubt and hardness of heart He allowed only two people into the Promised Land, despite it being promised to them all. With the force of His judgements He inflicted a terrible death on Korah and his companions for usurping the right to the dignity of the priesthood. He destroyed the whole of Benjamin’s district as a punishment for immorality and debauchery and saved only six hundred inhabitants. David’s pride was punished with the extermination of seventy-two thousand people. Babylon, so famous among the kingdoms and having disregard for all other kingdoms, was so depopulated for the numerous sins of its inhabitants that in the royal and princely palaces there lived only snakes and the ostriches which made their nests there. With the force of His judgements God gave into the hands of Nebuchadnezzar His own and particularly loved nation, and Nebuchadnezzar took this nation into slavery and burned the holy city and the temple.

These and other divine judgements, of which the Holy Bible is full, seem for many to be just a game or an apparition from a dream. And this is why – if God’s punishment is not meted out to them immediately – they continue to commit further sins without any fear.

Thus, tremble before the severe justice of God, which without any error will prepare suffering for the immoral and will give endless rewards to the good. Let us rather strive for the weapon of wisdom rather than that of the armed crowd, because “wisdom is better than weapons of war”.

For what use is an axe if there is no hand which could use it to chop? What use is a spear if there is no-one to throw it at the target? What use is a crowd that does not recognise discipline? How easy it is for an army to suffer defeat, however large the army may be, if there is a lack of the necessary discipline. [...]

So let there be discipline in the army if it is to achieve victories. Let there also be proficiency in the craft of war similar to that reigning among the soldiers of Alexander, about whom Gnaeus Pompeius Trogus wrote in the twelfth book, saying that when Alexander was selecting soldiers for

a particularly dangerous battle, he did not choose those soldiers who were in the prime of life or very young but veterans, many of whom were even retired but who had even fought alongside his father and his uncle, so that it could be stated that these were not just select soldiers but real masters of the art of warfare. The commanders of the units were exclusively sixty-year-old men so that if you were looking at the front of the ranks, it could be stated that you had before your eyes the senate of some republic. That is why during the battle no one thought of fleeing but everyone thought of victory and no one counted on the swiftness of his legs but on the strength of his shoulders. It was just the opposite with Darius and his army. And that is why Alexander's soldiers were victorious and those of Darius were defeated.

This is hardly surprising. After all, whoever wants a successful outcome of the battle will put his faith in the art of warfare, not in fate, and above all in the wisdom of God, who will teach hands for battle and fingers for war; this wisdom will give us victory over all our foes, seen and unseen, bring peace and peaceful fat years and will allow us to be seated in the heavens "in the beauty of peace and in opulent rest" – Wisdom personified, the Son of God acclaimed for ever and ever.

Paweł Włodkowiec

ON THE POWER OF THE POPE AND THE EMPEROR WITH RESPECT TO INFIDELS

When, long ago, the Old Prussians, then pagans, and others were raging against Christian Poles, the Polish dukes let into Poland the Teutonic Knights who called themselves the Teutonic Order of Holy Mary in Jerusalem. The dukes of Poland granted them some estates close to the border with the said pagans. Out of these estates, with the assistance of Poles and other Christians, with time they conquered the ruthless Prussian nation, then pagan, seized the land and therefore they are called the masters from Prussia. It was there that strong and well fortified towns or strongholds were built and their entire state was so fortified that it was unconquerable by anybody who was not less than 10-fold stronger. Although the ruthlessness of the pagans in raids against Christians was ended when the Prussians were conquered, it was the Teutonic Knights who did not cease to invade the pagans, who were then pacified and suppressed, and did not cease to raid their lands and state; on the contrary – under the original pretext that the pagan fury was continuing to rage against Christians, calling Christians for assistance, they as a rule raid the land of the pagans with a strong army twice a year, namely in the following periods: the Assumption and Absolution of the Blessed Virgin Mary that in their folk language they call raids. This is a way that an error becomes a custom: in order to perform military service, Christians who believe that they are praising God come together in crowds and ruthlessly attack a peaceful pagan nation in an effort to spread the Catholic faith. This results in killings, the faithful equally with pagans are threatened with condemnation, robberies occur along with many other foul deeds. This is the way the fame of the Order has grown, riches grow with power, the Teutonic Knights fill their treasuries and become richer at the expense of Christians and pagans. They persuade popes and emperors to issue letters saying that they hold title to all the neighbourhood, the land or states of the pagans that they have conquered or seized.

Finally, God, whose will is done in many ways, caused the most powerful pagan dukes to understand their errors and to convert to the true faith, and with the assistance of the Poles they came to be washed with the holy water of baptism. One of them became king of Poland; another remained the ruler and master of Lithuania and other neighbouring countries, both schismatic and pagan. They, whose power used to be awesome to the Christian countries

of Prussia, Livonia and Poland, are now followed by crowds of pagans who wish to worship the holy faith; in crowds they come to the spring of holy baptism and almost all of their natural subjects in the lands of Lithuania etc. have been baptised and others are following suit. Still others have subjected to their power out of their own free will.

These wonders are being studied by the Teutonic Knights and, as if worried that they have lost an opportunity to seize the property and states of these peoples, they raid with increased intensity many times at short intervals; as usual, the converts and their priests – and others baptised or not – are ruthlessly killed, their brand new churches are burned and numerous other deeds that are beyond speech are committed. Also, they attack those who have been Christian for ages, in particular their benefactors – they raid, take their donators into slavery, horribly treat Christian dukes who had provided for the Order; calling large numbers of the faithful, they pretend that all of this is against the unfaithful and by putting on more appearances they put forward their power against the Catholic king of Poland, invade the kingdom of Poland, devastate towns, reduce others to ashes, rob, violate and do many other shameful things that are difficult to put down on paper.

When in Poland lament is raised about the cruelty that has passed from the Prussians to the Teutonic Knights – those whom the Poles have used as a shield against barbarism have become a whip for them – Poland not only laments that it has raised such great and fatal cruelty in its own bosom but Poland is forced to oppose. So ranks stood up on both sides and clashed in battle. The power of the Order falls from high above, the battlefield is full [alas] with dead bodies and the Polish swords plunge into Teutonic blood time after time.

Although the opposition of some pagans already reborn in Christianity and of others totally under the power of Christian rulers – the said rightful monarchs – has stopped, and long ago the function of war performed by those Knights Hospitaller in those lands is no longer valid – they keep thinking that the said letters from emperors and popes they claim to possess have given them the pretexts and appearances to have done everything that is described above.

Therefore, having ascertained the true and obvious facts that require that Christian knights be more cautious in performing their duty, I, master Paweł Włodkovic, guardian and canon of the Kraków Diocese, the most humble of the doctors, propose for consideration three issues and those who have the right to do so may always correct me.

Firstly, as to the power of the pope, secondly, as to the power of emperors in relation to the unfaithful, and each of these issues requires eleven questions for full clarification; thirdly, an erroneous opinion in the matter will be quoted and an answer will be provided to the arguments contained therein.

With respect to the first issue, the question arises if, without sinning, monarchs can expel Saracens and Jews from their kingdoms and take over their property. Can the pope order or recommend monarchs to do this?

Second, if the unfaithful have kingdoms and provinces separate from ours and there they rule and hold everything, can Christians without sinning wage war against those who live in peace and take away their property?

Third, in this connection: can Christians defend the Holy Land and the unfaithful inhabiting it?

Fourth, can the pope of the Roman empire take away the authority from the unfaithful that the unfaithful have deprived the empire of?

Fifth, do the Roman church and all the others rightfully hold what they hold if it seems that everything has been acquired by violence and arms by Roman emperors?

Sixth, is it allowed to seize the property of heretics and schismatics?

Seventh, can the pope punish the unfaithful on any occasion?

Eighth, can the pope hold power over the unfaithful that do not hold any land where previously Christian monarchs had reigned?

Ninth, the question arises if the pope can order the unfaithful to allow preachers of the Gospel in their land.

Tenth, the question arises as to what happens if the pope has no power to punish them.

Eleventh, the question arises as to what law rules if the people of an unfaithful monarch are converted while the monarch is not.

With respect to the second issue, the question arises first as to the power of an emperor, namely what power or competence an emperor holds over the unfaithful and their property – there is a foreword containing numerous arguments that effectively prove that it is only the pope who rules the world holding two swords while the emperor is a minister of secular affairs, having been granted power from the pope in effect of positive law.

Second, the question arises if the emperor may grant authority to seize the land of the unfaithful, especially those who do not accept his empire.

Third, the question arises if letters of popes and emperors given to the Teutonic Knights and concerning seizure of the land of the unfaithful grant them any rights to seize the land with power or sue others for it.

Fourth, the question arises if the Teutonic Knights fighting against the peaceful unfaithful are waging a just war.

Fifth, the question arises if it is possible at all to force the unfaithful with power or exertion to accept the faith.

Sixth, is it acceptable or permitted that Christians assist the Teutonic Knights to attack the unfaithful because they are unfaithful, irrespective of whether this is claimed to spread Christian faith or to perform knightly duty?

Seventh, is it allowed to fight or prepare to fight the unfaithful without explicit need on holy days?

Eighth, can those subjects of the Teutonic Knights who fight against the unfaithful or raid their territories twice a year as specified above or deliberately unjustly attack Christians even if so ordered by their masters be treated as non-sinners?

Ninth, the question arises as to the property, land or states occupied in effect of such wars: from then on do they belong to those who have seized them and can they be retained without sin? If not, is the commander in the war or the key persons obliged – on pain of loss of salvation – to give back what has been seized and remedy the damage caused by him and by others so that their sin is absolved?

Tenth, can a Christian without sinning gain the assistance of the unfaithful to defend himself and his land?

Eleventh, the question arises as to whether the unfaithful who in a Christian court demand return of stolen property are to be treated justly? [...]

If after answering the above questions, another question is raised as to what power the emperor has over the unfaithful and their property, in particular those who do not accept his empire, in order to clarify these issues it is worth knowing that royal rule on the earth derives from three sources. The first mode is from God's will revealed to people in some form; the second is by the consent of those who are being ruled; the third mode is by violation. In the first and second instance royal power is just; it is not so in the third case. The first mode is used to justify the pope's power, starting from the power granted to patriarchs in the Old Testament, taken up later by Christ and transferred to Peter and his successors. Furthermore, the power is justified also in the other mode as the entire Catholic Church and the community of all the faithful agree to that which is approved by a very ancient custom without any memory of any contrary idea. As far as the third method is concerned, nothing more needs to be said as it is based rather on fact than on the law.

Although it is unknown if the rule over the said unfaithful be justified in the first or second method, one cannot say that the emperor has any power over the unfaithful except in the third mode, through violence and tyranny as specified above. [...]

From this follows an answer to question number two, that the emperor has no right to authorise seizure of the land of the unfaithful who do not accept his empire and that is due to the lack of power that is not held by the emperor but by the pope. The emperor is only authorised to execute power as a minister as referred to earlier. It is only the pope who can declare war

on them, nobody else as stated by Innocent, as stated above in the first treaty to question ten.

The Teutonic Knights may not justify the taking away of land from the unfaithful by privileges granted by the emperor.

The above produces an answer to question three: that letters from emperors given to the Teutonic Knights to seize the land of the unfaithful do not give them any right to fight for them since those who hold nothing are not able to give anything and whatever is contrary to the law should be deemed null and void. [...]

In effect a clear answer follows to the next question: that the Teutonic Knights etc., fighting against the peaceful unfaithful, as such never waged a just war. This is obvious as any law is against the attackers of those who want to live in peace.

Civil law: C 1, 11, 6 et seq. agree that the unfaithful who live in peace may not be harassed. Canon law: c. 2 X Multorum, 5, 6; c. 9 X Sicut, 5, 6; c. 11 Dispar, C. 23 qu. 8 – by way of an application a *contrario*, with others in agreement. Natural law speaks against them: “What you are seeking for yourself, do to others”, etc. like at the beginning of the Decrees.

God’s laws are against them, namely: “You shall not murder”, “You shall not steal” (Exodus. 20 [13-15]). In the expression “You shall not steal” there is a ban on any robbery and in the expression “You shall not murder” there is a ban on all violence: St Augustine says in his book *Issues of the Book of Exodus*, in chapter three: “Theft is obviously understood as all prohibited taking away of things belonging to other people – robbery was disallowed by those who prohibited stealing as he wanted that theft be understood in the law of the Old Testament also as robbery. We are clearly made to understand that this refers to all property that is unlawfully taken away from thy neighbour”. Robbery is a form of theft according to the gloss in the said canon since every robber is a thief.

Furthermore, such attacks on the unfaithful, in particular without any just cause, are not compliant with loving thy neighbour since when one opposition enters, another leaves and according to the Truth both the faithful and unfaithful are our fellow creatures without any difference. And since the letters of both the popes and the emperors do not grant any privilege upon the Teutonic Knights, in particular contrary to natural and divine law, then, etc. [...]

On the basis of what was said above, it is easier to answer another question, namely whether it is allowed to force the unfaithful with sword or pressure to accept the Christian faith since this is harmful to the fellow creatures and it is not allowed to do harm in order to achieve good. Therefore, in the canon *I Quid autem*, di. 45, one reads: “It is a new and unheard of way of preaching to force faith with flogging”. In c. 9 X Sicut, 5, 6, it is said: “It is not believed

that the Christian faith is held by those who were forced to accept baptism instead of out of his free will". In accordance with the gloss, evidence was made that no one should be forced to believe since faith should never result out of necessity as forced service is not to God's liking. Therefore, at the ecumenical council in Toledo, a decision was made that those who want to convert others should rather attract them instead of applying cruelty. As an argument, it was specified that there were people whose minds could have been won by clearly explaining the arguments but who were discouraged due to bad treatment. The following was added: "Those who act otherwise prove that they provide more support to their own causes than to God's matters". What was said about the Jews is based on the same argument that applies to any of the unfaithful and thus the same law. Where power is stronger than love, people look for what is theirs, not for what belongs to Jesus Christ and therefore it is easy to deviate from the rules of divine law. When there is more interest in ruling than care, honour inflates pride and what was supposed to lead to agreement leads to damage instead. [...]

That produces an erroneous conclusion that may not be tolerated by any means: that Christians come together to attack the unfaithful just because they are unfaithful. This may not be tolerated irrespective of whether it is said that this occurs to spread the Christian faith since under the guise of piety one may not commit godless deeds, or whether it is said that this occurs to practise knightly duty etc. All those who out of their own free will were assisting the Teutonic Knights in attacking the peaceful unfaithful may not be freed from mortal sin, regardless of whether they are their subjects or not. Those who assist in sinning are not giving a helping hand and in effect those who die there without repentance supporting such unjust wars, are sons of rage and they are rightly deemed to be condemned.

The war waged by Spain against the Saracens is just in the opinion of Oldrad (*Quaestiones*, No. 72) because its goal was to regain Christian land, that is such that used to be inhabited by Christians.

A Catholic soldier who is not a subject of the warring master should be completely convinced that the war he is supporting is just; otherwise, when he has doubts or is not certain, he is exposed to major risk. Ambrose says: "If you cannot help others without harming another, it is better not to help anyone while harming others". It is only a subject who can justify his deeds by assisting his master when doubt arises supported with probability that the war may not be just: but here there is the duty of obedience. It is otherwise if he were certain that the war is unjust or would have grounds to believe so. This argument no longer applies with respect to free people who have no duty of obedience and are guided by their own free will. In accordance with *Ostiensis* and *Raymond*, this applies to a subject provided he has investigated the matter as much as possible and has requested advice of more experienced

people and anyhow was left with doubt; otherwise he would only pretend not to be aware and thus would be punished as not devoid of knowledge. He would not be justified with a concern of losing worldly objects as although fear diminishes the guilt, it does not exclude it totally. That was discussed in detail by Ostiensis (in Summa: De paenitentiis et remissionibus, § Quibus et qualiter, line Quid de rapina). For this, an authorisation by the law or a judge is required.

Therefore, for everything that was said earlier and will follow, it should be known that five attributes are required for a war to be just, in accordance with Ostiensis after Raymond. Those are: person, subject, reason, spirit and authority.

A person who is able to fight must be secular to be entitled to shed blood as the clergy may not, unless in an unavoidable necessity.

A subject, that is when it is about recovering property or defending the motherland.

A reason such as that one fights out of necessity or to achieve peace through war.

A spirit so that the war does not stem from hatred or revenge but to correct and for love, justice and obedience since it is not a sin to wage a war but it is a sin to wage a war for spoils.

An authority, that is by authority of the Church if you fight for the faith or by the authority of a monarch.

Bartolome de Las Casas

BRIEF ACCOUNT OF THE DEVASTATION OF THE INDIES

Source: Bartolome de Las Casas, *Brief Account of the Devastation of the Indies* (1542).

The Indies were discovered in the year one thousand four hundred and ninety-two. In the following year a great many Spaniards went there with the intention of settling the land. Thus, forty-nine years have passed since the first settlers penetrated the land, the first so claimed being the large and most happy isle called Hispaniola, which is six hundred leagues in circumference. Around it in all directions are many other islands, some very big, others very small, and all of them were, as we saw with our own eyes, densely populated with native peoples called Indians. This large island was perhaps the most densely populated place in the world. There must be close to two hundred leagues of land on this island, and the seacoast has been explored for more than ten thousand leagues, and each day more of it is being explored. And all the land so far discovered is a beehive of people; it is as though God had crowded into these lands the great majority of mankind.

And of all the infinite universe of humanity, these people are the most guileless, the most devoid of wickedness and duplicity, the most obedient and faithful to their native masters and to the Spanish Christians whom they serve. They are by nature the most humble, patient, and peaceable, holding no grudges, free from embroilments, neither excitable nor quarrelsome. These people are the most devoid of rancors, hatreds, or desire for vengeance of any people in the world. And because they are so weak and complaisant, they are less able to endure heavy labor and soon die of no matter what malady. The sons of nobles among us, brought up in the enjoyments of life's refinements, are no more delicate than are these Indians, even those among them who are of the lowest rank of laborers. They are also poor people, for they not only possess little but have no desire to possess worldly goods. For this reason they are not arrogant, embittered, or greedy. Their repasts are such that the food of the holy fathers in the desert can scarcely be more parsimonious, scanty, and poor. As to their dress, they are generally naked, with only their pudenda covered somewhat. And when they cover their shoulders it is with a square cloth no more than two varas in size. They have no beds, but sleep on a kind of matting or else in a kind of suspended net called bamacas. They are very clean in their persons, with alert, intelligent minds, docile and open

to doctrine, very apt to receive our holy Catholic faith, to be endowed with virtuous customs, and to behave in a godly fashion. And once they begin to hear the tidings of the Faith, they are so insistent on knowing more and on taking the sacraments of the Church and on observing the divine cult that, truly, the missionaries who are here need to be endowed by God with great patience in order to cope with such eagerness. Some of the secular Spaniards who have been here for many years say that the goodness of the Indians is undeniable and that if this gifted people could be brought to know the one true God they would be the most fortunate people in the world.

Yet into this sheepfold, into this land of meek outcasts there came some Spaniards who immediately behaved like ravening wild beasts, wolves, tigers, or lions that had been starved for many days. And Spaniards have behaved in no other way during (...) past forty years, down to the present time, for they are still acting like ravening beasts, killing, terrorizing, afflicting, torturing, and destroying the native peoples, doing all this with the strangest and most varied new methods of cruelty, never seen or heard of before, and to such a degree that this Island of Hispaniola once so populous (having a population that I estimated to be more than three million), has now a population of barely two hundred persons.

The island of Cuba is nearly as long as the distance between Valladolid and Rome; it is now almost completely depopulated. San Juan [Puerto Rico] and Jamaica are two of the largest, most productive and attractive islands; both are now deserted and devastated. On the northern side of Cuba and Hispaniola lie the neighboring Lucayos comprising more than sixty islands including those called Gigantes, beside numerous other islands, some small some large. The least felicitous of them were more fertile and beautiful than the gardens of the King of Seville. They have the healthiest lands in the world, where lived more than five hundred thousand souls; they are now deserted, inhabited by not a single living creature. All the people were slain or died after being taken into captivity and brought to the Island of Hispaniola to be sold as slaves. When the Spaniards saw that some of these had escaped, they sent a ship to find them, and it voyaged for three years among the islands searching for those who had escaped being slaughtered, for a good Christian had helped them escape, taking pity on them and had won them over to Christ; of these there were eleven persons and these I saw.

More than thirty other islands in the vicinity of San Juan are for the most part and for the same reason depopulated, and the land laid waste. On these islands I estimate there are 2,100 leagues of land that have been ruined and depopulated, empty of people.

As for the vast mainland, which is ten times larger than all Spain, even including Aragon and Portugal, containing more land than the distance between Seville and Jerusalem, or more than two thousand leagues, we

are sure that our Spaniards, with their cruel and abominable acts, have devastated the land and exterminated the rational people who fully inhabited it. We can estimate very surely and truthfully that in the forty years that have passed, with the infernal actions of the Christians, there have been unjustly slain more than twelve million men, women, and children. In truth, I believe without trying to deceive myself that the number of the slain is more like fifteen million.

The common ways mainly employed by the Spaniards who call themselves Christian and who have gone there to extirpate those pitiful nations and wipe them off the earth is by unjustly waging cruel and bloody wars. Then, when they have slain all those who fought for their lives or to escape the tortures they would have to endure, that is to say, when they have slain all the native rulers and young men (since the Spaniards usually spare only the women and children, who are subjected to the hardest and bitterest servitude ever suffered by man or beast), they enslave any survivors. With these infernal methods of tyranny they debase and weaken countless numbers of those pitiful Indian nations.

Their reason for killing and destroying such an infinite number of souls is that the Christians have an ultimate aim, which is to acquire gold, and to swell themselves with riches in a very brief time and thus rise to a high estate disproportionate to their merits. It should be kept in mind that their insatiable greed and ambition, the greatest ever seen in the world, is the cause of their villainies. And also, those lands are so rich and felicitous, the native peoples so meek and patient, so easy to subject, that our Spaniards have no more consideration for them than beasts. And I say this from my own knowledge of the acts I witnessed. But I should not say "than beasts" for, thanks be to God, they have treated beasts with some respect; I should say instead like excrement on the public squares. And thus they have deprived the Indians of their lives and souls, for the millions I mentioned have died without the Faith and without the benefit of the sacraments. This is a wellknown and proven fact which even the tyrant Governors, themselves killers, know and admit. And never have the Indians in all the Indies committed any act against the Spanish Christians, until those Christians have first and many times committed countless cruel aggressions against them or against neighboring nations. For in the beginning the Indians regarded the Spaniards as angels from Heaven. Only after the Spaniards had used violence against them, killing, robbing, torturing, did the Indians ever rise up against them....

On the Island Hispaniola was where the Spaniards first landed, as I have said. Here those Christians perpetrated their first ravages and oppressions against the native peoples. This was the first land in the New World to be destroyed and depopulated by the Christians, and here they began their subjection of the women and children, taking them away from the Indians

to use them and ill use them, eating the food they provided with their sweat and toil. The Spaniards did not content themselves with what the Indians gave them of their own free will, according to their ability, which was always too little to satisfy enormous appetites, for a Christian eats and consumes in one day an amount of food that would suffice to feed three houses inhabited by ten Indians for one month. And they committed other acts of force and violence and oppression which made the Indians realize that these men had not come from Heaven. And some of the Indians concealed their foods while others concealed their wives and children and still others fled to the mountains to avoid the terrible transactions of the Christians.

And the Christians attacked them with buffets and beatings, until finally they laid hands on the nobles of the villages. Then they behaved with such temerity and shamelessness that the most powerful ruler of the islands had to see his own wife raped by a Christian officer.

From that time onward the Indians began to seek ways to throw the Christians out of their lands. They took up arms, but their weapons were very weak and of little service in offense and still less in defense. (Because of this, the wars of the Indians against each other are little more than games played by children.) And the Christians, with their horses and swords and pikes began to carry out massacres and strange cruelties against them. They attacked the towns and spared neither the children nor the aged nor pregnant women nor women in childbed, not only stabbing them and dismembering them but cutting them to pieces as if dealing with sheep in the slaughter house. They laid bets as to who, with one stroke of the sword, could split a man in two or could cut off his head or spill out his entrails with a single stroke of the pike. They took infants from their mothers' breasts, snatching them by the legs and pitching them headfirst against the crags or snatched them by the arms and threw them into the rivers, roaring with laughter and saying as the babies fell into the water, "Boil there, you offspring of the devil!" Other infants they put to the sword along with their mothers and anyone else who happened to be nearby. They made some low wide gallows on which the hanged victim's feet almost touched the ground, stringing up their victims in lots of thirteen, in memory of Our Redeemer and His twelve Apostles, then set burning wood at their feet and thus burned them alive. To others they attached straw or wrapped their whole bodies in straw and set them afire. With still others, all those they wanted to capture alive, they cut off their hands and hung them round the victim's neck, saying, "Go now, carry the message", meaning, Take the news to the Indians who have fled to the mountains. They usually dealt with the chieftains and nobles in the following way: they made a grid of rods which they placed on forked sticks, then lashed the victims to the grid and lighted a smoldering fire underneath, so that little by little, as those captives screamed in despair and torment, their souls would leave them...

After the wars and the killings had ended, when usually there survived only some boys, some women, and children, these survivors were distributed among the Christians to be slaves. The *repartimiento* or distribution was made according to the rank and importance of the Christian to whom the Indians were allocated, one of them being given thirty, another forty, still another, one or two hundred, and besides the rank of the Christian there was also to be considered in what favor he stood with the tyrant they called Governor. The pretext was that these allocated Indians were to be instructed in the articles of the Christian Faith. As if those Christians who were as a rule foolish and cruel and greedy and vicious could be caretakers of souls! And the care they took was to send the men to the mines to dig for gold, which is intolerable labor, and to send the women into the fields of the big ranches to hoe and till the land, work suitable for strong men. Nor to either the men or the women did they give any food except herbs and legumes, things of little substance. The milk in the breasts of the women with infants dried up and thus in a short while the infants perished. And since men and women were separated, there could be no marital relations. And the men died in the mines and the women died on the ranches from the same causes, exhaustion and hunger. And thus was depopulated that island which had been densely populated.

Giovanni Pico della Mirandola

ORATION ON THE DIGNITY OF MAN

Source: "University of Michigan":
<http://www.cscs.umich.edu/~crshalizi/Mirandola>

Most esteemed Fathers, I have read in the ancient writings of the Arabians that Abdala the Saracen on being asked what, on this stage, so to say, of the world, seemed to him most evocative of wonder, replied that there was nothing to be seen more marvelous than man. And that celebrated exclamation of Hermes Trismegistus, "What a great miracle is man, Asclepius" confirms this opinion.

And still, as I reflected upon the basis assigned for these estimations, I was not fully persuaded by the diverse reasons advanced for the pre-eminence of human nature; that man is the intermediary between creatures, that he is the familiar of the gods above him as he is the lord of the beings beneath him; that, by the acuteness of his senses, the inquiry of his reason and the light of his intelligence, he is the interpreter of nature, set midway between the timeless unchanging and the flux of time; the living union (as the Persians say), the very marriage hymn of the world, and, by David's testimony but little lower than the angels. These reasons are all, without question, of great weight; nevertheless, they do not touch the principal reasons, those, that is to say, which justify man's unique right for such unbounded admiration. Why, I asked, should we not admire the angels themselves and the beatific choirs more? At long last, however, I feel that I have come to some understanding of why man is the most fortunate of living things and, consequently, deserving of all admiration; of what may be the condition in the hierarchy of beings assigned to him, which draws upon him the envy, not of the brutes alone, but of the astral beings and of the very intelligences which dwell beyond the confines of the world. A thing surpassing belief and smiting the soul with wonder. Still, how could it be otherwise? For it is on this ground that man is, with complete justice, considered and called a great miracle and a being worthy of all admiration.

Hear then, oh Fathers, precisely what this condition of man is; and in the name of your humanity, grant me your benign audition as I pursue this theme.

God the Father, the Mightiest Architect, had already raised, according to the precepts of His hidden wisdom, this world we see, the cosmic dwelling of divinity, a temple most august. He had already adorned the supercelestial

region with Intelligences, infused the heavenly globes with the life of immortal souls and set the fermenting dung-heap of the inferior world teeming with every form of animal life. But when this work was done, the Divine Artificer still longed for some creature which might comprehend the meaning of so vast an achievement, which might be moved with love at its beauty and smitten with awe at its grandeur. When, consequently, all else had been completed (as both Moses and Timaeus testify), in the very last place, He bethought Himself of bringing forth man. Truth was, however, that there remained no archetype according to which He might fashion a new offspring, nor in His treasure-houses the wherewithal to endow a new son with a fitting inheritance, nor any place, among the seats of the universe, where this new creature might dispose himself to contemplate the world. All space was already filled; all things had been distributed in the highest, the middle and the lowest orders. Still, it was not in the nature of the power of the Father to fail in this last creative élan; nor was it in the nature of that supreme Wisdom to hesitate through lack of counsel in so crucial a matter; nor, finally, in the nature of His beneficent love to compel the creature destined to praise the divine generosity in all other things to find it wanting in himself.

At last, the Supreme Maker decreed that this creature, to whom He could give nothing wholly his own, should have a share in the particular endowment of every other creature. Taking man, therefore, this creature of indeterminate image, He set him in the middle of the world and thus spoke to him:

“We have given you, O Adam, no visage proper to yourself, nor endowment properly your own, in order that whatever place, whatever form, whatever gifts you may, with premeditation, select, these same you may have and possess through your own judgement and decision. The nature of all other creatures is defined and restricted within laws which We have laid down; you, by contrast, impeded by no such restrictions, may, by your own free will, to whose custody We have assigned you, trace for yourself the lineaments of your own nature. I have placed you at the very center of the world, so that from that vantage point you may with greater ease glance round about you on all that the world contains. We have made you a creature neither of heaven nor of earth, neither mortal nor immortal, in order that you may, as the free and proud shaper of your own being, fashion yourself in the form you may prefer. It will be in your power to descend to the lower, brutish forms of life; you will be able, through your own decision, to rise again to the superior orders whose life is divine.”

Oh unsurpassed generosity of God the Father, Oh wondrous and unsurpassable felicity of man, to whom it is granted to have what he chooses, to be what he wills to be! The brutes, from the moment of their birth, bring

with them, as Lucilius says, “from their mother’s womb” all that they will ever possess. The highest spiritual beings were, from the very moment of creation, or soon thereafter, fixed in the mode of being which would be theirs through measureless eternities. But upon man, at the moment of his creation, God bestowed seeds pregnant with all possibilities, the germs of every form of life. Whichever of these a man shall cultivate, the same will mature and bear fruit in him. If vegetative, he will become a plant; if sensual, he will become brutish; if rational, he will reveal himself a heavenly being; if intellectual, he will be an angel and the son of God. And if, dissatisfied with the lot of all creatures, he should recollect himself into the center of his own unity, he will there become one spirit with God, in the solitary darkness of the Father, Who is set above all things, himself transcend all creatures.

Who then will not look with awe upon this our chameleon, or who, at least, will look with greater admiration on any other being? This creature, man, whom Asclepius the Athenian, by reason of this very mutability, this nature capable of transforming itself, quite rightly said was symbolized in the mysteries by the figure of Proteus. This is the source of those metamorphoses, or transformations, so celebrated among the Hebrews and among the Pythagoreans; for even the esoteric theology of the Hebrews at times transforms the holy Enoch into that angel of divinity which is sometimes called *malakh-ha-shekhinah* and at other times transforms other personages into divinities of other names; while the Pythagoreans transform men guilty of crimes into brutes or even, if we are to believe Empedocles, into plants; and Mohammed, imitating them, was known frequently to say that the man who deserts the divine law becomes a brute. And he was right; for it is not the bark that makes the tree, but its insensitive and unresponsive nature; nor the hide which makes the beast of burden, but its brute and sensual soul; nor the orbicular form which makes the heavens, but their harmonious order. Finally, it is not freedom from a body, but its spiritual intelligence, which makes the angel. If you see a man dedicated to his stomach, crawling on the ground, you see a plant and not a man; or if you see a man bedazzled by the empty forms of the imagination, as by the wiles of Calypso, and through their alluring solicitations made a slave to his own senses, you see a brute and not a man. If, however, you see a philosopher, judging and distinguishing all things according to the rule of reason, him shall you hold in veneration, for he is a creature of heaven and not of earth; if, finally, a pure contemplator, unmindful of the body, wholly withdrawn into the inner chambers of the mind, here indeed is neither a creature of earth nor a heavenly creature, but some higher divinity, clothed in human flesh.

Who then will not look with wonder upon man? [...] But what is the purpose of all this? That we may understand – since we have been born into this condition of being what we choose to be – that we ought to be

sure above all else that it may never be said against us that, born to a high position, we failed to appreciate it, but fell instead to the estate of brutes and uncomprehending beasts of burden; and that the saying of Aspah the Prophet, "You are all Gods and sons of the Most High", might rather be true; and finally that we may not, through abuse of the generosity of a most indulgent Father, pervert the free option which he has given us from a saving to a damning gift. [...]

How must we proceed and what must we do to realize this ambition? Let us observe what they do, what kind of life they lead. For if we lead this kind of life (and we can) we shall attain their same estate. The Seraphim burns with the fire of charity; from the Cherubim flashes forth the splendor of intelligence; the Thrones stand firm with the firmness of justice. [...]

But how can anyone judge or love what he does not know? Moses loved the God whom he had seen and as judge of his people he administered what he had previously seen in contemplation on the mountain. Therefore the Cherub is the intermediary and by his light equally prepares us for the fire of the Seraphim and the judgement of the Thrones. This is the bond which unites the highest minds, the Palladian order which presides over contemplative philosophy. [...] Let us ask the Apostle Paul, that vessel of election, in what activity he saw the armies of the Cherubim engaged when he was rapt into the third heaven. He will answer, according to the interpretation of Dionysius, that he saw them first being purified, then illuminated, and finally made perfect. [...]

Lest we be satisfied to consult only those of our own faith and tradition, let us also have recourse to the patriarch, Jacob, whose likeness, carved on the throne of glory, shines out before us. This wisest of the Fathers who though sleeping in the lower world, still has his eyes fixed on the world above, will admonish us. He will admonish, however, in a figure, for all things appeared in figures to the men of those times: a ladder rises by many rungs from earth to the height of heaven and at its summit sits the Lord, while over its rungs the contemplative angels move, alternately ascending and descending. If this is what we, who wish to imitate the angelic life, must do in our turn, who, I ask, would dare set muddied feet or soiled hands to the ladder of the Lord? It is forbidden, as the mysteries teach, for the impure to touch what is pure. But what are these hands, these feet, of which we speak? The feet, to be sure, of the soul: that is, its most despicable portion by which the soul is held fast to earth as a root to the ground; I mean to say, its alimentary and nutritive faculty where lust ferments and voluptuous softness is fostered. And why may we not call "the hand" that irascible power of the soul, which is the warrior of the appetitive faculty, fighting for it and foraging for it in the dust and the sun, seizing for it all things which, sleeping in the shade, it will devour? Let us bathe in moral philosophy as in a living stream, these hands,

that is, the whole sensual part in which the lusts of the body have their seat and which, as the saying is, holds the soul by the scruff of the neck, let us be flung back from that ladder as profane and polluted intruders. Even this, however, will not be enough, if we wish to be the companions of the angels who traverse the ladder of Jacob, unless we are first instructed and rendered able to advance on that ladder duly, step by step, at no point to stray from it and to complete the alternate ascensions and descents. [...]

Let us also inquire of the just Job, who made his covenant with the God of life even before he entered into life, what, above all else, the supreme God desires of those tens of thousands of beings which surround Him. He will answer, without a doubt: peace, just as it is written in the pages of Job: He establishes peace in the high reaches of heaven. [...] For it is a patent thing, O Fathers, that many forces strive within us, in grave, intestine warfare, worse than the civil wars of states. Equally clear is it that, if we are to overcome this warfare, if we are to establish that peace which must establish us finally among the exalted of God, philosophy alone can compose and allay that strife. [...]

Summoned in such consoling tones and invited with such kindness, like earthly Mercuries, we shall fly on winged feet to embrace that most blessed mother and there enjoy the peace we have longed for: that most holy peace, that indivisible union, that seamless friendship through which all souls will not only be at one in that one mind which is above every mind, but, in a manner which passes expression, will really be one, in the most profound depths of being. This is the friendship which the Pythagoreans say is the purpose of all philosophy. This is the peace which God established in the high places of the heaven and which the angels, descending to earth, announced to men of good will, so that men, ascending through this peace to heaven, might become angels. [...]

In fact, however, the dignity of the liberal arts, which I am about to discuss, and their value to us is attested not only by the Mosaic and Christian mysteries but also by the theologies of the most ancient times. What else is to be understood by the stages through which the initiates must pass in the mysteries of the Greeks? These initiates, after being purified by the arts which we might call expiatory, moral philosophy and dialectic, were granted admission to the mysteries. What could such admission mean but the interpretation of occult nature by means of philosophy? Only after they had been prepared in this way did they receive "*Epopteia*", that is, the immediate vision of divine things by the light of theology. [...] Let us be driven, O Fathers, by those Socratic frenzies which lift us to such ecstasy that our intellects and our very selves are united to God. And we shall be moved by them in this way as previously we have done all that it lies in us to do. If, by moral philosophy, the power of our passions shall have been restrained

by proper controls so that they achieve harmonious accord; and if, by dialectic, our reason shall have progressed by an ordered advance, then, smitten by the frenzy of the Muses, we shall hear the heavenly harmony with the inward ears of the spirit. [...]

The sacred names of Apollo, to anyone who penetrates their meanings and the mysteries they conceal, clearly show that God is a philosopher no less than a seer; but since Ammonius has amply treated this theme, there is no occasion for me to expound it anew. Nevertheless, O Fathers, we cannot fail to recall those three Delphic precepts which are so very necessary for everyone about to enter the most holy and august temple, not of the false, but of the true Apollo who illumines every soul as it enters this world. You will see that they exhort us to nothing else but to embrace with all our powers this tripartite philosophy which we are now discussing. As a matter of fact that aphorism: *meden agan*, this is: "Nothing in excess", duly prescribes a measure and rule for all the virtues through the concept of the "Mean" of which moral philosophy treats. In like manner, that other aphorism *gnothi seauton*, that is, "Know thyself", invites and exhorts us to the study of the whole nature of which the nature of man is the connecting link and the "mixed potion"; [...]

Let us also seek the opinion of Pythagoras, that wisest of men, known as a wise man precisely because he never thought himself worthy of that name. His first precept to us will be: "Never sit on a bushel"; never, that is, through slothful inaction to lose our power of reason, that faculty by which the mind examines, judges and measures all things; but rather unremittingly by the rule and exercise of dialectic, to direct it and keep it agile. Next he will warn us of two things to be avoided at all costs: Neither to make water facing the sun, nor to cut our nails while offering sacrifice. [...] Finally, Pythagoras will command us to "Feed the cock"; that is, to nourish the divine part of our soul with the knowledge of divine things as with substantial food and heavenly ambrosia. This is the cock whose visage is the lion, that is, all earthly power, holds in fear and awe. This is the cock to whom, as we read in Job, all understanding was given. At this cock's crowing, erring man returns to his senses. This is the cock which every day, in the morning twilight, with the stars of morning, raises a *Te Deum* to heaven. This is the cock which Socrates, at the hour of his death, when he hoped he was about to join the divinity of his spirit to the divinity of the higher world and when he was already beyond danger of any bodily illness, said that he owed to Asclepius, that is, the healer of souls.

Let us also pass in review the records of the Chaldeans; there we shall see (if they are to be believed) that the road to happiness, for mortals, lies through these same arts. The Chaldean interpreters write that it was a saying of Zoroaster that the soul is a winged creature. When her wings fall from her,

she is plunged into the body; but when they grow strong again, she flies back to the supernal regions. And when his disciples asked him how they might insure that their souls might be well plumed and hence swift in flight he replied: "Water them well with the waters of life." And when they persisted, asking whence they might obtain these waters of life, he answered (as he was wont) in a parable: "The Paradise of God is bathed and watered by four rivers; from these same sources you may draw the waters which will save you. The name of the river which flows from the north is Pischon which means, 'the Right.' That which flows from the west is Gichon, that is, 'Expiation.' The river flowing from the east is named Chiddekel, that is, 'Light,' while that, finally, from the south is Perath, which may be understood as 'Compassion.'" Consider carefully and with full attention, O Fathers, what these deliverances of Zoroaster might mean. Obviously, they can only mean that we should, by moral science, as by western waves, wash the uncleanness from our eyes; that, by dialectic, as by a reading taken by the northern star, our gaze must be aligned with the right. Then, that we should become accustomed to bear, in the contemplation of nature, the still feeble light of truth, like the first rays of the rising sun, so that finally we may, through theological piety and the most holy cult of God, become able, like the eagles of heaven, to bear the effulgent splendor of the noonday sun. [...]

These are the reasons, most reverend Fathers, which not only led, but even compelled me, to the study of philosophy. [...] For the whole study of philosophy (such is the unhappy plight of our time) is occasion for contempt and contumely, rather than honor and glory. [...] Thus we have reached the point, it is painful to recognize, where the only persons accounted wise are those who can reduce the pursuit of wisdom to a profitable traffic; and chaste Pallas, who dwells among men only by the generosity of the gods, is rejected, hooted, whistled at in scorn, with no one to love or befriend her unless, by prostituting herself, she is able to pay back into the strongbox of her lover the ill-procured price of her deflowered virginity. [...] I have also been so avid for this knowledge and so enamored of it that I have set aside all private and public concerns to devote myself completely to contemplation; and from it no calumny of jealous persons, nor any invective from enemies of wisdom has ever been able to detach me. Philosophy has taught me to rely on my own convictions rather than on the judgements of others and to concern myself less with whether I am well thought of than whether what I do or say is evil.

But this has always been the case: works which are well-intentioned and sincerely directed to virtue have always had no fewer – not to say more – detractors than those undertaken for questionable motives and for devious ends. Some persons disapprove the present type of disputation in general and this method of disputing in public about learned matters; they assert

that they serve only the exhibition of talent and the display of opinion, rather than the increase of learning. [...]

These philosophers of the past all thought that nothing could profit them more in their search for wisdom than frequent participation in public disputation. Just as the powers of the body are made stronger through gymnastic, the powers of the mind grow in strength and vigor in this arena of learning. I am inclined to believe that the poets, when they sang of the arms of Pallas and the Hebrews, when they called the *barzel*, that is, the sword, the symbol of men of wisdom, could have meant nothing by these symbols but this type of contest, at once so necessary and so honorable for the acquisition of knowledge. This may also be the reason why the Chaldeans, at the birth of a man destined to be a philosopher, described a horoscope in which Mars confronted Mercury from three distinct angles. This is as much as to say that should these assemblies and these contests be abandoned, all philosophy would become sluggish and dormant.

It is more difficult for me, however, to find a line of defense against those who tell me that I am unequal to the undertaking. If I say that I *am* equal to it, I shall appear to entertain an immodestly high opinion of myself. If I admit that I am unequal to it, while persisting in it, I shall certainly risk being called temerarious and imprudent. [...] Perhaps I can invoke that saying of Job: "The spirit is in all men" or take consolation in what was said to Timothy: "Let no man despise your youth." But to speak from my own conscience, I might say with greater truth that there is nothing singular about me. I admit that I am devoted to study and eager in the pursuit of the good arts. Nevertheless, I do not assume nor arrogate to myself the title learned. [...]

I must, in the third place, answer those who are scandalized by the large number of propositions and the variety of topics I have proposed for disputation, as though the burden, however great it may be, rested on their shoulders and not, as it does, on mine. [...] In undertaking so great a venture only one alternative confronted me: success or failure. If I should succeed, I do not see how it would be more praiseworthy to succeed in defending ten theses than in defending nine hundred. If I should fail, those who hate me will have grounds for disparagement, while those who love me will have an occasion to excuse me. [...]

I protest that, in my case, no superfluity is involved, but that all is necessary. If they consider the method of my philosophy they will feel compelled, even against their inclinations, to recognize this necessity. All those who attach themselves to one or another of the philosophers, to Thomas, for instance or Scotus, who at present enjoy the widest following, can indeed test their doctrine in a discussion of a few questions. By contrast, I have so trained myself that, committed to the teachings of no one man, I have ranged through all the masters of philosophy, examined all their works, become acquainted

with all schools. [...] It is certainly a mark of excessive narrowness of mind to enclose oneself within one Porch or Academy; nor can anyone reasonably attach himself to one school or philosopher, unless he has previously become familiar with them all. In addition, there is in each school some distinctive characteristic which it does not share with any other.

To begin with the men of our own faith to whom philosophy came last, there is in Duns Scotus both vigor and distinction, in Thomas solidity and sense of balance, in Egidius, lucidity and precision, in Francis, depth and acuteness, in Albertus [Magnus] a sense of ultimate issues, all-embracing and grand, in Henry, as it has seemed to me, always an element of sublimity which inspires reverence. Among the Arabians, there is in Averroës something solid and unshaken, in Avempace, as in Al-Farabi, something serious and deeply meditated; in Avicenna, something divine and platonic. Among the Greeks philosophy was always brilliant and, among the earliest, even chaste: in Simplicius it is rich and abundant, in Themistius elegant and compendious, in Alexander, learned and self-consistent, in Theophrastus, worked out with great reflection, in Ammonius, smooth and pleasing. If you turn to the Platonists, to mention but a few, you will, in Porphyry, be delighted by the wealth of matter and by his preoccupation with many aspects of religion; in Iamblichus, you will be awed by his knowledge of occult philosophy and the mysteries of the barbarian peoples; in Plotinus, you will find it impossible to single out one thing for admiration, because he is admirable under every aspect. Platonists themselves, sweating over his pages, understand him only with the greatest difficulty when, in his oblique style, he teaches divinely about divine things and far more than humanly about things human. I shall pass over the more recent figures [...].

These considerations have motivated me in my determination to bring to men's attention the opinions of all schools rather than the doctrine of some one or other (as some might have preferred), for it seems to me that by the confrontation of many schools and the discussion of many philosophical systems that "effulgence of truth" of which Plato writes in his letters might illuminate our minds more clearly, like the sun rising from the sea. What should have been our plight had only the philosophical thought of the Latin authors, that is, Albert, Thomas, Scotus, Egidius, Francis and Henry, been discussed, while that of the Greeks and the Arabs was passed over, since all the thought of the barbarian nations was inherited by the Greeks and from the Greeks came down to us? For this reason, our thinkers have always been satisfied, in the field of philosophy, to rest on the discoveries of foreigners and simply to perfect the work of others. [...] The farmer hates sterility in his field and the husband deplures it in his wife; even more than must the divine mind hate the sterile mind with which it is joined and associated, because it hopes from that source to have offspring of such a high nature.

For these reasons, I have not been content to repeat well-worn doctrines, but have proposed for disputation many points of the early theology of Hermes Trismegistus, many theses drawn from the teachings of the Chaldeans and the Pythagoreans, from the occult mysteries of the Hebrews and, finally, a considerable number of propositions concerning both nature and God which we ourselves have discovered and worked out. In the first place, we have proposed a harmony between Plato and Aristotle, such as many before this time indeed believed to exist but which no one has satisfactorily established. [...]

In the second place, along with my own reflections on and developments of both the Aristotelian and the Platonic philosophies, I have adduced seventy-two theses in physics and metaphysics. [...]

I have, in addition, introduced a new method of philosophizing on the basis of numbers. This method is, in fact, very old, for it was cultivated by the ancient theologians, by Pythagoras, in the first place, but also by Aglaophamos, Philolaus and Plato, as well as by the earliest Platonists; however, like other illustrious achievements of the past, it has through lack of interest on the part of succeeding generations, fallen into such desuetude, that hardly any vestiges of it are to be found. Plato writes in *Epinomis* that among all the liberal arts and contemplative sciences, the science of number is supreme and most divine. And in another place, asking why man is the wisest of animals, he replies, because he knows how to count. Similarly, Aristotle, in his *Problems* repeats this opinion. Abumasar writes that it was a favorite saying of Avenzoar of Babylon that the man who knows how to count, knows everything else as well. These opinions are certainly devoid of any truth if by the art of number they intend that art in which today merchants excel all other men; Plato adds his testimony to this view, admonishing us emphatically not to confuse this divine arithmetic with the arithmetic of the merchants. When, consequently, after long nights of study I seemed to myself to have thoroughly penetrated this Arithmetic, which is thus so highly extolled, I promised myself that in order to test the matter, I would try to solve by means of this method of number seventy-four questions which are considered, by common consent, among the most important in physics and divinity.

I have also proposed certain theses concerning magic, in which I have indicated that magic has two forms. One consists wholly in the operations and powers of demons, and consequently this appears to me, as God is my witness, an execrable and monstrous thing. The other proves, when thoroughly investigated, to be nothing else but the highest realization of natural philosophy. The Greeks noted both these forms. However, because they considered the first form wholly undeserving the name magic they called it *goeteia*, reserving the term *mageia*, to the second, and understanding by it the highest and most perfect wisdom. The term "magus" in the Persian tongue,

according to Porphyry, means the same as “interpreter” and “worshipper of the divine” in our language. [...]

That first form of magic cannot justify any claim to being either an art or a science while the latter, filled as it is with mysteries, embraces the most profound contemplation of the deepest secrets of things and finally the knowledge of the whole of nature. This beneficent magic, in calling forth, as it were, from their hiding places into the light the powers which the largess of God has sown and planted in the world, does not itself work miracles, so much as sedulously serve nature as she works her wonders. Scrutinizing, with greater penetration, that harmony of the universe which the Greeks with greater aptness of terms called *sympatheia* and grasping the mutual affinity of things, she applies to each thing those inducements (called the *iugges* of the magicians), most suited to its nature. Thus it draws forth into public notice the miracles which lie hidden in the recesses of the world, in the womb of nature, in the storehouses and secret vaults of God, as though she herself were their artificer. As the farmer wedds his elms to the vines, so the “magus” unites earth to heaven, that is, the lower orders to the endowments and powers of the higher. Hence it is that this latter magic appears the more divine and salutary, as the former presents a monstrous and destructive visage. [...]

Not famous Hebrew teachers alone, but, from among those of our own persuasion, Esdras, Hilary and Origen all write that Moses, in addition to the law of the five books which he handed down to posterity, when on the mount, received from God a more secret and true explanation of the law. They also say that God commanded Moses to make the law known to the people, but not to write down its interpretation or to divulge it, but to communicate it only to Jesu Nave who, in turn, was to reveal it to succeeding high priests under a strict obligation of silence. [...]

The decision, consequently, to keep such things hidden from the vulgar and to communicate them only to the initiate, among whom alone, as Paul says, wisdom speaks, was not a counsel of human prudence but a divine command. And the philosophers of antiquity scrupulously observed this caution. Pythagoras wrote nothing but a few trifles which he confided to his daughter Dama, on his deathbed. The Sphinxes, which are carved on the temples of the Egyptians, warned that the mystic doctrines must be kept inviolate from the profane multitude by means of riddles. Plato, writing certain things to Dionysius concerning the highest substances, explained that he had to write in riddles “lest the letter fall into other hands and others come to know the things I have intended for you.” Aristotle used to say that the books of the *Metaphysics* in which he treats of divine matters were both published and unpublished. Is there any need for further instances? Origen asserts that Jesus Christ, the Teacher of Life, revealed many things to His

disciples which they in turn were unwilling to commit to writing lest they become the common possession of the crowd. Dionysius the Areopagite gives powerful confirmation to this assertion when he writes that the more secret mysteries were transmitted by the founders of our religion *ek nou eis vouv dia mesov logov*, that is, from mind to mind, without commitment to writing, through the medium of the spoken word alone. Because the true interpretation of the law given to Moses was, by God's command, revealed in almost precisely this way, it was called "Cabala", which in Hebrew means the same as our word "reception". The precise point is, of course, that the doctrine was received by one man from another not through written documents but, as a hereditary right, through a regular succession of revelations.

After Cyrus had delivered the Hebrews from the Babylonian captivity, and the Temple had been restored under Zorobabel, the Hebrews bethought themselves of restoring the Law. Esdras, who was head of the church at the time, amended the book of Moses. [...] He decided, consequently, that all of the wise men still alive should be convened and that each should communicate to the convention all that he remembered about the mysteries of the Law. Their communications were then to be collected by scribes into seventy volumes (approximately the same number as there were members of the Sanhedrin). So that you need not accept my testimony alone, O Fathers, hear Esdras himself speaking: "After forty days had passed, the All-Highest spoke and said: The first things which you wrote publish openly so that the worthy and unworthy alike may read; but the last seventy books conserve so that you may hand them on to the wise men among your people, for in these reside the spring of understanding, the fountain of wisdom and the river of knowledge. And I did these things." [...]

Pope Sixtus the Fourth, the immediate predecessor of our present pope, Innocent the Eighth, under whose happy reign we are living, took all possible measures to ensure that these books would be translated into Latin for the public benefit of our faith and at the time of his death, three of them had already appeared. The Hebrews hold these same books in such reverence that no one under forty years of age is permitted even to touch them. I acquired these books at considerable expense and, reading them from beginning to end with the greatest attention and with unrelenting toil, I discovered in them (as God is my witness) not so much the Mosaic as the Christian religion. There was to be found the mystery of the Trinity, the Incarnation of the Word, the divinity of the Messiah; there one might also read of original sin, of its expiation by the Christ, of the heavenly Jerusalem, of the fall of the demons, of the orders of the angels, of the pains of purgatory and of hell. There I read the same things which we read every day in the pages of Paul and of Dionysius, Jerome and Augustine. In philosophical matters, it were as though one were listening to Pythagoras and Plato, whose doctrines bear

so close an affinity to the Christian faith that our Augustine offered endless thanks to God that the books of the Platonists had fallen into his hands. In a word, there is no point of controversy between the Hebrews and ourselves on which the Hebrews cannot be confuted and convinced out the cabalistic writings, so that no corner is left for them to hide in. [...] I have wanted to make clear in disputation, not only that I know a great many things, but also that I know a great many things which others do not know.

Andrzej Frycz Modrzewski

ON LAWS

Laws are a guarantee in the sense that they decide everything for the sake of honesty and the common benefit in such a manner that for the same virtues they grant the same rewards and for the same offences – the same punishment. No one's freedom should be weighted so highly that such a person could shield his offences and be immune from or unequal in serving punishment. Real freedom consists in taming deceitful inclinations and errors and not in the freedom to act as one may wish or to apply lesser punishment to offenders. If any differences are to be applied in punishing for the same crime, they are such that they should restrain anger and not give in to it. Magnates, noblemen and those who are in offices should receive more severe punishment than people who are defenceless, plebeians or private persons.

Thus the first concern of legislators should be not to deviate from the reasonable formula and that when establishing any laws (like reason dictates) they should have a view to both honesty and the common benefit. So if a good medicine cures either the whole body or cures a part of the body without harm to other parts, equally it is necessary to praise the law that for the same virtues grants the same rewards and for the same crimes and offences serves the same medicine or punishment.

Who would by God be willing to take medicine that would chase fever away from the liver and introduce cold to the stomach? No one I think. When the stomach catches cold, it will digest no food, which would result in a sickness of the liver and other members of the body. So how then can a law be considered good that would not be equally favourable to the Republic, that would not grant the same rewards for the same virtues and not apply the same punishment for the same crimes committed in the same manner by various people but would be too lenient for some and thus induce leaders to sin and apply more severe punishment to others thus deriving of a possibility to defend against harm? As an example I am referring to a law imposing a very light punishment for manslaughter on some and a very severe punishment for the same crime on others. Whatever is said about one law, applies also to all other similar laws.

Once in a town, two people, one a nobleman and the other a plebeian, both rich in land and other property, seriously beat and wounded a man not as rich but a nobleman anyhow. The victim was taken to a doctor but since

some of his wounds were fatal he died in a month or two. Visiting friends or officials sent by the judge to see his condition kept asking him which of the oppressors was more guilty. He answered that it was the nobleman who had started the row but he was beaten by both equally fiercely and that he was not sure who had inflicted more severe wounds. They insisted, stating that for the wounds both oppressors must be punished; and if the wounds were to cause death, which of them should be accused of manslaughter? Our laws do not provide for two persons to be punished for one case of manslaughter. The heavily wounded answered that he had abandoned all hope of life but in his conscience, with which he was soon to face God's judgment, he was not able to determine which one of the two to accuse of homicide as he was dying of the wounds inflicted by both.

When the man died of the wounds, the plebeian was seized, brought to justice, charged and sentenced to death. There is a law stating that when a plebeian kills or heavily wounds a nobleman without any apparent reason he is to be executed. This was the punishment suffered by the oppressing plebeian. But the other oppressor, the nobleman stays alive and in good health. People say: he should be accused by the judge and punished in accordance with Polish law with a fine either for causing wounds or for manslaughter. Almighty God! Is it not so that for two kinds of people there are two different republics, so distant from each other that they have no common contact, that neither requires assistance from the other, that their inhabitants do not have any contact, do not know one another, that they have no common water, air or sun? Is it not a horrible wonder what is being practised with us that out of the same people living in the same Republic some are punished with death while others are treated very leniently?

There is no hope that the Republic with a law where someone is master of your life and death and you – fearing death – have to endure all wrongs and insults from such a person; where it is a joke and a trifle for you to be killed while you are accused of killing or wounding the other as for a capital crime – that the Republic is pursuing the goal for which all human communities are formed, that is that all its citizens could live peacefully and happily. [...]

Here I can only say that the law should be guaranteed with the idea that citizens can live as prompted by virtue and that when offences are punished no person is specifically taken into consideration. Laws are similar to medicines (to continue with the same example) when no experienced doctor looks at the sick person; it is sufficient to know the illness and the doctor is not bothered by the fact if the person who requires treatment is a master or a servant, a nobleman or a plebeian. This is also the reason why the laws exist – to punish offenders with equal measure and equally take care of the benefits, peace and soundness of everybody. To achieve this it is necessary to find a way to abide by the rule in accordance with which we should do to

others what we would like to have done to ourselves. This is a rule which – as if heaven sent – has become a part of our nature and one which Christ, our Saviour, said so many times to improve our lives and our deeds.

This should be well understood by all those who require that their merits and whatever freedoms they refer to be taken into account when laws are established. Merits should be understood as manifestations of virtues in doing good for the Republic or other persons. I am far from advising the legislator against taking such merits into account, far from not wishing to see them rewarded with the best possible prizes. But if someone considers an unjustified manslaughter as a merit and, being a nobleman, expects to receive lesser punishment, then such a person abuses the beautiful principle by referring it instead to the virtue to a murder committed in place of holy deeds. With respect to the freedom that it refers to, real freedom does not consist in freedom to do anything at will or to excessive leniency of the law for those responsible for capital crimes but in the freedom to tame blind and wild passions and to control them with reason which – when followed – makes life better and holier. What is required in life is discipline, a just legal system and the same treatment of the same matters irrespective of the person; equal legal treatment, making judgments and enforcing them. Are any more powerful rulers than the passions that abolish reason and judgment? No one is more a slave than those who serve ruthless masters even if they are rich and highly positioned. Is there any larger freedom than not being subject to their power?

Let us compare it to the freedom of those boasting eulogists of freedom which they abuse usually like horses that without halters or bits bump into one another and inflict wounds with teeth and hooves so that finally they are of use to the Republic. What then would be more desirable for such horses than taming them with halters so that they could no longer do any harm to themselves or others? And what is more useful for a rider to drive the animal with a sharp bit? But beasts do not understand that and therefore they have no such wish. However, for people with intellect there should be nothing sweeter or more pleasant to tame their passions with the halter of the law and perform their deeds for good benefits. These may seem to be fetters but such that prevent us from recklessness, debauchery, cruelty and other vices and lead to caution, modesty, humanity and all virtues.

No one thinks that God is devoid of freedom because He cannot sin; and therefore no one should think that His freedom is restricted if the law and severe punishment deprive him of the freedom to sin. This is the ugliest and most dangerous freedom for mankind when someone resorts to unlawful passions, is on the lookout for somebody else's property, betrays, commits perjury, robs, lightly treats the lives and fate of the lower classes

and afterwards boasts with his descent and riches, shielded with which he is either treated very leniently or avoids any punishment at all.

There is no law strong enough for him, he says,
He will take whatever his sword takes.

However, if others commit the same deeds, he thinks that a most severe punishment should be administered. Anybody can see that such freedom is related to great slavery of the people. Excessive slavery and excessive freedom are to be hated; when both are moderate, they can last a long time and be something very good in people's opinion.

Historians write that the Persian state collapsed due to excessive slavery while the state of Athens perished because of excessive freedom. With us, plebeians are too much oppressed with slavery while the noblemen use too much freedom. So what good can be expected of such a manifest abuse of things that are opposite to each other?

Everybody should look at the habits of the people whose hearts are ruled by the phantoms of their privileges and title to freedom. Many others out of some hatred for people, others due to their inborn wildness, some perhaps even good and modest by nature but as if infected with the company of the evil ones – they all commit many evil things in relation to lower classes, openly being jealous of their virtues, distorting their best deeds with slander and cruel malice.

What could we say about those who kill people whenever they feel like it, obviously encouraged, with the law hardly punishing them for harm and homicide, placing the rich above the poor, the noblemen above plebeians like people above dogs as this is recognised and called out loud by numerous supporters of this freedom. As many noblemen as there are, so there are as many little kings above the plebeians and as many of the rich above the poor. No king, no tyrant may have more power than the power over someone's life and death; and that our laws have given such power to those who are stronger is something that I referred to earlier.

Thus, there is no more dangerous thing for the Republic than unequal laws and punishments in relation to different offenders. Equal law should speak to everybody and with the same voice, apply the same power over everyone – whenever it orders and whenever it bans, justify and sanctify the same argument and benefits for all, pains and harms. Whoever serves such laws should be considered as really free as a person who agreed to be a slave to the law so that he could stay free for long. While the other freedom, combined with a wish to do whatever you please, is hard to find even in any barbarian nation and it is far from being a well ordered republic.

The laws are usually arranged in such a manner that they serve the interests of the rich and infect the poor with slavery so that they are entangled in nets that the others tear like spider webs. In order to stop discussing the law on manslaughter, what is the reason for the unjustified delay when coaches have been sent out? What is the goal of such law that you may not imprison the people who have committed a crime since they own large land estates? As if indeed the issue was about the estates they hold and not about the crime they have committed! Let wise men decide if such and similar laws are worthy of the name. I will come back to them later.

If the same laws are to rule the Republic, then the same punishment should be applied to punish criminals. There is nothing more distant from the law than variety in punishing for the same crime depending on the person who committed the crime if indeed – if the matter was to be considered carefully – a more severe punishment is due to those who sin on a higher level of the hierarchy than people of lower classes. Plato orders more severe punishment for theft for a citizen of the republic than a slave or a passer-by because the former has committed such a big crime although being raised in a perfect republic while the latter may have been less educated in virtue and thus more prone to offend. More severe punishment for offences should be applied to those who wish to be treated as of better descent, better educated, so perfect in body and soul that they are better than others – than to those who are inferior with respect to soul, body, riches and anything else.

But with us this is viewed otherwise by those who think that for any crime they should be awarded a lower punishment only because they are noblemen. As if their nobility has grown out of freedom in sinning, impertinence and immunity to punishment for crimes committed. That would not be evidence of real nobility but some sort of disgrace, blemish and sickness of the community that every really noble person should, as much as they have power and talent, try to eject beyond our borders.

So if any differences were to be established with respect to inflicting punishment, more severe punishment should be applied to those who are of higher office than those in lower positions; more severe punishment to the rich than to the poor, nobility than the common people, those in offices than private individuals. Because those who have received abundant gifts of the soul and property, have more reason to refrain from sinning and thus their crime is more serious. And although that is sufficient to establish a more severe punishment for them, there is an additional reason – the higher the position of the criminal, the more visible his crime is and usually it finds numerous followers. Crimes of poorer people are less visible since their lives are less visible and therefore they do not give so much example to be followed.

Therefore, ending, I wish to say that for all those living in the same republic and guilty of the same crimes, the punishment should be the same.

And if any difference is to be established, it may not be such to expand the excessive freedom of the rich but such that would protect the weak from harm. Since it is the duty of the law to prevent hardship, this may be achieved in no better way than punishing the violators of the poor in a more severe manner than those who do harm to the rich. It is not so easy to harm the rich as it is with respect to the lower classes whose harm should be subject to more severe punishment than the harm of the others. [...]

Hugo Grotius

ON THE LAW OF WAR AND PEACE

Source: Hugo Grotius, *On the Law of War and Peace*, translated and abridged by A.C. Campbell, A.M., Batoche Books, Kitchener 2001.

We should not by any means accept the truth of what this philosopher says, nor of what Horace said in imitation, *Nature itself will not split wrong from right*.

For though man is an animal, he is one of a special kind, further removed from the rest than each of the other species is from one another – for which there is testimony from many actions unique to the human species. Among the things which are unique to man is the desire for society [*appetitus societatis*], that is, for community with those who belong to his species – though not a community of any kind, but one at peace, and with a rational order [*pro sui intellectus modo ordinatae*]. Therefore, when it is said that nature drives each animal to seek its own interests [*utilitates*], we can say that this is true of the other animals, and of man before he came to the use of that which is special to man [*antequam ad usum eius quod homini proprium est, pervenerit*]; though we should also make this exception in the case of the other animals, that their pursuit of their own interests is tempered by a regard partly for their own offspring, and partly for the other members of their species.

We believe that this proceeds in their case from some extrinsic principle of intelligence, since a similar intelligence does not appear in other actions of theirs which are equally difficult. In the case of men, however, when they perform such actions, it is reasonable to suppose that they stem from some internal principle, which is associated with qualities belonging not to all animals but to human nature alone. This care for society in accordance with the human intellect, which we have roughly sketched, is the source of *ius*, properly so called, to which belong abstaining from another's possessions, restoring anything which belongs to another (or the profit from it), being obliged to keep promises, giving compensation for culpable damage, and incurring human punishment. From this concept of *ius* arises another and more extensive one.

Since men not only have this social instinct [*vim socialem*] more than other animals, but also possess the capacity to assess pleasures or pains [*quae delectant aut nocent*], both immediately and in the future, and to make judgments about what will conduce to them; we should understand that it is appropriate to human nature rationally [*pro humani intellectus modo*] to

follow good judgment in these matters, and not be disturbed by fear or the lure of immediate pleasure, and that whatever is plainly contrary to good judgment is also contrary to the law of nature (that is, of human nature). As a result it behooves us when distributing resources responsibly to individuals or groups to ensure that we give more weight to the intelligent [*sapiens*] than to the less intelligent, more to a neighbor than to a stranger, and more to the poor than to the rich, as their conduct and the nature of the case requires. In the past many people took this to be part of *ius* properly and strictly so called, whereas *ius* accurately understood is very different in its character, as it consists in refraining from taking what belongs to another person, or in fulfilling some obligation to them.

What I have just said would be relevant even if we were to suppose (what we cannot suppose without the greatest wickedness) that there is no God, or that human affairs are of no concern to him: the contrary of which on the one hand is borne in upon us (however unwilling we may be) by an innate light in our soul, and on the other is confirmed by many arguments and by miracles witnessed down the ages. It follows that without exception we should obey God as our creator to whom we owe everything, especially as he has revealed himself repeatedly as the best and most powerful being, who can give his followers great and eternal rewards; and we ought to believe that he wishes to do so all the more if he has promised it in so many words: which we Christians, following the ancient Hebrews, believe on the basis of unquestionable trust in the testimonies of his will.

The free will of God gives rise to another *ius* in addition to that of nature, and our reason [*intellectus*] irrefutably tells us that we should submit to it. Moreover, despite the fact that natural *ius*, with which I am concerned, whether we think of it as the basis of society or take it more loosely [*sive illud sociale, sive quod laxius ita dicitur*], necessarily derives from intrinsic principles of a human being [*ex principiis homini internis necessario profluit*], it can also justly be attributed to God, since he willed that there should be such principles in us. It was in this sense that Chrysippus and the Stoics said that one should simply seek the origin of *ius* in Jove himself. The word *ius* in Latin indeed probably comes from the name *Iovis*. Among men our parents are like Gods of a kind, to whom not infinite but appropriate honor is due. Now, since it is part of the *ius naturae* that we keep our promises (for it was necessary that men should have some way of obliging themselves, and no other natural means can be conceived), civil laws [*iura civilia*] stem from the same source. For when people form themselves into a society [*coetus*] or subject themselves to some man or men, they have either expressly promised, or should be presumed from the nature of the arrangement to have tacitly promised, that they will agree with whatever the majority of the society, or the bearers of authority in it, have decided upon.

Accordingly, what not Carneades alone but others as well have said, *Utility [utilitas] might be called the mother of justice and equity*, is not true, if we speak accurately: for human nature itself is the mother of natural law, as it drives us to seek a common society [*societatem mutuam*] even if there is no shortage of resources: the mother of civil law is the obligation which arises from agreement, and since that gets its force from natural law, nature can be termed the grandmother of civil law.

But utility is annexed to the natural law: the author of nature willed that as individuals we should be weak and in need of many things if we are to lead a good life, in order that we should be all the more impelled into living in society; and utility is the occasion of civil law [*iuri autem civili occasionem dedit utilitas*], since what I have termed association or subjection originally came into existence for the sake of some interest [*utilitatis*]. It is also the case that anyone who prescribes laws for other people usually does so with a view to increasing utility, or at least ought to do so. But just as the laws of each state [*civitas*] consult the utility of that state, so there could be (and indeed there seem actually to be) laws between states – either between all states or between a number of them – which consult the utility not of the individual societies but of their totality. This is what is termed “the law of nations,” insofar as we distinguish that law from the law of nature.

Carneades omitted this kind of law when he categorized all laws as either the laws of nature or those of particular nations, though since he was dealing with the law which governs international relations (for the subject of his lecture was “war and its consequences”), he ought to have dealt with it above all. So Carneades was wrong when he stigmatized justice with the name of irrationality: for just as on his own account a citizen is not irrational who obeys the civil law of his state, even though doing so may require the citizen to forgo some personal benefit, so a nation is not irrational if it does not pursue its own interest at the expense of the common laws of nations. The reasoning is the same in each case: a citizen who breaks the civil law for the sake of some immediate interest will thereby undermine his own and his descendants’ permanent interests, and a nation which violates the laws of nature and nations will have renounced its right [*rescindit munimenta*] subsequently to live in peace. So even if no benefit is to be expected from obedience to a law, it is wise and not irrational to do what we feel we are led to by our nature.

By the same token, it is not invariably true that *We ought to say that from fear of injustice came laws*; or, as Plato puts the same thought, laws were invented from a fear of suffering injury, and it was violence which got men to cultivate justice. Strictly speaking, this applies only to those practices [*instituta*] and laws which were devised to help with instituting relationships of justice: many people who were individually weak got together to found and maintain

with their collective strength a legal system [*iudicia*], so that they would not be oppressed by the more powerful, and that what they could not achieve separately would be within their power as a community. It is in this sense that it can reasonably be said that what is right is what benefits the most powerful, when we understand that a system of right can secure its external objective only with the help of force. Moreover, laws can still have an effect even without any violence annexed to them. For justice leads to a secure conscience, while injustice leads to the torment and laceration which Plato depicts in the hearts of tyrants; the common consent of upright people approves of justice and condemns injustice; and, most importantly of all, God is hostile to injustice and a friend to justice. [...]

The existence of the Law of Nature is proved by two kinds of argument, *a priori*, and *a posteriori*, the former a more abstruse, and the latter a more popular method of proof. We are said to reason *a priori*, when we show the agreement or disagreement of any thing with a reasonable and social nature; but *a posteriori*, when without absolute proof, but only upon probability, any thing is inferred to accord with the law of nature, because it is received as such among all, or at least the more civilized nations. For a general effect can only arise from a general cause. Now scarce any other cause can be assigned for so general an opinion, but the common sense, as it is called, of mankind. [...]

It is another Question, Whether we have a just Cause for War with another Prince, in order to relieve his Subjects from their Oppression under him. True it is, that since the Institution of Civil Societies, the Governors of every State have acquired some peculiar Right over their respective Subjects. [...]

But those reasons may take place where Subjects are really in Fault, or, if you please, when it is uncertain whether they are or no. For to this End was the Distribution of Empires first made.

But if the injustice be visible, as if a Busiris, a Phalaris, or a Thracian Diomedes exercise such Tyrannies over Subjects, as no good Man living can approve of, the Right of human Society shall not be therefore excluded.

Thomas Hobbes

LEVIATHAN

Source: "Oregon State University":

<http://oregonstate.edu/instruct/phl302/texts/hobbes/leviathan-c.html>

The right of nature, which writers commonly call *jus naturale*, is the liberty each man hath to use his own power as he will himself for the preservation of his own nature; that is to say, of his own life; and consequently, of doing anything which, in his own judgement and reason, he shall conceive to be the aptest means thereunto. [...]

A law of nature, *lex naturalis*, is a precept, or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life, or taketh away the means of preserving the same, and to omit that by which he thinketh it may be best preserved. For though they that speak of this subject use to confound *jus* and *lex*, right and law, yet they ought to be distinguished, because right consisteth in liberty to do, or to forbear; whereas law determineth and bindeth to one of them: so that law and right differ as much as obligation and liberty, which in one and the same matter are inconsistent.

And because the condition of man [...] is a condition of war of every one against every one, in which case every one is governed by his own reason, and there is nothing he can make use of that may not be a help unto him in preserving his life against his enemies; it followeth that in such a condition every man has a right to every thing, even to one another's body. And therefore, as long as this natural right of every man to every thing endureth, there can be no security to any man, how strong or wise soever he be, of living out the time which nature ordinarily alloweth men to live. And consequently it is a precept, or general rule of reason: that every man ought to endeavour peace, as far as he has hope of obtaining it; and when he cannot obtain it, that he may seek and use all helps and advantages of war. The first branch of which rule containeth the first and fundamental law of nature, which is: to seek peace and follow it. The second, the sum of the right of nature, which is: by all means we can to defend ourselves.

From this fundamental law of nature, by which men are commanded to endeavour peace, is derived this second law: that a man be willing, when others are so too, as far forth as for peace and defence of himself he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men as he would allow other men against

himself. For as long as every man holdeth this right, of doing anything he liketh; so long are all men in the condition of war. But if other men will not lay down their right, as well as he, then there is no reason for anyone to divest himself of his: for that were to expose himself to prey, which no man is bound to, rather than to dispose himself to peace. This is that law of the gospel: Whatsoever you require that others should do to you, that do ye to them. And that law of all men, *quod tibi fieri non vis, alteri ne feceris*.

To lay down a man's right to anything is to divest himself of the liberty of hindering another of the benefit of his own right to the same. For he that renounceth or passeth away his right giveth not to any other man a right which he had not before, because there is nothing to which every man had not right by nature, but only standeth out of his way that he may enjoy his own original right without hindrance from him, not without hindrance from another. So that the effect which redoundeth to one man by another man's defect of right is but so much diminution of impediments to the use of his own right original.

Right is laid aside, either by simply renouncing it, or by transferring it to another. By simply renouncing, when he cares not to whom the benefit thereof redoundeth. By transferring, when he intendeth the benefit thereof to some certain person or persons. And when a man hath in either manner abandoned or granted away his right, then is he said to be obliged, or bound, not to hinder those to whom such right is granted, or abandoned, from the benefit of it: and that he ought, and it is duty, not to make void that voluntary act of his own: and that such hindrance is injustice, and injury, as being *sine jure*; the right being before renounced or transferred. So that injury or injustice, in the controversies of the world, is somewhat like to that which in the disputations of scholars is called absurdity. For as it is there called an absurdity to contradict what one maintained in the beginning; so in the world it is called injustice, and injury voluntarily to undo that which from the beginning he had voluntarily done. The way by which a man either simply renounceth or transferreth his right is a declaration, or signification, by some voluntary and sufficient sign, or signs, that he doth so renounce or transfer, or hath so renounced or transferred the same, to him that accepteth it. And these signs are either words only, or actions only; or, as it happeneth most often, both words and actions. And the same are the bonds, by which men are bound and obliged: bonds that have their strength, not from their own nature (for nothing is more easily broken than a man's word), but from fear of some evil consequence upon the rupture.

Whensoever a man transferreth his right, or renounceth it, it is either in consideration of some right reciprocally transferred to himself, or for some other good he hopeth for thereby. For it is a voluntary act: and of the voluntary acts of every man, the object is some good to himself. And therefore there be

some rights which no man can be understood by any words, or other signs, to have abandoned or transferred. As first a man cannot lay down the right of resisting them that assault him by force to take away his life, because he cannot be understood to aim thereby at any good to himself. The same may be said of wounds, and chains, and imprisonment, both because there is no benefit consequent to such patience, as there is to the patience of suffering another to be wounded or imprisoned, as also because a man cannot tell when he seeth men proceed against him by violence whether they intend his death or not. And lastly the motive and end for which this renouncing and transferring of right is introduced is nothing else but the security of a man's person, in his life, and in the means of so preserving life as not to be weary of it. And therefore if a man by words, or other signs, seem to despoil himself of the end for which those signs were intended, he is not to be understood as if he meant it, or that it was his will, but that he was ignorant of how such words and actions were to be interpreted.

The mutual transferring of right is that which men call contract. [...]

From that law of nature by which we are obliged to transfer to another such rights as, being retained, hinder the peace of mankind, there followeth a third; which is this: that men perform their covenants made; without which covenants are in vain, and but empty words; and the right of all men to all things remaining, we are still in the condition of war.

And in this law of nature consisteth the fountain and original of justice. For where no covenant hath preceded, there hath no right been transferred, and every man has right to everything and consequently, no action can be unjust. But when a covenant is made, then to break it is unjust and the definition of injustice is no other than the not performance of covenant. And whatsoever is not unjust is just.

But because covenants of mutual trust, where there is a fear of not performance on either part (as hath been said in the former chapter), are invalid, though the original of justice be the making of covenants, yet injustice actually there can be none till the cause of such fear be taken away; which, while men are in the natural condition of war, cannot be done. Therefore before the names of just and unjust can have place, there must be some coercive power to compel men equally to the performance of their covenants, by the terror of some punishment greater than the benefit they expect by the breach of their covenant, and to make good that propriety which by mutual contract men acquire in recompense of the universal right they abandon: and such power there is none before the erection of a Commonwealth. And this is also to be gathered out of the ordinary definition of justice in the Schools, for they say that justice is the constant will of giving to every man his own. And therefore where there is no own, that is, no propriety, there is no injustice; and where there is no coercive power erected, that is, where there is

no Commonwealth, there is no propriety, all men having right to all things: therefore where there is no Commonwealth, there nothing is unjust. So that the nature of justice consisteth in keeping of valid covenants, but the validity of covenants begins not but with the constitution of a civil power sufficient to compel men to keep them: and then it is also that propriety begins. [...]

And though this may seem too subtle a deduction of the laws of nature to be taken notice of by all men, whereof the most part are too busy in getting food, and the rest too negligent to understand; yet to leave all men inexcusable, they have been contracted into one easy sum, intelligible even to the meanest capacity; and that is: Do not that to another which thou wouldest not have done to thyself, which showeth him that he has no more to do in learning the laws of nature but, when weighing the actions of other men with his own they seem too heavy, to put them into the other part of the balance, and his own into their place, that his own passions and self-love may add nothing to the weight; and then there is none of these laws of nature that will not appear unto him very reasonable.

The laws of nature oblige *in foro interno*; that is to say, they bind to a desire they should take place: but *in foro externo*; that is, to the putting them in act, not always. For he that should be modest and tractable, and perform all he promises in such time and place where no man else should do so, should but make himself a prey to others, and procure his own certain ruin, contrary to the ground of all laws of nature which tend to nature's preservation. And again, he that having sufficient security that others shall observe the same laws towards him, observes them not himself, seeketh not peace, but war, and consequently the destruction of his nature by violence.

And whatsoever laws bind *in foro interno* may be broken, not only by a fact contrary to the law, but also by a fact according to it, in case a man think it contrary. For though his action in this case be according to the law, yet his purpose was against the law; which, where the obligation is *in foro interno*, is a breach.

The laws of nature are immutable and eternal; for injustice, ingratitude, arrogance, pride, iniquity, acception of persons, and the rest can never be made lawful. For it can never be that war shall preserve life, and peace destroy it.

The same laws, because they oblige only to a desire and endeavour, mean an unfeigned and constant endeavour, are easy to be observed. For in that they require nothing but endeavour, he that endeavoureth their performance fulfillleth them; and he that fulfillleth the law is just.

And the science of them is the true and only moral philosophy. For moral philosophy is nothing else but the science of what is good and evil in the conversation and society of mankind. Good and evil are names that signify our appetites and aversions, which in different tempers, customs, and doctrines

of men are different: and diverse men differ not only in their judgement on the senses of what is pleasant and unpleasant to the taste, smell, hearing, touch, and sight; but also of what is conformable or disagreeable to reason in the actions of common life. Nay, the same man, in diverse times, differs from himself; and one time praiseth, that is, calleth good, what another time he dispraiseth, and calleth evil: from whence arise disputes, controversies, and at last war. And therefore so long as a man is in the condition of mere nature, which is a condition of war, private appetite is the measure of good and evil: and consequently all men agree on this, that peace is good, and therefore also the way or means of peace, which (as I have shown before) are justice, gratitude, modesty, equity, mercy, and the rest of the laws of nature, are good; that is to say, moral virtues; and their contrary vices, evil. Now the science of virtue and vice is moral philosophy; and therefore the true doctrine of the laws of nature is the true moral philosophy. But the writers of moral philosophy, though they acknowledge the same virtues and vices; yet, not seeing wherein consisted their goodness, nor that they come to be praised as the means of peaceable, sociable, and comfortable living, place them in a mediocrity of passions: as if not the cause, but the degree of daring, made fortitude; or not the cause, but the quantity of a gift, made liberality.

These dictates of reason men used to call by the name of laws, but improperly: for they are but conclusions or theorems concerning what conduceth to the conservation and defence of themselves; whereas law, properly, is the word of him that by right hath command over others. But yet if we consider the same theorems as delivered in the word of God that by right commandeth all things, then are they properly called laws. [...]

The law of nature and the civil law contain each other and are of equal extent. For the laws of nature, which consist in equity, justice, gratitude, and other moral virtues on these depending, in the condition of mere nature (as I have said before in the end of the fifteenth Chapter), are not properly laws, but qualities that dispose men to peace and to obedience. When a Commonwealth is once settled, then are they actually laws, and not before; as being then the commands of the Commonwealth; and therefore also civil laws: for it is the sovereign power that obliges men to obey them. For the differences of private men, to declare what is equity, what is justice, and is moral virtue, and to make them binding, there is need of the ordinances of sovereign power, and punishments to be ordained for such as shall break them; which ordinances are therefore part of the civil law. The law of nature therefore is a part of the civil law in all Commonwealths of the world. Reciprocally also, the civil law is a part of the dictates of nature. For justice, that is to say, performance of covenant, and giving to every man his own, is a dictate of the law of nature. But every subject in a Commonwealth hath covenanted to obey the civil law; either one with another, as when they

assemble to make a common representative, or with the representative itself one by one when, subdued by the sword, they promise obedience that they may receive life; and therefore obedience to the civil law is part also of the law of nature. Civil and natural law are not different kinds, but different parts of law; whereof one part, being written, is called civil the other unwritten, natural. But the right of nature, that is, the natural liberty of man, may by the civil law be abridged and restrained: nay, the end of making laws is no other but such restraint, without which there cannot possibly be any peace. And law was brought into the world for nothing else but to limit the natural liberty of particular men in such manner as they might not hurt, but assist one another, and join together against a common enemy. [...]

I find the words *lex civilis* and *jus civile*, that is to say, and law and right civil, promiscuously used for the same thing, even in the most learned authors; which nevertheless ought not to be so. For right is liberty, namely that liberty which the civil law leaves us: but civil law is an obligation, and takes from us the liberty which the law of nature gave us. Nature gave a right to every man to secure himself by his own strength, and to invade a suspected neighbour by way of prevention: but the civil law takes away that liberty, in all cases where the protection of the law may be safely stayed for. Insomuch as *lex* and *jus* are as different as obligation and liberty.

Likewise laws and charters are taken promiscuously for the same thing. Yet charters are donations of the sovereign; and not laws, but exemptions from law. The phrase of a law is *jubeo, injungo*; I command and enjoin: the phrase of a charter is *dedi, concessi*; I have given, I have granted: but what is given or granted to a man is not forced upon him by a law. A law may be made to bind all the subjects of a Commonwealth: a liberty or charter is only to one man or some one part of the people. [...]

LIBERTY, or freedom, signifieth properly the absence of opposition (by opposition, I mean external impediments of motion); and may be applied no less to irrational and inanimate creatures than to rational. For whatsoever is so tied, or environed, as it cannot move but within a certain space, which space is determined by the opposition of some external body, we say it hath not liberty to go further. And so of all living creatures, whilst they are imprisoned, or restrained with walls or chains; and of the water whilst it is kept in by banks or vessels that otherwise would spread itself into a larger space; we use to say they are not at liberty to move in such manner as without those external impediments they would. But when the impediment of motion is in the constitution of the thing itself, we use not to say it wants the liberty, but the power, to move; as when a stone lieth still, or a man is fastened to his bed by sickness.

And according to this proper and generally received meaning of the word, a freeman is he that, in those things which by his strength and wit he is able to do, is not hindered to do what he has a will to. But when the words free and liberty are applied to anything but bodies, they are abused; for that which is not subject to motion is not to subject to impediment: and therefore, when it is said, for example, the way is free, no liberty of the way is signified, but of those that walk in it without stop. And when we say a gift is free, there is not meant any liberty of the gift, but of the giver, that was not bound by any law or covenant to give it. So when we speak freely, it is not the liberty of voice, or pronounciation, but of the man, whom no law hath obliged to speak otherwise than he did. Lastly, from the use of the words free will, no liberty can be inferred of the will, desire, or inclination, but the liberty of the man; which consisteth in this, that he finds no stop in doing what he has the will, desire, or inclination to do.

Fear and liberty are consistent: as when a man throweth his goods into the sea for fear the ship should sink, he doth it nevertheless very willingly, and may refuse to do it if he will; it is therefore the action of one that was free: so a man sometimes pays his debt, only for fear of imprisonment, which, because no body hindered him from detaining, was the action of a man at liberty. And generally all actions which men do in Commonwealths, for fear of the law, are actions which the doers had liberty to omit.

Liberty and necessity are consistent: as in the water that hath not only liberty, but a necessity of descending by the channel; so, likewise in the actions which men voluntarily do, which, because they proceed their will, proceed from liberty, and yet because every act of man's will and every desire and inclination proceedeth from some cause, and that from another cause, in a continual chain (whose first link is in the hand of God, the first of all causes), proceed from necessity. So that to him that could see the connexion of those causes, the necessity of all men's voluntary actions would appear manifest. And therefore God, that seeth and disposeth all things, seeth also that the liberty of man in doing what he will is accompanied with the necessity of doing that which God will and no more, nor less. For though men may do many things which God does not command, nor is therefore author of them; yet they can have no passion, nor appetite to anything, of which appetite God's will is not the cause. And did not His will assure the necessity of man's will, and consequently of all that on man's will dependeth, the liberty of men would be a contradiction and impediment to the omnipotence and liberty of God. And this shall suffice, as to the matter in hand, of that natural liberty, which only is properly called liberty.

But as men, for the attaining of peace and conservation of themselves thereby, have made an artificial man, which we call a Commonwealth; so also have they made artificial chains, called civil laws, which they

themselves, by mutual covenants, have fastened at one end to the lips of that man, or assembly, to whom they have given the sovereign power, and at the other to their own ears. These bonds, in their own nature but weak, may nevertheless be made to hold, by the danger, though not by the difficulty of breaking them.

In relation to these bonds only it is that I am to speak now of the liberty of subjects. For seeing there is no Commonwealth in the world wherein there be rules enough set down for the regulating of all the actions and words of men (as being a thing impossible): it followeth necessarily that in all kinds of actions, by the laws pretermitted, men have the liberty of doing what their own reasons shall suggest for the most profitable to themselves. For if we take liberty in the proper sense, for corporal liberty; that is to say, freedom from chains and prison, it were very absurd for men to clamour as they do for the liberty they so manifestly enjoy. Again, if we take liberty for an exemption from laws, it is no less absurd for men to demand as they do that liberty by which all other men may be masters of their lives. And yet as absurd as it is, this is it they demand, not knowing that the laws are of no power to protect them without a sword in the hands of a man, or men, to cause those laws to be put in execution. The liberty of a subject lieth therefore only in those things which, in regulating their actions, the sovereign hath pretermitted: such as is the liberty to buy, and sell, and otherwise contract with one another; to choose their own abode, their own diet, their own trade of life, and institute their children as they themselves think fit; and the like.

Nevertheless we are not to understand that by such liberty the sovereign power of life and death is either abolished or limited. For it has been already shown that nothing the sovereign representative can do to a subject, on what pretence soever, can properly be called injustice or injury; because every subject is author of every act the sovereign doth, so that he never wanteth right to any thing, otherwise than as he himself is the subject of God, and bound thereby to observe the laws of nature. And therefore it may and doth often happen in Commonwealths that a subject may be put to death by the command of the sovereign power, and yet neither do the other wrong; as when Jephthah caused his daughter to be sacrificed: in which, and the like cases, he that so dieth had liberty to do the action, for which he is nevertheless, without injury, put to death. And the same holdeth also in a sovereign prince that putteth to death an innocent subject. For though the action be against the law of nature, as being contrary to equity (as was the killing of Uriah by David); yet it was not an injury to Uriah, but to God. Not to Uriah, because the right to do what he pleased was given him by Uriah himself; and yet to God, because David was God's subject and prohibited all iniquity by the law of nature. Which distinction, David himself, when he repented the fact, evidently confirmed, saying, "To thee only have I sinned." [...]

The liberty whereof there is so frequent and honourable mention in the histories and philosophy of the ancient Greeks and Romans, and in the writings and discourse of those that from them have received all their learning in the politics, is not the liberty of particular men, but the liberty of the Commonwealth: which is the same with that which every man then should have, if there were no civil laws nor Commonwealth at all. And the effects of it also be the same. For as amongst masterless men, there is perpetual war of every man against his neighbour; no inheritance to transmit to the son, nor to expect from the father; no propriety of goods or lands; no security; but a full and absolute liberty in every particular man: so in states and Commonwealths not dependent on one another, every Commonwealth, not every man, has an absolute liberty to do what it shall judge, that is to say, what that man or assembly that representeth it shall judge, most conducing to their benefit. But withal, they live in the condition of a perpetual war, and upon the confines of battle, with their frontiers armed, and cannons planted against their neighbours round about. The Athenians and Romans were free; that is, free Commonwealths: not that any particular men had the liberty to resist their own representative, but that their representative had the liberty to resist, or invade, other people. There is written on the turrets of the city of Luca in great characters at this day, the word LIBERTAS; yet no man can thence infer that a particular man has more liberty or immunity from the service of the Commonwealth there than in Constantinople. Whether a Commonwealth be monarchical or popular, the freedom is still the same.

But it is an easy thing for men to be deceived by the specious name of liberty; and, for want of judgement to distinguish, mistake that for their private inheritance and birthright which is the right of the public only. And when the same error is confirmed by the authority of men in reputation for their writings on this subject, it is no wonder if it produce sedition and change of government. In these western parts of the world we are made to receive our opinions concerning the institution and rights of Commonwealths from Aristotle, Cicero, and other men, Greeks and Romans, that, living under popular states, derived those rights, not from the principles of nature, but transcribed them into their books out of the practice of their own Commonwealths, which were popular. [...] And by reading of these Greek and Latin authors, men from their childhood have gotten a habit, under a false show of liberty, of favouring tumults, and of licentious controlling the actions of their sovereigns; [...]

To come now to the particulars of the true liberty of a subject; that is to say, what are the things which, though commanded by the sovereign, he may nevertheless without injustice refuse to do; we are to consider what rights we pass away when we make a Commonwealth; or, which is all one, what liberty we deny ourselves by owning all the actions, without exception, of the

man or assembly we make our sovereign. For in the act of our submission consisteth both our obligation and our liberty; which must therefore be inferred by arguments taken from thence; there being no obligation on any man which ariseth not from some act of his own; for all men equally are by nature free. And because such arguments must either be drawn from the express words, "I authorise all his actions", or from the intention of him that submitteth himself to his power (which intention is to be understood by the end for which he so submitteth), the obligation and liberty of the subject is to be derived either from those words, or others equivalent, or else from the end of the institution of sovereignty; namely, the peace of the subjects within themselves, and their defence against a common enemy.

First therefore, seeing sovereignty by institution is by covenant of every one to every one; and sovereignty by acquisition, by covenants of the vanquished to the victor, or child to the parent; it is manifest that every subject has liberty in all those things the right whereof cannot by covenant be transferred. [...]

If the sovereign command a man, though justly condemned, to kill, wound, or maim himself; or not to resist those that assault him; or to abstain from the use of food, air, medicine, or any other thing without which he cannot live; yet hath that man the liberty to disobey.

If a man be interrogated by the sovereign, or his authority, concerning a crime done by himself, he is not bound (without assurance of pardon) to confess it; because no man, as I have shown in the same chapter, can be obliged by covenant to accuse himself.

Again, the consent of a subject to sovereign power is contained in these words, "I authorise, or take upon me, all his actions"; in which there is no restriction at all of his own former natural liberty: for by allowing him to kill me, I am not bound to kill myself when he commands me. It is one thing to say, "Kill me, or my fellow, if you please"; another thing to say, "I will kill myself, or my fellow." [...]

No man is bound by the words themselves, either to kill himself or any other man; and consequently, that the obligation a man may sometimes have, upon the command of the sovereign, to execute any dangerous or dishonourable office, dependeth not on the words of our submission, but on the intention; which is to be understood by the end thereof. When therefore our refusal to obey frustrates the end for which the sovereignty was ordained, then there is no liberty to refuse; otherwise, there is. [...]

As for other liberties, they depend on the silence of the law. In cases where the sovereign has prescribed no rule, there the subject hath the liberty to do, or forbear, according to his own discretion. And therefore such liberty is in some places more, and in some less; and in some times more, in other times less, according as they that have the sovereignty shall think most convenient. [...]

If a monarch, or sovereign assembly, grant a liberty to all or any of his subjects, which grant standing, he is disabled to provide for their safety; the grant is void, unless he directly renounce or transfer the sovereignty to another. For in that he might openly (if it had been his will), and in plain terms, have renounced or transferred it and did not, it is to be understood it was not his will, but that the grant proceeded from ignorance of the repugnancy between such a liberty and the sovereign power: and therefore the sovereignty is still retained, and consequently all those powers which are necessary to the exercising thereof; such as are the power of war and peace, of judicature, of appointing officers and counsellors, of levying money, and the rest named in the eighteenth Chapter.

The obligation of subjects to the sovereign is understood to last as long, and no longer, than the power lasteth by which he is able to protect them. For the right men have by nature to protect themselves, when none else can protect them, can by no covenant be relinquished. The sovereignty is the soul of the Commonwealth; which, once departed from the body, the members do no more receive their motion from it. The end of obedience is protection; which, wheresoever a man seeth it, either in his own or in another's sword, nature applieth his obedience to it, and his endeavour to maintain it. And though sovereignty, in the intention of them that make it, be immortal; yet is it in its own nature, not only subject to violent death by foreign war, but also through the ignorance and passions of men it hath in it, from the very institution, many seeds of a natural mortality, by intestine discord. [...]

A COMMONWEALTH is said to be instituted when a multitude of men do agree, and covenant, every one with every one, that to whatsoever man, or assembly of men, shall be given by the major part the right to present the person of them all, that is to say, to be their representative; every one, as well he that voted for it as he that voted against it, shall authorize all the actions and judgements of that man, or assembly of men, in the same manner as if they were his own, to the end to live peaceably amongst themselves, and be protected against other men.

From this institution of a Commonwealth are derived all the rights and faculties of him, or them, on whom the sovereign power is conferred by the consent of the people assembled.

First, because they covenant, it is to be understood they are not obliged by former covenant to anything repugnant hereunto. And consequently they that have already instituted a Commonwealth, being thereby bound by covenant to own the actions and judgements of one, cannot lawfully make a new covenant amongst themselves to be obedient to any other, in anything whatsoever, without his permission. And therefore, they that are subjects to a monarch cannot without his leave cast off monarchy and return to the

confusion of a disunited multitude; nor transfer their person from him that beareth it to another man, other assembly of men: for they are bound, every man to every man, to own and be reputed author of all that already is their sovereign shall do and judge fit to be done; so that any one man dissenting, all the rest should break their covenant made to that man, which is injustice: and they have also every man given the sovereignty to him that beareth their person; and therefore if they depose him, they take from him that which is his own, and so again it is injustice. Besides, if he that attempteth to depose his sovereign be killed or punished by him for such attempt, he is author of his own punishment, as being, by the institution, author of all his sovereign shall do; and because it is injustice for a man to do anything for which he may be punished by his own authority, he is also upon that title unjust. And whereas some men have pretended for their disobedience to their sovereign a new covenant, made, not with men but with God, this also is unjust: for there is no covenant with God but by mediation of somebody that representeth God's person, which none doth but God's lieutenant who hath the sovereignty under God. But this pretence of covenant with God is so evident a lie, even in the pretenders' own consciences, that it is not only an act of an unjust, but also of a vile and unmanly disposition.

Secondly, because the right of bearing the person of them all is given to him they make sovereign, by covenant only of one to another, and not of him to any of them, there can happen no breach of covenant on the part of the sovereign; and consequently none of his subjects, by any pretence of forfeiture, can be freed from his subjection. That he which is made sovereign maketh no covenant with his subjects before hand is manifest; because either he must make it with the whole multitude, as one party to the covenant, or he must make a several covenant with every man. With the whole, as one party, it is impossible, because as they are not one person: and if he make so many several covenants as there be men, those covenants after he hath the sovereignty are void; because what act soever can be pretended by any one of them for breach thereof is the act both of himself, and of all the rest, because done in the person, and by the right of every one of them in particular. Besides, if any one or more of them pretend a breach of the covenant made by the sovereign at his institution, and others or one other of his subjects, or himself alone, pretend there was no such breach, there is in this case no judge to decide the controversy: it returns therefore to the sword again; and every man recovereth the right of protecting himself by his own strength, contrary to the design they had in the institution. It is therefore in vain to grant sovereignty by way of precedent covenant. The opinion that any monarch receiveth his power by covenant, that is to say, on condition, proceedeth from want of understanding this easy truth: that covenants being but words, and breath, have no force to oblige, contain, constrain, or protect

any man, but what it has from the public sword; that is, from the untied hands of that man, or assembly of men, that hath the sovereignty, and whose actions are avouched by them all, and performed by the strength of them all, in him united. [...]

Thirdly, because the major part hath by consenting voices declared a sovereign, he that dissented must now consent with the rest; that is, be contented to avow all the actions he shall do, or else justly be destroyed by the rest. For if he voluntarily entered into the congregation of them that were assembled, he sufficiently declared thereby his will, and therefore tacitly covenanted, to stand to what the major part should ordain: and therefore if he refuse to stand thereto, or make protestation against any of their decrees, he does contrary to his covenant, and therefore unjustly. And whether he be of the congregation or not, and whether his consent be asked or not, he must either submit to their decrees or be left in the condition of war he was in before; wherein he might without injustice be destroyed by any man whatsoever.

Fourthly, because every subject is by this institution author of all the actions and judgements of the sovereign instituted, it follows that whatsoever he doth, can be no injury to any of his subjects; nor ought he to be by any of them accused of injustice. For he that doth anything by authority from another doth therein no injury to him by whose authority he acteth: but by this institution of a Commonwealth every particular man is author of all the sovereign doth; and consequently he that complaineth of injury from his sovereign complaineth of that whereof he himself is author, and therefore ought not to accuse any man but himself; no, nor himself of injury, because to do injury to oneself is impossible. It is true that they that have sovereign power may commit iniquity, but not injustice or injury in the proper signification.

Fifthly, and consequently to that which was said last, no man that hath sovereign power can justly be put to death, or otherwise in any manner by his subjects punished. For seeing every subject is author of the actions of his sovereign, he punisheth another for the actions committed by himself.

And because the end of this institution is the peace and defence of them all, and whosoever has right to the end has right to the means, it belonged of right to whatsoever man or assembly that hath the sovereignty to be judge both of the means of peace and defence, and also of the hindrances and disturbances of the same; and to do whatsoever he shall think necessary to be done, both beforehand, for the preserving of peace and security, by prevention of discord at home, and hostility from abroad; and when peace and security are lost, for the recovery of the same. And therefore,

Sixthly, it is annexed to the sovereignty to be judge of what opinions and doctrines are averse, and what conducing to peace; and consequently, on what occasions, how far, and what men are to be trusted withal in speaking

to multitudes of people; and who shall examine the doctrines of all books before they be published. For the actions of men proceed from their opinions, and in the well governing of opinions consisteth the well governing of men's actions in order to their peace and concord. [...]

The final cause, end, or design of men (who naturally love liberty, and dominion over others) in the introduction of that restraint upon themselves, in which we see them live in Commonwealths, is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of war which is necessarily consequent, as hath been shown, to the natural passions of men when there is no visible power to keep them in awe, and tie them by fear of punishment to the performance of their covenants, and observation of those laws of nature set down in the fourteenth and fifteenth chapters.

For the laws of nature, as justice, equity, modesty, mercy, and, in sum, doing to others as we would be done to, of themselves, without the terror of some power to cause them to be observed, are contrary to our natural passions, that carry us to partiality, pride, revenge, and the like. And covenants, without the sword, are but words and of no strength to secure a man at all. Therefore, notwithstanding the laws of nature (which every one hath then kept, when he has the will to keep them, when he can do it safely), if there be no power erected, or not great enough for our security, every man will and may lawfully rely on his own strength and art for caution against all other men. [...]

The only way to erect such a common power, as may be able to defend them from the invasion of foreigners, and the injuries of one another, and thereby to secure them in such sort as that by their own industry and by the fruits of the earth they may nourish themselves and live contentedly, is to confer all their power and strength upon one man, or upon one assembly of men, that may reduce all their wills, by plurality of voices, unto one will: which is as much as to say, to appoint one man, or assembly of men, to bear their person; and every one to own and acknowledge himself to be author of whatsoever he that so beareth their person shall act, or cause to be acted, in those things which concern the common peace and safety; and therein to submit their wills, every one to his will, and their judgements to his judgement. This is more than consent, or concord; it is a real unity of them all in one and the same person, made by covenant of every man with every man, in such manner as if every man should say to every man: I authorise and give up my right of governing myself to this man, or to this assembly of men, on this condition; that thou give up, thy right to him, and authorise all his actions in like manner. This done, the multitude so united in one person is called a COMMONWEALTH; in Latin, CIVITAS. This is the generation of that great LEVIATHAN, or rather, to speak more reverently, of that mortal

god to which we owe, under the immortal God, our peace and defence. For by this authority, given him by every particular man in the Commonwealth, he hath the use of so much power and strength conferred on him that, by terror thereof, he is enabled to form the wills of them all, to peace at home, and mutual aid against their enemies abroad. And in him consisteth the essence of the Commonwealth; which, to define it, is: one person, of whose acts a great multitude, by mutual covenants one with another, have made themselves every one the author, to the end he may use the strength and means of them all as he shall think expedient for their peace and common defence.

John Locke

TWO TREATISES OF GOVERNMENT

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But though this be a state of liberty, yet it is not a state of licence; though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The state of Nature has a law of Nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions; for men being all the workmanship of one omnipotent and infinitely wise Maker; all the servants of one sovereign Master, sent into the world by His order and about His business; they are His property, whose workmanship they are made to last during His, not one another's pleasure. And, being furnished with like faculties, sharing all in one community of Nature, there cannot be supposed any such subordination among us that may authorise us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for ours. Every one as he is bound to preserve himself, and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he as much as he can to preserve the rest of mankind, and not unless it be to do justice on an offender, take away or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another [...]

And that all men may be restrained from invading others' rights, and from doing hurt to one another, and the law of Nature be observed, which willeth the peace and preservation of all mankind, the execution of the law of Nature is in that state put into every man's hands, whereby every one has a right to punish the transgressors of that law to such a degree as may hinder its violation. For the law of Nature would, as all other laws that concern men in this world, be in vain if there were nobody that in the state of Nature had a power to execute that law, and thereby preserve the innocent and restrain offenders; and if any one in the state of Nature may punish another for any evil he has done, every one may do so. For in that state of perfect equality, where naturally there is no superiority or jurisdiction of one over another,

what any may do in prosecution of that law, every one must needs have a right to do. [...]

The freedom then of man, and liberty of acting according to his own will, is grounded on his having reason, which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the freedom of his own will. To turn him loose to an unrestrained liberty, before he has reason to guide him, is not the allowing him the privilege of his nature to be free, but to thrust him out amongst brutes, and abandon him to a state as wretched and as much beneath that of a man as theirs. [...]

If man in the state of Nature be so free as has been said, if he be absolute lord of his own person and possessions, equal to the greatest and subject to nobody, why will he part with his freedom, this empire, and subject himself to the dominion and control of any other power? To which it is obvious to answer, that though in the state of Nature he hath such a right, yet the enjoyment of it is very uncertain and constantly exposed to the invasion of others; for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very insecure. This makes him willing to quit this condition which, however free, is full of fears and continual dangers; and it is not without reason that he seeks out and is willing to join in society with others who are already united, or have a mind to unite for the mutual preservation of their lives, liberties and estates, which I call by the general name—property. [...]

The great and chief end, therefore, of men uniting into commonwealths, and putting themselves under government, is the preservation of their property; to which in the state of Nature there are many things wanting.

Firstly, there wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them. For though the law of Nature be plain and intelligible to all rational creatures, yet men, being biased by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.

Secondly, in the state of Nature there wants a known and indifferent judge, with authority to determine all differences according to the established law. For every one in that state being both judge and executioner of the law of Nature, men being partial to themselves, passion and revenge is very apt to carry them too far, and with too much heat in their own cases, as well as negligence and unconcernedness, make them too remiss in other men's.

Thirdly, in the state of Nature there often wants power to back and support the sentence when right, and to give it due execution. They who by any injustice offended will seldom fail where they are able by force to make

good their injustice. Such resistance many times makes the punishment dangerous, and frequently destructive to those who attempt it.

Thus mankind, notwithstanding all the privileges of the state of Nature, being but in an ill condition while they remain in it are quickly driven into society. Hence it comes to pass, that we seldom find any number of men live any time together in this state. The inconveniencies that they are therein exposed to by the irregular and uncertain exercise of the power every man has of punishing the transgressions of others, make them take sanctuary under the established laws of government, and therein seek the preservation of their property. It is this that makes them so willingly give up every one his single power of punishing to be exercised by such alone as shall be appointed to it amongst them, and by such rules as the community, or those authorised by them to that purpose, shall agree on. And in this we have the original right and rise of both the legislative and executive power as well as of the governments and societies themselves.

For in the state of Nature to omit the liberty he has of innocent delights, a man has two powers. The first is to do whatsoever he thinks fit for the preservation of himself and others within the permission of the law of Nature; by which law, common to them all, he and all the rest of mankind are one community, make up one society distinct from all other creatures, and were it not for the corruption and viciousness of degenerate men, there would be no need of any other, no necessity that men should separate from this great and natural community, and associate into lesser combinations. The other power a man has in the state of Nature is the power to punish the crimes committed against that law. Both these he gives up when he joins in a private, if I may so call it, or particular political society, and incorporates into any commonwealth separate from the rest of mankind. [...]

But though men when they enter into society give up the equality, liberty, and executive power they had in the state of Nature into the hands of the society, to be so far disposed of by the legislative as the good of the society shall require, yet it being only with an intention in every one the better to preserve himself, his liberty and property (for no rational creature can be supposed to change his condition with an intention to be worse), the power of the society or legislative constituted by them can never be supposed to extend farther than the common good, but is obliged to secure every one's property by providing against those three defects above mentioned that made the state of Nature so unsafe and uneasy. And so, whoever has the legislative or supreme power of any commonwealth, is bound to govern by established standing laws, promulgated and known to the people, and not by extemporary decrees, by indifferent and upright judges, who are to decide controversies by those laws; and to employ the force of the community at home only in the execution of such laws, or abroad to prevent or redress

foreign injuries and secure the community from inroads and invasion. And all this to be directed to no other end but the peace, safety, and public good of the people. [...]

Men being, as has been said, by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another without his own consent, which is done by agreeing with other men, to join and unite into a community for their comfortable, safe, and peaceable living, one amongst another, in a secure enjoyment of their properties, and a greater security against any that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left, as they were, in the liberty of the state of Nature. When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest.

For, when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority. For that which acts any community, being only the consent of the individuals of it, and it being one body, must move one way, it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority, or else it is impossible it should act or continue one body, one community, which the consent of every individual that united into it agreed that it should; and so every one is bound by that consent to be concluded by the majority. And therefore we see that in assemblies empowered to act by positive laws where no number is set by that positive law which empowers them, the act of the majority passes for the act of the whole, and of course determines as having, by the law of Nature and reason, the power of the whole. [...]

Whosoever, therefore, out of a state of Nature unite into a community, must be understood to give up all the power necessary to the ends for which they unite into society to the majority of the community, unless they expressly agreed in any number greater than the majority. And this is done by barely agreeing to unite into one political society, which is all the compact that is, or needs be, between the individuals that enter into or make up a commonwealth. And thus, that which begins and actually constitutes any political society is nothing but the consent of any number of freemen capable of majority, to unite and incorporate into such a society. And this is that, and that only, which did or could give beginning to any lawful government in the world.

WARNINGS FOR POLAND

Of the rights that the Supreme Being developed when creating the world, these rights were allocated to human beings: Each human being along with life will receive feelings. No one will be given a perfect life. The lives of all human beings will grow and decrease gradually. Also the feelings of all human beings will be to a measure: they may increase to a certain extent from where they may either disappear or be forced to decrease. Only with an increase of feelings will the activities of human beings expand.

Human beings must be born, grow, become old and die. Each person will experience pain and pleasure. Through feelings, each person will become a necessary objective of activity for all the surrounding beings. The operation of external beings which is conducive to maintaining human life will cause pleasant feelings in the person, namely bliss. The operation of external beings which is contrary to human life will cause pain.

In pain and in the face of death, every person must try to maintain his life. The fruits of the earth and sleep are necessary to stay alive. Each person will have senses to recognise the operation of external beings which is conducive to human life and to avoid the operation of those beings who are harmful to human life. No person will be allowed to understand the essence of external objects: each person with his senses will receive feelings that are the effects of the operation of external beings. Among the received feelings, every person will have a memory and will be able to make images thereof. External images will affect human will to the same extent as internal feelings. Each person will be able to imitate with ease but to think with difficulty.

Human beings are not only required to maintain their own lives but also to multiply their tribe. The feelings of one person will stir the senses of another person and awaken reciprocal feelings. The pain of a suffering person will cause pain in another person.

Each human being will have the power of expressing his feelings to other persons through speech and to pass on his impressions. In order to defend and to use these properties or rights, each human being will be provided with strength and intellect. No one shall have the strength or intellect to deprive others of these rights. Therefore, more strength and a better intellect will not be permanent or hereditary in one family and will remain only as a temporary feature of a person.

Therefore each person will be born weak and for a long time in childhood will remain infirm in strength and intellect. With age, strength and intellect will mature. But these will be taken away by sleep every few hours – and soon, like in childhood in the past, old age will weaken people again [...].

So people are equal as to all rights while not all are equal as to the use of rights. The inequality gives them common needs and each person is compelled to live in company. The inequality may never extend so far that one person could deprive another of such rights or a minority could deprive a majority of such rights and use them for themselves. Personal strength and intellect in each person differ with age, time and passion and are subject to illness; they need rest every so many hours, become weaker in old age and end in death.

However, the common strength and intellect of a society or a majority of people are constant, never varying, subject to no age or illness, always competent. Like human rights, they are immortal. The strength and intellect of a majority of people are therefore an invincible fortress of human rights that the Supreme Creator of the rights has established Himself [...].

Equality, freedom and ownership are the most necessary and straightforward resultant from human rights. No one is born with an inseparable privilege of doing nothing and being rich or an unchanged destiny to work and be poor. All riches available to people are in the earth. Without a major violation no one can be prohibited to acquire title to land. The law or the right to use personal property allows each person to hold title to land.

No one is born with a stigma of serfdom, unkindness, contempt and shame of life, just as no one is born with a privilege of nobility, domination, respect and honour. It is only usefulness that makes people different [...].

Human beings are made to live in company. The objective of people living in company is to secure the law of nature. Each person in the company promises not to use personal strength and intellect to defend his rights but will apply all his strength and intellect to defend the company.

The company in turn guarantees each person the defence of his rights and the freedom to use all property in accordance with the laws. The rules of the company for people living in any climate do not change natural human rights since the climate only decreases or increases feelings in people. Such a change only results in changes of the constitution of government, civil rights, rewards and punishment [...].

The highest power and will or the highest sovereignty exists in the nation. Such power and will were established by the Creator Himself. Therefore, only such power comes from God as the nation explicitly provides. Human freedom consists in free use of property in accordance with the law. The law within a community is the result of common will. Common will is

a collection of the will of everybody. Each citizen can participate either directly or through a deputy in establishing laws.

The law that is the result of common will may prohibit only such activities as are harmful to the law of everybody or the community. Unanimity is the best manifestation of common will. A second manifestation of common will is the consent of two thirds of the nation.

Thus, a simple majority may often prove to be a deceitful manifestation of common will. Violation of common will occurs when only one third of a nation acts against two thirds or when a third part prohibits the other two thirds from acting. The smaller the third part, the more material the violation is.

The most outrageous violation occurs when one land, one province, one person constricts the will of dozens of lands, provinces or millions of people. This occurs most often when lack of knowledge makes only out of unanimity the manifestation of common will.

Common strength and will are attributed to each nation so that no nation may deprive itself of them. In a community each verdict of the personal will of one person, one family or a number of families is not the law but a violation of the law. In a community, law is violated by all those classes, families or that one family that would claim that birth gave them more rights than to other people, that it or they only have the power of dominating other people, granting rights to them, designating their property, happiness, peace, selling them, transferring them to another master, exchanging or giving as a dowry.

Political fraudsters are all those families or that one family that would argue that God has given just them supreme power and intellect above other millions of people, that it is only their intellect and will that are infallible, that they are inseparable from the real good of those millions of people, never subject to any personality, any passions or weaknesses of the flesh. This is only an opinion, this is only false and generally imposed images on all people may treat seriously the robbery of common will by the violator. Therefore, every person should be free to speak, write, print, pass on opinions to other people just like every person is free to use their thoughts, personal property as long as no harm is done to the rights of other people [...].

The highest power and will of the nation are inseparable. A nation with highest will without highest power would be like a paralytic; a nation with highest power without highest will would be like a stupid person. All magistrates, each civil servant in a country is a tool without any other power than that which is provided to them by the highest power. The highest power may not be transferred as a whole and obviously may not grant power that is larger than itself.

It is abhorrent to politics and not good government when a civil servant whose duty is to watch that the law is observed has more power than the legislator, where a king has sometimes more power than the common power and will. The highest magistrate power may only grant such power to those who implement the rights that would never pose a hazard to the freedom of the community and that would always be a threat of particular violence [...].

It is only common will which may institute courts, grant power to them and describe methods of trial and studies to determine if the evidence of the complainant is true while the law itself will specify the punishment. There is no equality, freedom or ownership where human rights are violated, where one citizen has the power of designating judges for his own co-citizens.

Human rights are in constant danger where one magistrate elects judges for the whole country. Human equality and freedom require that judges are elected by the citizens whom they will judge. A court verdict may be nothing else but the provisions of the law itself. [...]

Internal defence of citizens' rights against other citizens should be arranged in such a manner that it never appears dangerous to the freedom of the community. And it proved dangerous to each citizen that the person harmed with the verdict was devoid of reward, property and peace. The common strength of the nation shall be the external defence. This may not be transferred to anyone.

The threat to human rights should be defended by citizens of their own country. Defence of a country is the protection of human rights, citizens' freedom and property. So defence of the country may not offer a chance to harm these rights. The defence which becomes stronger than the strength of the whole nation may be used against the freedom of that nation, that is against human freedoms, that deprives it of personal property and destroys land ownership that – when destroyed – leaves nothing to defend; such, I say, defence is nothing else but a tool of violation and a defence of tyranny.

Such defence of the community violates personal ownership, imposes eternal concern in the souls of parents and children in the whole country that may not be preserved without forcing not all but only some citizens to leave their homes, parents, relatives and property forever; to renounce the inborn likings, the selected way of living and the freedom to use human rights. Such a defence of the country destroys land ownership that is contrary to the common will of the nation but in line with the increasing defence of a neighbouring country or due to the particular ambitions of one family is forced to grow and takes away all benefits from owning property, leaving them only with work and poverty.

The regular and standing army may not act solely as defenders of slavery and despotism: they may not apply their growth and immeasurable needs to human rights, to citizens' ownership and freedoms but they apply human

rights, citizens' freedom and ownership to themselves. In accordance with God's laws, it is only the common power of the nation granted out of the will of the nation, that is only the citizens themselves who are natural defenders of their rights, freedom and property. Therefore, the way to wage a war should not be based on art but on the power and courage of men [...].

The rights of the nation are equal to human rights taken together. Just as from nature every person has intellect and strength to defend his rights without depriving others, equally each nation should be free to use its power and intellect to defend its rights without depriving other nations of them. Just as in a community, it is the citizen who violates the rights of others and attributes more rights to himself and similarly in nations it is the family or that nation that violates the rights of others and appropriates more rights to itself than to others.

War is an act of God and is in agreement with God's orders when it is aimed at saving mankind. War is the only method the Supreme Legislator has given people to defend their rights, to rid themselves of violators.

Only such wars are fair and just that defend human rights.

Rights of nations are violated by every despot since wherever despotism exists, republics have a difficult time to survive in the neighbourhood.

Rights of nations are violated by all those families, all those individuals who seize for themselves the sole legislative power; rights of nations are violated by that family, that community that keeps a regular army as it gives a hundred thousand people more power through craft than God has given to millions.

Rights of nations are violated by that family or those families who dare call people their property in the same manner they refer to land, cattle and other creatures.

Rights of nations are violated by the duke [king, emperor], any person, any public servant who dares force with weapons other people, other villages, towns, province, nation to stay under his rule when those people, that village, town, province, nation find happiness for themselves under another ruler.

Rights of nations are violated by the duke [king, emperor] who wages war on another country to seize it or to steal a province from it without shame justifying the war with the most disgraceful ground that those millions come in his wife's dowry or are inherited after a grandmother or uncle.

All those families, whatever their name, are conspirators against the rights of nations who plot in order to split nations among them, who sell, trade, wage wars for and after such wars in result of agreements split among them millions of people like themselves, grant to themselves, exchange one nation for another. No person or assembly is empowered to decide about the slavery of some of their co-citizens. This is only subject to the free agreement of the people whose freedom is at stake. A legal parliament only may expel

a part of nation from its community but is not empowered to sell it into slavery. Anyone who dares do that commits a crime against mankind. One man may not be owned by another.

Today all land that has been divided and occupied is in the rightful possession of those who cultivate it. Therefore, today the only just reason for a war is the integrity of the rights of nations. Those wars are unjust that are waged for any other reason than to save the rights of nations or to restore to any people their inborn freedom to form a community with anyone of their own free will or to elect a government as they like.

Wars may not be waged to seize for whatever reason any land since such land belongs to those people who settled there first. Wars may neither be waged to take the power of other people since people are not cattle to become the property of other people. Each war should be ended to give such people an opportunity to become free, to join in a community with those whom they like and elect a government of their choice.

Hugo Kollataj

THE POLITICAL LAW OF THE POLISH NATION

Whoever takes a pen when he is guided by love to mankind, integrity and the happiness of his Motherland, then he does not care about what position he is to take in human memory among writers who think that they can entertain and teach. He is only repaying the debt to the community in which he lives, to which he is related by fate, property, upbringing and calling; he does what he can, advises as he perceives, brings relief to human fate, wishes to deliver mankind from oppression and unjust rule – as much as he can and as much as he is talented. Those views I had in mind when I seized a pen devoting it to the truth and the Motherland. Those were the motives that stirred my heart and without them I would not have written anything for the public, with them I care less what the fate of the small work is. [...]

I call upon all of you – those who will judge my writing, those who have been authorised by the nation to establish a durable and perfect form of government, those who have dared to overturn and destroy the laws imposed by a foreign power – I call upon you to face the altar of the truth where important matters are taking place, our own matters, the integrity of our Motherland, the happiness or misery of so many millions of people; the matter that will leave memories of you to distant generations, be it as a blessing or as a curse. Legislators of the Polish nation! This is the voice of truth that speaks to you, a respected person who has not been seen within the borders of the Republic for a long time; this is a voice speaking for the people and for the overall happiness of the nation. Give it some serious thought. The rightful court is much higher than your legislative power. There is no torment enclosed in natural elements that could intimidate such a court; there is no power in the political government that could suppress it; neither on the throne, nor among the legislators is there enough power to intimidate it. The truth always wins and a man armed with it is more powerful than vast military ranks. Judgements of the truth can be condemned to be burned, its followers can be harassed and destroyed but once it gets to human hearts, there is no power that is able to eradicate it.

The time has come also for this hapless land. The truth has shed its light on the inhabitants; the truth has begun; the truth must complete its work. The Polish nation – for so long affected by a chain of ill fate, internal injustice and external oppression, kept in chains for so long, is beginning to sense its rights; the moment when the truth has been revealed is an epoch

from which time on one may not think about the happiness of only several hundred thousand but about freedom for all, justice for all.

All these important reasons have encouraged me to propose this project for consideration. I have done so driven by my heart and because I am a citizen of this free land, encouraged by a verdict of the law. The readers will judge this writing. Those in the legislature will do whatever they please. Perhaps some favouring special prerogatives, usually winning popular consent, may find this writing worthy of burning and will oppress the writer. However, if it contains the truth, if it is in harmony with the human heart, there is no measure either in a raging prejudiced brain or in a will favouring only a limited number of people with honours and common freedom that would suppress the truth.

The Polish nation and the legislators of the hapless people! Do what you want and strain to reach whatever you may reach by submitting to obsolete opinions; I will boldly tell you that neither the entire nation, nor the inhabitants will feel free as long as your laws, taking only a small part of the people into account, leave the others under violence and usurpers, if the constitution of the government is not established in an orderly way and if slavery persists side by side with freedom, lawlessness with justice, prejudice with the truth.

Many will find my project too bold when I myself, looking back into the past which always provides easier access to human hearts, see it as completely incompatible with the wishes of humanity busy with doing good. New generations will come after us and if they read this petty writing, they will say: "Indeed, in 1789 they dared speak for the truth but since prejudice was still reigning, it was not bold enough to speak for the truth".

When we heard an echo of the French revolution, we shuddered at the committed cruelty; however, when we saw that the French people were gaining freedom, each of us blessed the Heavens; why so? Because we were applying the events of the revolution not to our own feelings but to the autocrat. Do we want to know the sentence of the truth? We are looking for it in the speeches of truly free nations; so let us ask for an opinion about us among Englishmen, Batavians, Helvetians or Frenchmen? They look at our revolution like at quarrels between despotism and despotism, they look at Poland and say: "Poland has freed itself from the yoke of foreign dependence, it has crushed the power of the sceptre but still only one class rules there above millions of people in an autocratic manner; the nation wishes to become independent but does not have enough courage to make all its inhabitants share the freedom; any circumstances favouring despotism will find it easy to re-chain one hundred families of people living among the slaves".

Therefore in my work I am not looking back at obsolete views but only at the good and happiness of the whole country. I am writing this paper for

everybody who lives in Poland; it is in the overall happiness and freedom that I see the real power of the nation, its greatness and primarily the certainty of well governed freedom against autocratic rule that is always menacing. The focus on men and on their safety is always for me the foundation of the entire building of the Republic. I once said: every person born or resident in Poland or immigrant, is free, certain of his person and his property; his freedom and safety I can prove successfully with other arguments as a man based on this fundamental rule and whatever conditions are encountered in the community, whatever laws he finds, he will always refer them to the primary rules of inborn freedom. Rights attributable to man are also attributable to human communities, equal in relation to various classes of people within the same community, notwithstanding that such differences derive from nature or convention. Whoever well understands man and his rights, he will not err in political or civil legislation as he is following a well designated path on which moral order is founded. He will ensure that no class or people will suffer due to convention. However, in the opposite case, should he follow prejudice resulting from false opinion and he will elevate some people above their original equality while humiliating the common human rights, will condemn mankind and will always arrive at two conclusions in his train of thinking and action: one man or a small portion of others will be amazed that they are superhuman, that they have better blood while millions of others will be degraded to the role of beasts and oppressing them with enslaving laws will ensure that man deprived of his rights will become a new species among beasts. Indeed, it must always be like that when the legislator begins a description of the laws with conventional privileges rather than human rights.

Can specific privileges for a group of people be greater than the natural rights attributable to man? than rights of communities that were established out of necessity? Giving noblemen freedom, I am not attributing to them anything more than the rights of every human being. So if a right to freedom serves only noblemen, what is then left for peasants, handicraftsmen or merchants? In such circumstances the other people will not have natural rights; so they must remain in one class with beasts, in poverty, stupidity, prejudice, condemnation – they certainly are not human beings. I will resort to various ways, my will is arbitrary over some privileges of towns and their citizens. What will then those privileges mean if not separate freedoms for townsmen? But all of them have been acquired by noblemen, then townsmen or merchants or handicraftsmen only hold a small portion that was allotted to them while the self-interest applied to all the noble prerogatives is a manifest example of the distance between the rights of noblemen and peasants when peasants look at townsmen as much inferior to noblemen in relation to whom they are much meaner and more dishonourable.

Those were the ways used by the age of unenlightenment, the age of bloody barbarianism that ill treated human nature since everybody likes to ponder over their privileges and no one is brave enough to think of the rights that have been granted by the charitable Creator, Father to all people. Men are able to deprive other men of their rights, able to lower the others to beasts but could never show that usurpation led him to equal slavery coming from either an impudent despot or uprooted lawlessness. For long times noblemen in France were leading ahead of townspeople and peasants; the hapless time came when feudal privileges fell victim to the autocratic government. The oppressed people could no longer provide for the luxury and needs of the ruler; it proved necessary to oppress and rob the higher classes of their property. Would then any specific privileges and honours be of assistance? The French nation would not be free so far if it were not for the nobility who extended a hand to the people, coming back to the original rights. It was at the moment when the French resorted to human rights and when they abolished all privileged honours that they became really free while all freedoms that they have secured in human rights will most effectively observe the right of common freedom against the usurpation of autocratic power. True, everybody's senses are offended at the thought of the atrocities that the French committed but there is no one among freedom lovers who would not praise the French classes that they have returned human rights to their legal system.

Who cannot see our own similar image in those times when hapless Poland was subjected to violence and tyranny in a most distasteful way; when it was split like America used to be? The nation was striving for freedom and independence but was not looking for it in human rights; noble privileges and honours were too weak to save common property and freedoms. Foreign powers were enslaving noblemen, which was looked at by millions of slaves with indifference, just like a harnessed ox that draws a cart full of the quarters of its hapless fellow beasts, like a bird sitting on a tree watches with calm when an eager hunter chases a bear or a wolf in the wilderness. Slaves did not care to whom they had to pay tribute and for whom they had to work; they thought that nothing out of the ordinary was happening when the small number who used to rule would be driven to the same fate as was considered natural for so many millions of people.

In this way Polish noblemen with all their privileges became slaves of the autocrat in the stolen lands; in this way the autocrat became an unjust oppressor by claiming title to land held by those who in turn violated the freedom of peasants. Noblemen and peasants in the provinces taken away from Poland will be slaves as long as both do not return to their original rights and as long as in the legislation they do not secure the rights for themselves that they are not able to secure with usurpation. Do we wish to be really free? We should not look for this in human laws – let us listen to

the voice of truth. The Creator of all things wrote the full set of human rights in the hearts of men. Let us come back to them and there will no despot who would dare breach them. The constitution of the government shall start with unfringeable rights. No one will be jealous of the privileges of the nobility when they see that they do not oppress and diminish human rights. Otherwise all our works will become only a senseless phantom and we will become a game for ourselves until our neighbours divide us among themselves till the end and we will be mere spoils to any despot.

“There is no energy in the nation. Meanness and baseness have hold of everybody”. These are words that ring in our ears. Where can the energy be found? Perhaps among the hundred thousand families among whom a majority is taught meanness, corruption, to sell minds and hearts to proud autocrats? Polish energy only consisted in inciting some against others, in burning towns and estates, in robbery and burglary; which was all covered by a beloved amnesty. Confederations were calling thousands ready – at one word from their commanders – to kill and burn, ruin and destroy like a hunter kills and chases animals in the woods, without being aware of the reason for the commotion and shooting. At each election, at each quarrel between the rich, poor peasants and handicraftsmen feared that the raiders would take away their little property, burn their huts or take lives. Foreigners domiciled for several years who had been attracted to populate towns at some expense, escaped immediately, carrying away with them to distant lands fear and hatred towards the land in respect of which they understood themselves to be slaves rather than men. The word confederation itself is the strongest repulsion for every foreigner.

Therefore, if we do not start the laws of Polish government from human rights, if we fail to say that the Polish land is the land of a free nation, that men standing on it are free and sure of themselves, we will only deceive ourselves and become the laughing stock of other free nations; our country will always be a comfortable forest where either internal tyranny or foreign violence will continue to oppress us until Polish names disappear totally or until a determined man stands among us – as brave as he is shrewd – who will make us our own property.

If I did not have such horrible thoughts, if I did not see where empty animosities lead us, if I saw that there is time to progress gradually, I would restrain my pen and would leave the truth to more enlightened times, the truth that is too evident for today; but convinced deep in my heart that the time lost today will never come back; that when on the one hand the light of the truth burns too strongly, it should be thought over in detail so that no deceitful usurper is found to raise slaves’ hands to our and their ill fortune. This is how important reasons have encouraged me to propose this project, which I have divided into three books.

In the first book I discuss human rights. I begin with cardinal rights based on natural laws and I proceed to rights stemming from the social system and afterwards I describe those that a free community may reasonably arrange by itself; the majesty of national government I attribute to landowners with land being personal and belonging to municipalities; this division causes me to look at people in two aspects: firstly, there are landlords and secondly – townspeople. These two types of ownership have driven me to imagining two legislative systems as I perceive the people attributed to them by the criterion of land ownership as collections of families that – having combined their specific property – have created a nation. In such a nation, I grant the majesty of national government to land owners and having assured natural laws and community laws for all, I only add those that have been attached to us so strongly by convention. The nobility, agreed conventionally, I support with their unquestioned right of land ownership to hold national government; the townspeople are attached solely to municipal ownership without depriving them of the freedom to hold land. Over the heads of that nation, as father of the Motherland, I wish to see a king who is not elected but with descent attached to take good care of the integrity of the Republic; wishing that the nation remains free forever, I designate three grand principles: enlightenment, religion and cohesive defence. Therefrom there appear three major professions on which perfection of the government and its durability are founded. I call these professions as servants of or benevolent towards the Republic since as long as they perform their duties as required, the government remains brave and unshaken. The teaching profession, the clergy and the military profession do not form any specific legislative classes but they do not lose any privileges due to the people positioned in the first two classes: landlords and townspeople. Everywhere human rights are my first concern. By dividing the government of the nation into legislative and executive bodies, I make it a bond of the two classes; I satisfy opinion by dividing the legislature into two Chambers and I also satisfy the needs of legislation; and if satisfaction of opinion allowed me to place representatives of landlords and townspeople in one Chamber, I would be willing to abandon that but I would never abandon two Legislative Chambers, which I consider a major principle of good and perfect legislation in a nation [...].

Human beings are born to this world within a community, they are brought up within a community; throughout life a community is necessary – in disability, illness, old age people need support from the community, people even die in a community; indeed: human beings are born to live in a community. And thus by original law human beings have mutual rights and duties that apply to each and every member of the community.

THE RIGHTS OF HUMAN BEINGS IN RELATIONS WITH OTHERS

1. Each man is the sole owner of himself by natural right.
2. Each man, being the sole owner of his person, is the owner of his strength which he can use as he sees best fit, he can perfect it and use to it to acquire the things he needs.
3. Each man acquiring things as an effect of work acquires the title thereto; he is free to own such things and use them.
4. Each man has the right to act of his own free will, he can act, decide and consent, and he has the natural freedom to act.
5. Each man as the owner of his person and objects may freely agree with others any work, the exchange or disposal of his things as long as such agreements are fair and with no harm to third parties.
6. Each man is free to defend himself against attack and to respond with force to violence.
7. Each man is free to provide mutual assistance or receive the assistance of others.

THE DUTIES OF HUMAN BEINGS IN RELATIONS WITH OTHERS

1. No man may appropriate the person of another or infringe upon the other's personal property in any manner.
2. No man may disturb others in using their strength, perfecting it or acquiring through work the things that they need.
3. Every man, in addition to not being allowed to disturb others in acquiring things with their own strength, should treat such acquired property as held by others with respect and may not rob it or take it away through violence.
4. No man may interfere with or restrict other people's freedom.
5. Each man shall keep voluntarily concluded contracts that are fair and without harm to third parties.
6. No man may attack others or use violence against them unless in just defence.
7. No man may refuse mutual or merciful assistance to other people if he can provide it.

Thomas Paine

COMMON SENSE

Source: "US History": <http://www.ushistory.org/Paine/rights/singlehtml.htm>

Among the incivilities by which nations or individuals provoke and irritate each other, Mr. Burke's pamphlet on the French Revolution is an extraordinary instance. Neither the People of France, nor the National Assembly, were troubling themselves about the affairs of England, or the English Parliament; and that Mr. Burke should commence an unprovoked attack upon them, both in Parliament and in public, is a conduct that cannot be pardoned on the score of manners, nor justified on that of policy.

There is scarcely an epithet of abuse to be found in the English language, with which Mr. Burke has not loaded the French Nation and the National Assembly. Everything which rancour, prejudice, ignorance or knowledge could suggest, is poured forth in the copious fury of near four hundred pages. In the strain and on the plan Mr. Burke was writing, he might have written on to as many thousands. When the tongue or the pen is let loose in a frenzy of passion, it is the man, and not the subject, that becomes exhausted.

Hitherto Mr. Burke has been mistaken and disappointed in the opinions he had formed of the affairs of France; but such is the ingenuity of his hope, or the malignancy of his despair, that it furnishes him with new pretences to go on. There was a time when it was impossible to make Mr. Burke believe there would be any Revolution in France. His opinion then was, that the French had neither spirit to undertake it nor fortitude to support it; and now that there is one, he seeks an escape by condemning it.

Not sufficiently content with abusing the National Assembly, a great part of his work is taken up with abusing Dr. Price (one of the best-hearted men that lives) and the two societies in England known by the name of the Revolution Society and the Society for Constitutional Information.

Dr. Price had preached a sermon on the 4th of November, 1789, being the anniversary of what is called in England the Revolution, which took place 1688. Mr. Burke, speaking of this sermon, says: "The political Divine proceeds dogmatically to assert, that by the principles of the Revolution, the people of England have acquired three fundamental rights:

1. To choose our own governors.
2. To cashier them for misconduct.
3. To frame a government for ourselves."

Dr. Price does not say that the right to do these things exists in this or in that person, or in this or in that description of persons, but that it exists in the whole; that it is a right resident in the nation. Mr. Burke, on the contrary, denies that such a right exists in the nation, either in whole or in part, or that it exists anywhere; and, what is still more strange and marvellous, he says: "that the people of England utterly disclaim such a right, and that they will resist the practical assertion of it with their lives and fortunes." That men should take up arms and spend their lives and fortunes, not to maintain their rights, but to maintain they have not rights, is an entirely new species of discovery, and suited to the paradoxical genius of Mr. Burke.

The method which Mr. Burke takes to prove that the people of England have no such rights, and that such rights do not now exist in the nation, either in whole or in part, or anywhere at all, is of the same marvellous and monstrous kind with what he has already said; for his arguments are that the persons, or the generation of persons, in whom they did exist, are dead, and with them the right is dead also. To prove this, he quotes a declaration made by Parliament about a hundred years ago, to William and Mary, in these words: "The Lords Spiritual and Temporal, and Commons, do, in the name of the people aforesaid" (meaning the people of England then living) "most humbly and faithfully submit themselves, their heirs and posterities, for EVER." He quotes a clause of another Act of Parliament made in the same reign, the terms of which he says, "bind us" (meaning the people of their day), "our heirs and our posterity, to them, their heirs and posterity, to the end of time."

Mr. Burke conceives his point sufficiently established by producing those clauses, which he enforces by saying that they exclude the right of the nation for ever. And not yet content with making such declarations, repeated over and over again, he farther says, "that if the people of England possessed such a right before the Revolution" (which he acknowledges to have been the case, not only in England, but throughout Europe, at an early period), "yet that the English Nation did, at the time of the Revolution, most solemnly renounce and abdicate it, for themselves, and for all their posterity, for ever."

As Mr. Burke occasionally applies the poison drawn from his horrid principles, not only to the English nation, but to the French Revolution and the National Assembly, and charges that august, illuminated and illuminating body of men with the epithet of usurpers, I shall, sans ceremonie, place another system of principles in opposition to his.

The English Parliament of 1688 did a certain thing, which, for themselves and their constituents, they had a right to do, and which it appeared right should be done. But, in addition to this right, which they possessed by delegation, they set up another right by assumption, that of binding and controlling posterity to the end of time. The case, therefore, divides itself into two parts;

the right which they possessed by delegation, and the right which they set up by assumption. The first is admitted; but with respect to the second. [...]

There never did, there never will, and there never can, exist a Parliament, or any description of men, or any generation of men, in any country, possessed of the right or the power of binding and controlling posterity to the “end of time”, or of commanding for ever how the world shall be governed, or who shall govern it; and therefore all such clauses, acts or declarations by which the makers of them attempt to do what they have neither the right nor the power to do, nor the power to execute, are in themselves null and void. Every age and generation must be as free to act for itself in all cases as the age and generations which preceded it. The vanity and presumption of governing beyond the grave is the most ridiculous and insolent of all tyrannies. Man has no property in man; neither has any generation a property in the generations which are to follow. The Parliament or the people of 1688, or of any other period, had no more right to dispose of the people of the present day, or to bind or to control them in any shape whatever, than the parliament or the people of the present day have to dispose of, bind or control those who are to live a hundred or a thousand years hence. Every generation is, and must be, competent to all the purposes which its occasions require. It is the living, and not the dead, that are to be accommodated. When man ceases to be, his power and his wants cease with him; and having no longer any participation in the concerns of this world, he has no longer any authority in directing who shall be its governors, or how its government shall be organised, or how administered.

I am not contending for nor against any form of government, nor for nor against any party, here or elsewhere. That which a whole nation chooses to do it has a right to do. Mr. Burke says, No. Where, then, does the right exist? I am contending for the rights of the living, and against their being willed away and controlled and contracted for by the manuscript assumed authority of the dead, and Mr. Burke is contending for the authority of the dead over the rights and freedom of the living. There was a time when kings disposed of their crowns by will upon their death-beds, and consigned the people, like beasts of the field, to whatever successor they appointed. This is now so exploded as scarcely to be remembered, and so monstrous as hardly to be believed. But the Parliamentary clauses upon which Mr. Burke builds his political church are of the same nature.

The laws of every country must be analogous to some common principle. In England no parent or master, nor all the authority of Parliament, omnipotent as it has called itself, can bind or control the personal freedom even of an individual beyond the age of twenty-one years. On what ground of right, then, could the Parliament of 1688, or any other Parliament, bind all posterity for ever?

Those who have quitted the world, and those who have not yet arrived at it, are as remote from each other as the utmost stretch of mortal imagination can conceive. What possible obligation, then, can exist between them – what rule or principle can be laid down that of two nonentities, the one out of existence and the other not in, and who never can meet in this world, the one should control the other to the end of time?

In England it is said that money cannot be taken out of the pockets of the people without their consent. But who authorised, or who could authorise, the Parliament of 1688 to control and take away the freedom of posterity (who were not in existence to give or to withhold their consent) and limit and confine their right of acting in certain cases for ever?

A greater absurdity cannot present itself to the understanding of man than what Mr. Burke offers to his readers. He tells them, and he tells the world to come, that a certain body of men who existed a hundred years ago made a law, and that there does not exist in the nation, nor ever will, nor ever can, a power to alter it. Under how many subtillies or absurdities has the divine right to govern been imposed on the credulity of mankind? Mr. Burke has discovered a new one, and he has shortened his journey to Rome by appealing to the power of this infallible Parliament of former days, and he produces what it has done as of divine authority, for that power must certainly be more than human which no human power to the end of time can alter.

But Mr. Burke has done some service – not to his cause, but to his country – by bringing those clauses into public view. They serve to demonstrate how necessary it is at all times to watch against the attempted encroachment of power, and to prevent its running to excess. It is somewhat extraordinary that the offence for which James II. was expelled, that of setting up power by assumption, should be re-acted, under another shape and form, by the Parliament that expelled him. It shows that the Rights of Man were but imperfectly understood at the Revolution, for certain it is that the right which that Parliament set up by assumption (for by the delegation it had not, and could not have it, because none could give it) over the persons and freedom of posterity for ever was of the same tyrannical unfounded kind which James attempted to set up over the Parliament and the nation, and for which he was expelled. The only difference is (for in principle they differ not) that the one was an usurper over living, and the other over the unborn; and as the one has no better authority to stand upon than the other, both of them must be equally null and void, and of no effect.

From what, or from whence, does Mr. Burke prove the right of any human power to bind posterity for ever? He has produced his clauses, but he must produce also his proofs that such a right existed, and show how it existed. If it ever existed it must now exist, for whatever appertains to the nature of

man cannot be annihilated by man. It is the nature of man to die, and he will continue to die as long as he continues to be born. But Mr. Burke has set up a sort of political Adam, in whom all posterity are bound for ever. He must, therefore, prove that his Adam possessed such a power, or such a right.

The weaker any cord is, the less will it bear to be stretched, and the worse is the policy to stretch it, unless it is intended to break it. Had anyone proposed the overthrow of Mr. Burke's positions, he would have proceeded as Mr. Burke has done. He would have magnified the authorities, on purpose to have called the right of them into question; and the instant the question of right was started, the authorities must have been given up.

It requires but a very small glance of thought to perceive that although laws made in one generation often continue in force through succeeding generations, yet they continue to derive their force from the consent of the living. A law not repealed continues in force, not because it cannot be repealed, but because it is not repealed; and the non-repealing passes for consent.

But Mr. Burke's clauses have not even this qualification in their favour. They become null, by attempting to become immortal. The nature of them precludes consent. They destroy the right which they might have, by grounding it on a right which they cannot have. Immortal power is not a human right, and therefore cannot be a right of Parliament. The Parliament of 1688 might as well have passed an act to have authorised themselves to live for ever, as to make their authority live for ever. All, therefore, that can be said of those clauses is that they are a formality of words, of as much import as if those who used them had addressed a congratulation to themselves, and in the oriental style of antiquity had said: O Parliament, live for ever!

The circumstances of the world are continually changing, and the opinions of men change also; and as government is for the living, and not for the dead, it is the living only that has any right in it. That which may be thought right and found convenient in one age may be thought wrong and found inconvenient in another. In such cases, who is to decide, the living or the dead?

As almost one hundred pages of Mr. Burke's book are employed upon these clauses, it will consequently follow that if the clauses themselves, so far as they set up an assumed usurped dominion over posterity for ever, are unauthoritative, and in their nature null and void; that all his voluminous inferences, and declamation drawn therefrom, or founded thereon, are null and void also; and on this ground I rest the matter.

I have now to follow Mr. Burke through a pathless wilderness of rhapsodies, and a sort of descant upon governments, in which he asserts whatever he pleases, on the presumption of its being believed, without offering either evidence or reasons for so doing.

Before anything can be reasoned upon to a conclusion, certain facts, principles, or data, to reason from, must be established, admitted, or denied. Mr. Burke with his usual outrage, abused the Declaration of the Rights of Man, published by the National Assembly of France, as the basis on which the constitution of France is built. This he calls „paltry and blurred sheets of paper about the rights of man.” Does Mr. Burke mean to deny that man has any rights? If he does, then he must mean that there are no such things as rights anywhere, and that he has none himself; for who is there in the world but man? But if Mr. Burke means to admit that man has rights, the question then will be: What are those rights, and how man came by them originally?

The error of those who reason by precedents drawn from antiquity, respecting the rights of man, is that they do not go far enough into antiquity. They do not go the whole way. They stop in some of the intermediate stages of an hundred or a thousand years, and produce what was then done, as a rule for the present day. This is no authority at all. If we travel still farther into antiquity, we shall find a direct contrary opinion and practice prevailing; and if antiquity is to be authority, a thousand such authorities may be produced, successively contradicting each other; but if we proceed on, we shall at last come out right; we shall come to the time when man came from the hand of his Maker. What was he then? Man. Man was his high and only title, and a higher cannot be given him. But of titles I shall speak hereafter.

We are now got at the origin of man, and at the origin of his rights. As to the manner in which the world has been governed from that day to this, it is no farther any concern of ours than to make a proper use of the errors or the improvements which the history of it presents. Those who lived an hundred or a thousand years ago, were then moderns, as we are now. They had their ancients, and those ancients had others, and we also shall be ancients in our turn. If the mere name of antiquity is to govern in the affairs of life, the people who are to live an hundred or a thousand years hence, may as well take us for a precedent, as we make a precedent of those who lived an hundred or a thousand years ago. The fact is, that portions of antiquity, by proving everything, establish nothing. It is authority against authority all the way, till we come to the divine origin of the rights of man at the creation. Here our enquiries find a resting-place, and our reason finds a home. If a dispute about the rights of man had arisen at the distance of an hundred years from the creation, it is to this source of authority they must have referred, and it is to this same source of authority that we must now refer.

Though I mean not to touch upon any sectarian principle of religion, yet it may be worth observing, that the genealogy of Christ is traced to Adam. Why then not trace the rights of man to the creation of man? I will answer the question. Because there have been upstart governments, thrusting themselves between, and presumptuously working to un-make man.

If any generation of men ever possessed the right of dictating the mode by which the world should be governed for ever, it was the first generation that existed; and if that generation did it not, no succeeding generation can show any authority for doing it, nor can set any up. The illuminating and divine principle of the equal rights of man (for it has its origin from the Maker of man) relates, not only to the living individuals, but to generations of men succeeding each other. Every generation is equal in rights to generations which preceded it, by the same rule that every individual is born equal in rights with his contemporary.

Every history of the creation, and every traditionary account, whether from the lettered or unlettered world, however they may vary in their opinion or belief of certain particulars, all agree in establishing one point, the unity of man; by which I mean that men are all of one degree, and consequently that all men are born equal, and with equal natural right, in the same manner as if posterity had been continued by creation instead of generation, the latter being the only mode by which the former is carried forward; and consequently every child born into the world must be considered as deriving its existence from God. The world is as new to him as it was to the first man that existed, and his natural right in it is of the same kind.

The Mosaic account of the creation, whether taken as divine authority or merely historical, is full to this point, the unity or equality of man. The expression admits of no controversy. „And God said, Let us make man in our own image. In the image of God created he him; male and female created he them.” The distinction of sexes is pointed out, but no other distinction is even implied. If this be not divine authority, it is at least historical authority, and shows that the equality of man, so far from being a modern doctrine, is the oldest upon record.

It is also to be observed that all the religions known in the world are founded, so far as they relate to man, on the unity of man, as being all of one degree. Whether in heaven or in hell, or in whatever state man may be supposed to exist hereafter, the good and the bad are the only distinctions. Nay, even the laws of governments are obliged to slide into this principle, by making degrees to consist in crimes and not in persons.

It is one of the greatest of all truths, and of the highest advantage to cultivate. By considering man in this light, and by instructing him to consider himself in this light, it places him in a close connection with all his duties, whether to his Creator or to the creation, of which he is a part; and it is only when he forgets his origin, or, to use a more fashionable phrase, his birth and family, that he becomes dissolute. It is not among the least of the evils of the present existing governments in all parts of Europe that man, considered as man, is thrown back to a vast distance from his Maker, and the artificial chasm filled up with a succession of barriers, or sort of turnpike

gates, through which he has to pass. I will quote Mr. Burke's catalogue of barriers that he has set up between man and his Maker. Putting himself in the character of a herald, he says: „We fear God – we look with awe to king – with affection to Parliaments with duty to magistrates – with reverence to priests, and with respect to nobility.” Mr. Burke has forgotten to put in „chivalry.” He has also forgotten to put in Peter.

The duty of man is not a wilderness of turnpike gates, through which he is to pass by tickets from one to the other. It is plain and simple, and consists but of two points. His duty to God, which every man must feel; and with respect to his neighbor, to do as he would be done by. If those to whom power is delegated do well, they will be respected: if not, they will be despised; and with regard to those to whom no power is delegated, but who assume it, the rational world can know nothing of them.

Hitherto we have spoken only (and that but in part) of the natural rights of man. We have now to consider the civil rights of man, and to show how the one originates from the other. Man did not enter into society to become worse than he was before, nor to have fewer rights than he had before, but to have those rights better secured. His natural rights are the foundation of all his civil rights. But in order to pursue this distinction with more precision, it will be necessary to mark the different qualities of natural and civil rights.

A few words will explain this. Natural rights are those which appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others. Civil rights are those which appertain to man in right of his being a member of society. Every civil right has for its foundation some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent. Of this kind are all those which relate to security and protection.

From this short review it will be easy to distinguish between that class of natural rights which man retains after entering into society and those which he throws into the common stock as a member of society.

The natural rights which he retains are all those in which the Power to execute is as perfect in the individual as the right itself. Among this class, as is before mentioned, are all the intellectual rights, or rights of the mind; consequently religion is one of those rights. The natural rights which are not retained, are all those in which, though the right is perfect in the individual, the power to execute them is defective. They answer not his purpose. A man, by natural right, has a right to judge in his own cause; and so far as the right of the mind is concerned, he never surrenders it. But what availeth it him to judge, if he has not power to redress? He therefore deposits this right in the common stock of society, and takes the ann of society, of which he is a part,

in preference and in addition to his own. Society grants him nothing. Every man is a proprietor in society, and draws on the capital as a matter of right.

First, That every civil right grows out of a natural right; or, in other words, is a natural right exchanged.

Secondly, That civil power properly considered as such is made up of the aggregate of that class of the natural rights of man, which becomes defective in the individual in point of power, and answers not his purpose, but when collected to a focus becomes competent to the Purpose of every one.

Thirdly, That the power produced from the aggregate of natural rights, imperfect in power in the individual, cannot be applied to invade the natural rights which are retained in the individual, and in which the power to execute is as perfect as the right itself.

Cesare Beccaria

OF CRIMES AND PUNISHMENTS

Source: "Constitution Society": http://www.constitution.org/cb/crim_pun.htm

The torture of a criminal during the course of his trial is a cruelty consecrated by custom in most nations. It is used with an intent either to make him confess his crime, or to explain some contradictions into which he had been led during his examination, or discover his accomplices, or for some kind of metaphysical and incomprehensible purgation of infamy, or, finally, in order to discover other crimes of which he is not accused, but of which he may be guilty.

No man can be judged a criminal until he be found guilty; nor can society take from him the public protection until it have been proved that he has violated the conditions on which it was granted. What right, then, but that of power, can authorise the punishment of a citizen so long as there remains any doubt of his guilt? This dilemma is frequent. Either he is guilty, or not guilty. If guilty, he should only suffer the punishment ordained by the laws, and torture becomes useless, as his confession is unnecessary, if he be not guilty, you torture the innocent; for, in the eye of the law, every man is innocent whose crime has not been proved. Besides, it is confounding all relations to expect that a man should be both the accuser and accused; and that pain should be the test of truth, as if truth resided in the muscles and fibres of a wretch in torture. By this method the robust will escape, and the feeble be condemned. These are the inconveniences of this pretended test of truth, worthy only of a cannibal, and which the Romans, in many respects barbarous, and whose savage virtue has been too much admired, reserved for the slaves alone.

What is the political intention of punishments? To terrify and be an example to others. Is this intention answered by thus privately torturing the guilty and the innocent? It is doubtless of importance that no crime should remain unpunished; but it is useless to make a public example of the author of a crime hid in darkness. A crime already committed, and for which there can be no remedy, can only be punished by a political society with an intention that no hopes of impunity should induce others to commit the same. If it be true, that the number of those who from fear or virtue respect the laws is greater than of those by whom they are violated, the risk of torturing an innocent person is greater, as there is a greater probability that, *coeteris paribus*, an individual hath observed, than that he hath infringed the laws.

There is another ridiculous motive for torture, namely, to purge a man from infamy. Ought such an abuse to be tolerated in the eighteenth century? Can pain, which is a sensation, have any connection with a moral sentiment, a matter of opinion? Perhaps the rack may be considered as the refiner's furnace.

It is not difficult to trace this senseless law to its origin; for an absurdity, adopted by a whole nation, must have some affinity with other ideas established and respected by the same nation. This custom seems to be the offspring of religion, by which mankind, in all nations and in all ages, are so generally influenced. We are taught by our infallible church, that those stains of sin contracted through human frailty, and which have not deserved the eternal anger of the Almighty, are to be purged away in another life by an incomprehensible fire. Now infamy is a stain, and if the punishments and fire of purgatory can take away all spiritual stains, why should not the pain of torture take away those of a civil nature? I imagine, that the confession of a criminal, which in some tribunals is required as being essential to his condemnation, has a similar origin, and has been taken from the mysterious tribunal of penitence, where the confession of sins is a necessary part of the sacrament. Thus have men abused the unerring light of revelation; and, in the times of tractable ignorance, having no other, they naturally had recourse to it on every occasion, making the most remote and absurd applications. Moreover, infamy is a sentiment regulated neither by the laws nor by reason, but entirely by opinion; but torture renders the victim infamous, and therefore cannot take infamy away.

Another intention of torture is to oblige the supposed criminal to reconcile the contradictions into which he may have fallen during his examination; as if the dread of punishment, the uncertainty of his fate, the solemnity of the court, the majesty of the judge, and the ignorance of the accused, were not abundantly sufficient to account for contradictions, which are so common to men even in a state of tranquillity, and which must necessarily be multiplied by the perturbation of the mind of a man entirely engaged in the thoughts of saving himself from imminent danger.

This infamous test of truth is a remaining monument of that ancient and savage legislation, in which trials by fire, by boiling water, or the uncertainty of combats, were called judgments of God; as if the links of that eternal chain, whose beginning is in the breast of the first cause of all things, could ever be disunited by the institutions of men. The only difference between torture and trials by fire and boiling water is, that the event of the first depends on the will of the accused, and of the second on a fact entirely physical and external: but this difference is apparent only, not real. A man on the rack, in the convulsions of torture, has it as little in his power to declare the truth, as, in former times, to prevent without fraud the effects of fire or boiling water.

Every act of the will is invariably in proportion to the force of the impression on our senses. The impression of pain, then, may increase to such a degree, that, occupying the mind entirely, it will compel the sufferer to use the shortest method of freeing himself from torment. His answer, therefore, will be an effect as necessary as that of fire or boiling water, and he will accuse himself of crimes of which he is innocent: so that the very means employed to distinguish the innocent from the guilty will most effectually destroy all difference between them.

It would be superfluous to confirm these reflections by examples of innocent persons who, from the agony of torture, have confessed themselves guilty: innumerable instances may be found in all nations, and in every age. How amazing that mankind have always neglected to draw the natural conclusion! Lives there a man who, if he has carried his thoughts ever so little beyond the necessities of life, when he reflects on such cruelty, is not tempted to fly from society, and return to his natural state of independence?

The result of torture, then, is a matter of calculation, and depends on the constitution, which differs in every individual, and it is in proportion to his strength and sensibility; so that to discover truth by this method, is a problem which may be better solved by a mathematician than by a judge, and may be thus stated: The force of the muscles and the sensibility of the nerves of an innocent person being given, it is required to find the degree of pain necessary to make him confess himself guilty of a given crime.

The examination of the accused is intended to find out the truth; but if this be discovered with so much difficulty in the air, gesture, and countenance of a man at ease, how can it appear in a countenance distorted by the convulsions of torture? Every violent action destroys those small alterations in the features which sometimes disclose the sentiments of the heart.

These truths were known to the Roman legislators, amongst whom, as I have already observed, slaves only, who were not considered as citizens, were tortured. They are known to the English a nation in which the progress of science, superiority in commerce, riches, and power, its natural consequences, together with the numerous examples of virtue and courage, leave no doubt of the excellence of its laws. They have been acknowledged in Sweden, where torture has been abolished. They are known to one of the wisest monarchs in Europe, who, having seated philosophy on the throne by his beneficent legislation, has made his subjects free, though dependent on the laws; the only freedom that reasonable men can desire in the present state of things. In short, torture has not been thought necessary in the laws of armies, composed chiefly of the dregs of mankind, where its use should seem most necessary. Strange phenomenon! that a set of men, hardened by slaughter, and familiar with blood, should teach humanity to the sons of peace.

It appears also that these truths were known, though imperfectly, even to those by whom torture has been most frequently practised; for a confession made during torture, is null, if it be not afterwards confirmed by an oath, which if the criminal refuses, he is tortured again. Some civilians and some nations permit this infamous *petitio principii* to be only three times repeated, and others leave it to the discretion of the judge; therefore, of two men equally innocent, or equally guilty, the most robust and resolute will be acquitted, and the weakest and most pusillanimous will be condemned, in consequence of the following excellent mode of reasoning. I, the judge, must find some one guilty. Thou, who art a strong fellow, hast been able to resist the force of torment; therefore I acquit thee. Thou, being weaker, hast yielded to it; I therefore condemn thee. I am sensible, that the confession which was extorted from thee has no weight; but if thou dost not confirm by oath what thou hast already confessed, I will have thee tormented again.

A very strange but necessary consequence of the use of torture is, that the case of the innocent is worse than that of the guilty. With regard to the first, either he confesses the crime which he has not committed, and is condemned, or he is acquitted, and has suffered a punishment he did not deserve. On the contrary, the person who is really guilty has the most favourable side of the question; for, if he supports the torture with firmness and resolution, he is acquitted, and has gained, having exchanged a greater punishment for a less.

The law by which torture is authorised, says, Men, be insensible to pain. Nature has indeed given you an irresistible self-love, and an unalienable right of self-preservation; but I create in you a contrary sentiment, an heroic hatred of yourselves. I command you to accuse yourselves, and to declare the truth, amidst the tearing of your flesh, and the dislocation of your bones.

Torture is used to discover whether the criminal be guilty of other crimes besides those of which he is accused, which is equivalent to the following reasoning. Thou art guilty of one crime, therefore it is possible that thou mayest have committed a thousand others; but the affair being doubtful I must try it by my criterion of truth. The laws order thee to be tormented because thou art guilty, because thou mayest be guilty, and because I choose thou shouldst be guilty.

Torture is used to make the criminal discover his accomplices; but if it has been demonstrated that it is not at a proper means of discovering truth, how can it serve to discover the accomplices, which is one of the truths required? Will not the man who accuses himself yet more readily accuse others? Besides, is it just to torment one man for the crime of another? May not the accomplices be found out by the examination of the witnesses, or of the criminal; from the evidence, or from the nature of the crime itself; in short, by all the means that have been used to prove the guilt of the prisoner?

The accomplices commonly fly when their comrade is taken. The uncertainty of their fate condemns them to perpetual exile, and frees society from the danger of further injury; whilst the punishment of the criminal, by deterring others, answers the purpose for which it was ordained.

Immanuel Kant

THE METAPHYSICS OF MORALS

Source: H. S. Reiss (ed.), *Kant: Political Writings*, Cambridge University Press, Cambridge 1991, pp. 136-176.

Public right is the sum total of those laws which require to be made universally public in order to produce a state of right. It is therefore a system of laws for a people, i.e. an aggregate of human beings, or for an aggregate of peoples. Since these individuals or peoples must influence one another, they need to live in a state of right under a unifying will: that is, they require a constitution in order to enjoy their rights.

A condition in which the individual members of a people are related to each other in this way is said to be a civil one (*status civilis*), and when considered as a whole in relation to its own members, it is called a state (*civitas*). Since the state takes the form of a union created by the common interest of everyone in living in a state of right, it is called a commonwealth (*res publica latins sic dicta*). In relation to other peoples, however, it is simply called a power (*potentia* – hence the word ‘potentate’); and if it claims to be united by heredity, it may also call itself a congeneric nation (*gens*). Within the general concept of public right, we must therefore include not only political right but also international right (*ius gentium*). And since the earth’s surface is not infinite but limited by its own configuration, these two concepts taken together necessarily lead to the idea of an international political right (*ius gentium*) or a cosmopolitan right (*ius cosmopolitanicum*). Consequently, if even only one of these three possible forms of rightful state lacks a principle which limits external freedom by means of laws, the structure of all the rest must inevitably be undermined, and finally collapse.

Experience teaches us the maxim that human beings act in a violent and malevolent manner, and that they tend to fight among themselves until an external coercive legislation supervenes. But it is not experience or any kind of factual knowledge which makes public legal coercion necessary. On the contrary, even if we imagine men to be as benevolent and law-abiding as we please, the *a priori* rational idea of a non-lawful state will still tell us that before a public and legal state is established, individual men, peoples and states can never be secure against acts of violence from one another, since each will have his own right to do what seems right and good to him, independently of the opinion of others. Thus the first decision the individual is obliged to make, if he does not wish to renounce all concepts of right, will

be to adopt the principle that one must abandon the state of nature in which everyone follows his own desires, and unite with everyone else (with whom he cannot avoid having intercourse) in order to submit to external, public and lawful coercion. He must accordingly enter into a state wherein that which is to be recognised as belonging to each person is allotted to him by law and guaranteed to him by an adequate power (which is not his own, but external to him). In other words, he should at all costs enter into a state of civil society.

The state of nature need not necessarily be a state of injustice (*iniustus*) merely because those who live in it treat one another solely in terms of the amount of power they possess. But it is a state devoid of justice (*status iustitia vacuus*), for if a dispute over rights (*ius controversum*) occurs in it, there is no competent judge to pronounce legally valid decisions. Anyone may thus use force to impel the others to abandon this state for a state of right. For although each individual's concepts of right may imply that an external object can be acquired by occupation or by contract, this acquisition is only provisional until it has been sanctioned by a public law, since it is not determined by any public (distributive) form of justice and is not guaranteed by any institution empowered to exercise this right.

If no-one were willing to recognise any acquisition as rightful, not even provisionally so, before a civil state had been established, the civil state would itself be impossible. For in relation to their form, the laws relating to property contain exactly the same things in a state of nature as they would prescribe in a civil state, in so far as we conceive of this state only in terms of concepts of pure reason. The only difference is that in the second case, the conditions under which the laws are applied (in accordance with distributive justice) are given. Thus if there were not even a provisional system of external property in the state of nature, there would not be any rightful duties in it either, so that there could not be any commandment to abandon it.

A state (*civitas*) is a union of an aggregate of men under rightful laws. In so far as these laws are necessary a priori and follow automatically from concepts of external right in general (and are not just set up by statute), the form of the state will be that of a state in the absolute sense, i.e. as the idea of what a state ought to be according to pure principles of right. This idea can serve as an internal guide (*norma*) for every actual case where men unite to form a commonwealth.

Every state contains three powers, i.e. the universally united will is made up of three separate persons (*trias politico*). These are the ruling power (or sovereignty) in the person of the legislator, the executive power in the person of the individual who governs in accordance with the law, and the judicial power (which allots to everyone what is his by law) in the person of the judge (*potestas legislatoria, rectoria et iudiciaria*). They can be likened to the three

propositions in a practical operation of reason: the major premise, which contains the law of the sovereign will, the minor premise, which contains the command to act in accordance with the law (i.e. the principle of subsumption under the general will), and the conclusion, which contains the legal decision (the sentence) as to the rights and wrongs of each particular case.

The legislative power can belong only to the united will of the people. For since all right is supposed to emanate from this power, the laws it gives must be absolutely incapable of doing anyone an injustice. Now if someone makes dispositions for another person, it is always possible that he may thereby do him an injustice, although this is never possible in the case of decisions he makes for himself (*for volentimon fit iniuria*). Thus only the unanimous and combined will of everyone whereby each decides the same for all and all decide the same for each – in other words, the general united will of the people – can legislate.

The members of such a society (*societas civilis*) or state who unite for the purpose of legislating are known as citizens (*cives*), and the three rightful attributes which are inseparable from the nature of a citizen as such are as follows: firstly, lawful freedom to obey no law other than that to which he has given his consent; secondly, civil equality in recognising no-one among the people as superior to himself, unless it be someone whom he is just as morally entitled to bind by law as the other is to bind him; and thirdly, the attribute of civil independence which allows him to owe his existence and sustenance not to the arbitrary will of anyone else among the people, but purely to his own rights and powers as a member of the commonwealth (so that he may not, as a civil personality, be represented by anyone else in matters of right).

Fitness to vote is the necessary qualification which every citizen must possess. To be fit to vote, a person must have an independent position among the people. He must therefore be not just a part of the commonwealth, but a member of it, i.e. he must by his own free will actively participate in a community of other people. But this latter quality makes it necessary to distinguish between the active and the passive citizen, although the latter concept seems to contradict the definition of the concept of a citizen altogether. The following examples may serve to overcome this difficulty. Apprentices to merchants or tradesmen, servants who are not employed by the state, minors (*naturaliter vel civiliter*) women in general and all those who are obliged to depend for their living (i.e. for food and protection) on the offices of others (excluding the state) – all of these people have no civil personality, and their existence is, so to speak, purely inherent. The woodcutter whom I employ on my premises; the blacksmith in India who goes from house to house with his hammer, anvil and bellows to do work with iron, as opposed to the European carpenter or smith who can put the products of his work

up for public sale; the domestic tutor as opposed to the academic, the titheholder as opposed to the farmer; and so on – they are all mere auxiliaries to the commonwealth, for they have to receive orders or protection from other individuals, so that they do not possess civil independence.

This dependence upon the will of others and consequent inequality does not, however, in any way conflict with the freedom and equality of all men as human beings who together constitute a people. On the contrary, it is only by accepting these conditions that such a people can become a state and enter into a civil constitution. But all are not equally qualified within this constitution to possess the right to vote, i.e. to be citizens and not just subjects among other subjects. For from the fact that as passive members of the state, they can demand to be treated by all others in accordance with laws of natural freedom and equality, it does not follow that they also have a right to influence or organise the state itself as active members, or to co-operate in introducing particular laws. Instead, it only means that the positive laws to which the voters agree, of whatever sort they may be, must not be at variance with the natural laws of freedom and with the corresponding equality of all members of the people whereby they are allowed to work their way up from their passive condition to an active one.

All of the three powers within the state are dignities, and since they necessarily follow from the general idea of a state as elements essential for its establishment (constitution), they are political dignities. They involve a relationship between a universal sovereign (who, if considered in the light of laws of freedom, can be none other than the united people itself) and the scattered mass of the people as subjects, i.e. a relationship of commander (*imperans*) to him who obeys (*subditus*). The act by which the people constitutes a state for itself, or more precisely, the mere idea of such an act (which alone enables us to consider it valid in terms of right), is the original contract. By this contract, all members of the people (*omnes et singuli*) give up their external freedom in order to receive it back at once as members of a commonwealth, i.e. of the people regarded as a state (*universi*). And we cannot say that men within a state have sacrificed apart of their inborn external freedom for a specific purpose; they have in fact completely abandoned their wild and lawless freedom, in order to find again their entire and undiminished freedom in a state of lawful dependence (i.e. in a state of right), for this dependence is created by their own legislative will.

The three powers in the state are related to one another in the following ways. Firstly, as moral persons, they are co-ordinate (*potestates coordinatae*), i.e. each is complementary to the others in forming the complete constitution of the state (*complementum ad sufficientiam*). But secondly, they are also subordinate (*subordinatae*) to one another, so that the one cannot usurp any function of the others to which it ministers; for each has its own principle,

so that although it issues orders in the quality of a distinct person, it does so under the condition of a superior person's will. Thirdly, the combination of both relationships described above assures every subject of his rights.

It can be said of these powers, considered in their appropriate dignity, that the will of the legislator (*legislatoris*) in relation to external property cannot be reproached (i.e. it is irreprehensible), that the executive power of the supreme ruler (*summi rectoris*) cannot be opposed (i.e. it is irresistible), and that the verdict of the supreme judge (*supremi indicts*) cannot be altered (i.e. it is without appeal).

The ruler of the state (*rex, princeps*) is that moral or physical person who wields the executive power (*potestas executoria*). He is the agent of the state who appoints the magistrates, and who prescribes rules for the people so that each may acquire something or retain what is his by law (i.e. by subsuming individual cases under the law). If the ruler is taken to be a moral person, he is called the directory or government. His commands to the people, the magistrates, and their superiors (ministers) who are responsible for administering the state (*gubernatio*), are not laws but ordinances or decrees; for they depend upon decisions in particular cases and are issued subject to revision. A government which were also to make laws would be called a despotic as opposed to a patriotic government. This is not to be confused with a paternal government (*regimen paternale*); the latter is the most despotic kind of all, for it treats the citizens like children. A patriotic government (*regimen civitatis et patriae*) means that although the state itself (*civitas*) treats its subjects as if they were members of one family, it also treats them as citizens of the state, i.e. in accordance with laws guaranteeing their own independence. Thus each is responsible for himself and does not depend upon the absolute will of anyone equal or superior to him.

The sovereign of the people (the legislator) cannot therefore also be the ruler, for the ruler is subject to the law, through which he is consequently beholden to another party, i.e. the sovereign. The sovereign may divest the ruler of his power, depose him, or reform his administration, but he cannot punish him. (And that is the real meaning of the common English saying that the king – i.e. the supreme executive authority – can do no wrong.) For to punish the ruler would in turn be an act of the executive power, which alone possesses the supreme authority to apply coercion in accordance with the law, and such a punishment would mean subjecting the executive power itself to coercion, which is self-contradictory.

Finally, neither the sovereign nor the ruler may pass judgement; they can only appoint judges as magistrates. The people judge themselves, through those fellow-citizens whom they have nominated as their representatives, by free election, for each particular juridical act. For a legal decision or sentence is a particular act of public justice (*iustitiae distributivae*) by an administrator

of the state (a judge or court of law) upon a subject, i.e. one who belongs to the people, and it does not carry the necessary authority to grant or assign to the subject that which is his. Now since each member of the people is purely passive in his relationship to the supreme authority, it would be possible for either the legislative or the executive power to do him an injustice in any decision it might make in a controversial case involving that which belongs to the subject; for it would not be an action of the people themselves in pronouncing a fellow citizen guilty or not guilty. After the facts of a legal suit have thus been established, the court of law has the judicial authority to put the law into practice and to ensure, by means of the executive authority, that each person receives his due. Thus only the people, albeit through the indirect means of the representatives they have themselves appointed (i.e. the jury), can pass judgement upon anyone of their own number. Besides, it would be beneath the dignity of the head of state to act the part of a judge, i.e. to put himself in a position where he could do some injustice, and thus give cause for an appeal to some higher authority (*a rege male informato ad regem melius informandum*).

There are thus three distinct powers (*potestas legislativa, executoria, iudiciaria*) which give the state (*civitas*) its autonomy, that is, which enable the state to establish and maintain itself in accordance with laws of freedom. The welfare of the state consists in the union of these powers (*salus reipublicae suprema lex est*). But this welfare must not be understood as synonymous with the well-being and happiness of the citizens, for it may well be possible to attain these in a more convenient and desirable way within a state of nature (as Rousseau declares), or even under a despotic regime. On the contrary, the welfare of the state should be seen as that condition in which the constitution most closely approximates to the principles of right; and reason, by a categorical imperative, obliges us to strive for its realisation. [...]

A country (*territorium*) whose inhabitants are fellow citizens of one and the same commonwealth by the very nature of the constitution (i.e. without having to exercise any particular right, so that they are already citizens by birth) is called the fatherland of these citizens. Lands in which this condition of citizenship does not apply to them are foreign countries. And a country which is part of a wider system of government is called a province (in the sense in which the Romans used this word); since it is not, however, an integrated part of an empire (*imperii*) whose inhabitants are all fellow-citizens, but is only a possession and subordinate realm of the empire, it must respect the territory of the ruling state as its motherland (*regio domino*).

1. The subject (considered also as a citizen) has the right of emigration, for the state could not hold him back as it might a piece of property. But

he can take only his mobile belongings with him; he cannot take his fixed possessions, as would indeed be the case if he were authorised to sell the land he had hitherto possessed and to take the money he received for it with him.

2. The lord of the land has the right to encourage the immigration and settlement of foreigners (colonists), even though the native subjects should look askance at it. But he must see to it that private ownership of the land by the native subjects is not diminished.

3. If a subject should commit a crime which makes it a danger to the state for him to associate with his fellow citizens, the lord of the land has the right to banish him to a foreign province where he will not share any of the rights of a citizen, i.e. he has a right to deport him.

4. The lord indeed has the right to exile him completely (*ius exilii*), to send him out into the world at large, i.e. to foreign countries (for which the old German word was 'Elend', the same word as that denoting misery). And since the lord of the land thereby withdraws his protection from him, it is tantamount to making him an outlaw within his own frontiers.

The three powers within the state, which emerge from the general concept of a commonwealth (*res publica latins dicta*), are simply so many relationships within the united will of the people (which is derived *a priori* from reason itself), and are likewise a pure idea of the supreme head of state, which also has objective and practical reality. But this head of state (the sovereign) is only an abstraction (representing the entire people) so long as there is no physical person to represent the highest power in the state and to make this idea influence the will of the people. Now the relationship between the head of state and the people can be envisaged in three different ways. Either one person within the state will rule over everyone, or several persons of equal rank will unite to rule over all others, or all will rule collectively over each (hence also over themselves). That is, the form of the state will either be autocratic, aristocratic, or democratic. (The expression 'monarchic' instead of 'autocratic' does not properly cover the concept here intended, for a monarch is one who has the highest power, while an autocrat or absolute ruler is one who has all the power; the latter is the sovereign, whereas the former merely represents him.)

It can readily be seen that the autocratic form is the simplest form of state, for it involves only a relationship between one individual (the king) and the people, and the legislator is a single person. An aristocratic state is composite, involving two kinds of relationship: that of the aristocrats (as legislators) towards one another, thereby constituting the sovereign, and then the relationship between this sovereign and the people. But the democratic form is the most composite of all. For it must first unite the will of all

in order to make a people; it must then unite the will of the citizens to make a commonwealth; and finally, it must unite their will to place at the head of the commonwealth a sovereign, who is simply this united will itself. As far as the actual manipulation of right within the state is concerned, the simplest form is of course also the best, but in relation to right itself, it is the most dangerous from the point of view of the people, for it is extremely conducive to despotism. Simplification is certainly the most rational maxim for the mechanical process of uniting the people by means of coercive laws, so long as all the people are passive and obedient to a single individual above them – but this would mean that no subjects could be citizens. Perhaps, however, the people are supposed to content themselves with the consolation that monarchy (in this case, autocracy) is the best political constitution if the monarch is a good one (i.e. if he has not only the will but also the necessary insight to be one). But this saying is a tautology, for it merely means that the best constitution is that by which the administrator of the state is made into the best ruler, i.e. that the best constitution is that which is best.

It is futile to hunt for historical documentation of the origins of this mechanism. That is, we cannot reach back to the time at which civil society first emerged (for savages do not set up any formal instruments in submitting themselves to the law, and it can easily be gathered from the nature of uncivilised man that they must have initially used violent means). But it would be quite culpable to undertake such researches with a view to forcibly changing the constitution at present in existence. For this sort of change could only be effected by the people by means of revolutionary conspiracy, and not by the legislature. But revolution under an already existing constitution means the destruction of all relationships governed by civil right, and thus of right altogether. And this is not a change but a dissolution of the civil constitution; and the transition to a better one would not then be a metamorphosis but a palingenesis, for it would require a new social contract on which the previous one (which is now dissolved) could have no influence. But it must still be possible for the sovereign to alter the existing constitution if it cannot readily be reconciled with the idea of the original contract, and yet in so doing to leave untouched that basic form which is essential if the people are to constitute a state. This alteration cannot be such that the state abandons one of the three fundamental forms and reconstitutes itself in accordance with one of the two remaining ones, as would happen, for example, if the aristocrats agreed to submit to an autocracy or to disband and create a democracy or vice versa. This would imply that it depended on the sovereign's own free choice and discretion to subject the people to whatever constitution he wished. For even if the sovereign decided to go over to democracy, he might still be doing the people an injustice; for they might themselves detest this form of constitution and find one of the two others more congenial.

The three forms of state are merely the letter (*littera*) of the original legislation within civil society, and they may therefore remain as part of the mechanism of the constitution for as long as they are considered necessary by old and long established custom (i.e. purely subjectively). But the spirit of the original contract (*anima pacti originarii*) contains an obligation on the part of the constitutive power to make the mode of government conform to the original idea, and thus to alter the mode of government by a gradual and continuous process (if it cannot be done at once) until it accords in its effects with the only rightful constitution, that of a pure republic. The old empirical (and statutory) forms, which serve only to effect the subjection of the people, should accordingly resolve themselves into the original (rational) form which alone makes freedom the principle and indeed the condition of all coercion. For coercion is required for a just political constitution in the truest sense, and this will eventually be realised in letter as well as in spirit.

This, then, is the only lasting political constitution in which the law is the sole ruler, independent of all particular persons; it is the ultimate end of all public right, and the only condition in which each individual can be given his due peremptorily. But as long as the various forms of the state are supposed to be represented literally by an equivalent number of distinct moral persons invested with supreme power, only a provisional internal right instead of an absolute condition of right can obtain within civil society.

Any true republic, however, is and cannot be anything other than a representative system of the people whereby the people's rights are looked after on their behalf by deputies who represent the united will of the citizens. But as soon as a head of state in person (whether this head of state be a king, a nobility, or the whole populace as a democratic association) also allows himself to be represented, the united people then does not merely represent the sovereign, but actually is the sovereign itself. For the supreme power originally rests with the people, and all the rights of individuals as mere subjects (and particularly as state officials) must be derived from this supreme power. Once it has been established, the republic will therefore no longer need to release the reins of government from its own hands and to give them back to those who previously held them, for they might then destroy all the new institutions again by their absolute and arbitrary will.

It was thus a great error of judgement on the part of a certain powerful ruler in our own times when he tried to relieve himself of the embarrassment of large national debts by leaving it to the people to assume and distribute this burden at their own discretion. It was thus natural that the people should acquire legislative powers not only in matters of taxation but also in matters of government, for they had to ensure that the government would incur no new debts by extravagance or by war. The monarch's ruling authority thus disappeared completely; for it was not merely suspended but actually

passed over to the people, to whose legislative will the property of every subject was now submitted. Nor is it possible to say that we must postulate a tacit yet contractual promise on the part of the national assembly not to take over the sovereignty, but only to administer the sovereign's business and to hand back the reins of government to the monarch after the business had been completed. For a contract of this kind would in itself be null and void. The right of the supreme legislation in the commonwealth is not alienable; on the contrary, it is the most personal right of all. Whoever possesses it can only exercise control over the people through the people's collective will, but not over the collective will itself, the original foundation of all public contracts. A contract which obliged the people to give back their authority would not be in accord with the people's function as a legislative power. And this, according to the proposition that no man can serve two masters, is self-contradictory.

The human beings who make up a nation can, as natives of the country, be represented as analogous to descendants from a common ancestry (*congeniti*) even if this is not in fact the case. But in an intellectual sense or for the purposes of right, they can be thought of as the offspring of a common mother (the republic), constituting, as it were, a single family (*gens, natio*) whose members (the citizens) are all equal by birth. These citizens will not intermix with any neighbouring people who live in a state of nature, but will consider them ignoble, even though such savages for their own part may regard themselves as superior on account of the lawless freedom they have chosen. The latter likewise constitute national groups, but they do not constitute states.

What we are now about to consider under the name of international right or the right of nations is the right of states in relation to one another (although it is not strictly correct to speak, as we usually do, of the right of nations; it should rather be called the right of states – *ius publicum civitatum*). The situation in question is that in which one state, as a moral person, is considered as existing in a state of nature in relation to another state, hence in a condition of constant war. International right is thus concerned partly with the right to make war, partly with the right of war itself, and partly with questions of right after a war, i.e. with the right of states to compel each other to abandon their warlike condition and to create a constitution which will establish an enduring peace. A state of nature among individuals or families (in their relations with one another) is different from a state of nature among entire nations, because international right involves not only the relationship between one state and another within a larger whole, but also the relationship between individual persons in one state and individuals in the other or between such individuals and the other state as a whole. But this difference between international right and the right of individuals in

a mere state of nature is easily deducible from the latter concept without need of any further definitions.

The elements of international right are as follows. Firstly, in their external relationships with one another, states, like lawless savages, exist in a condition devoid of right. Secondly, this condition is one of war (the right of the stronger), even if there is no actual war or continuous active fighting (i.e. hostilities). But even although neither of two states is done any injustice by the other in this condition, it is nevertheless in the highest degree unjust in itself, for it implies that neither wishes to experience anything better. Adjacent states are thus bound to abandon such a condition. Thirdly, it is necessary to establish a federation of peoples in accordance with the idea of an original social contract, so that states will protect one another against external aggression while refraining from interference in one another's internal disagreements. And fourthly, this association must not embody a sovereign power as in a civil constitution, but only a partnership or confederation. It must therefore be an alliance which can be terminated at any time, so that it has to be renewed periodically. This right is derived in subsidium from another original right, that of preventing oneself from lapsing into a state of actual war with one's partners in the confederation (*foedus Amphictyonum*).

If we consider the original right of free states in the state of nature to make war upon one another (for example, in order to bring about a condition closer to that governed by right), we must first ask what right the state has as against its own subjects to employ them in a war on other states, and to expend or hazard their possessions or even their lives in the process. Does it not then depend upon their own judgement whether they wish to go to war or not? May they simply be sent thither at the sovereign's supreme command?

This right might seem an obvious consequence of the right to do what one wishes with one's own property. Whatever someone has himself substantially made is his own undisputed property. These are the premises from which a mere jurist would deduce the right in question.

A country may yield various natural products, some of which, because of their very abundance, must also be regarded as artefacts of the state. For the country would not yield them in such quantities if there were no state or proper government in control and if the inhabitants still lived in a state of nature. For example, domestic poultry (the most useful kind of fowl), sheep, pigs, cattle, etc. would be completely unknown in the country I live in (or would only rarely be encountered) if there were no government to guarantee the inhabitants their acquisitions and possessions. The same applies to the number of human beings, for there can only be few of them in a state of nature, as in the wilds of America, even if we credit them with great industry (which they do not have). The inhabitants would be very sparsely scattered, for no-one could spread very far afield with his household in a land constantly

threatened with devastation by other human beings, wild animals, or beasts of prey. There would thus be no adequate support for so large a population as now inhabits a country.

Now one can say that vegetables (e.g. potatoes) and domestic animals, in quantity at least, are made by human beings, and that they may therefore be used, expended or consumed (i.e. killed) at will. One might therefore appear justified in saying that the supreme power in the state, the sovereign, has the right to lead his subjects to war as if on a hunt, or into battle as if on an excursion, simply because they are for the most part produced by the sovereign himself.

But while this legal argument (of which monarchs are no doubt dimly aware) is certainly valid in the case of animals, which can be the property of human beings, it is absolutely impermissible to apply it to human beings themselves, particularly in their capacity as citizens. For a citizen must always be regarded as a co-legislative member of the state (i.e. not just as a means, but also as an end in himself), and he must therefore give his free consent through his representatives not only to the waging of war in general, but also to every particular declaration of war. Only under this limiting condition may the state put him to service in dangerous enterprises.

We shall therefore have to derive the right under discussion from the duty of the sovereign towards the people, not vice versa. The people must be seen to have given their consent to military action, and although they remain passive in this capacity (for they allow themselves to be directed), they are still acting spontaneously and they represent the sovereign himself.

In the state of nature, the right to make war (i.e. to enter into hostilities) is the permitted means by which one state prosecutes its rights against another. Thus if a state believes that it has been injured by another state, it is entitled to resort to violence, for it cannot in the state of nature gain satisfaction through legal proceedings, the only means of settling disputes in a state governed by right. Apart from an actively inflicted injury (the first aggression, as distinct from the first hostilities), a state may be subjected to threats. Such threats may arise either if another state is the first to make military preparations, on which the right of anticipatory attack (*ius praeventionis*) is based, or simply if there is an alarming increase of power (*potentia tremenda*) in another state which has acquired new territories. This is an injury to the less powerful state by the mere fact that the other state, even without offering any active offence, is more powerful; and any attack upon it is legitimate in the state of nature. On this is based the right to maintain a balance of power among all states which have active contact with one another. Those active injuries which give a state the right to make war on another state include any unilateral attempt to gain satisfaction for an affront which the people of one state have offered to the people of the other. Such an act of retribution (*retorsio*) without any

attempt to obtain compensation from the other state by peaceful means is similar in form to starting war without prior declaration. For if one wishes to find any rights in wartime, one must assume the existence of something analogous to a contract; in other words, one must assume that the other party has accepted the declaration of war and that both parties therefore wish to prosecute their rights in this manner.

The most problematic task in international right is that of determining rights in wartime. For it is very difficult to form any conception at all of such rights and to imagine any law whatsoever in this lawless state without involving oneself in contradictions (*inter artna silent leges*). The only possible solution would be to conduct the war in accordance with principles which would still leave the states with the possibility of abandoning the state of nature in their external relations and of entering a state of right.

No war between independent states can be a punitive one (*bellum punitivum*). For a punishment can only occur in a relationship between a superior (*imperantis*) and a subject (*subditum*), and this is not the relationship which exists between states. Nor can there be a war of extermination (*bellum internecinum*) or a war of subjugation (*bellum subiugatorium*); for these would involve the moral annihilation of a state, and its people would either merge with those of the victorious state or be reduced to bondage. Not that this expedient, to which a state might resort in order to obtain peace, would in itself contradict the rights of a state. But the fact remains that the only concept of antagonism which the idea of international right includes is that of an antagonism regulated by principles of external freedom. This requires that violence be used only to preserve one's existing property, but not as a method of further acquisition; for the latter procedure would create a threat to one state by augmenting the power of another.

The attacked state is allowed to use any means of defence except those whose use would render its subjects unfit to be citizens. For if it did not observe this condition, it would render itself unfit in the eyes of international right to function as a person in relation to other states and to share equal rights with them. It must accordingly be prohibited for a state to use its own subjects as spies, and to use them, or indeed foreigners, as poisoners or assassins (to which class the so-called sharpshooters who wait in ambush on individual victims also belong), or even just to spread false reports. In short, a state must not use such treacherous methods as would destroy that confidence which is required for the future establishment of a lasting peace.

It is permissible in war to impose levies and contributions on the conquered enemy, but not to plunder the people, i.e. to force individual persons to part with their belongings (for this would be robbery, since it was not the conquered people who waged the war, but the state of which they were subjects which waged it through them). Bills of receipt should be

issued for any contributions that are exacted, so that the burden imposed on the country or province can be distributed proportionately when peace is concluded.

The right which applies after a war, i.e. with regard to the peace treaty at the time of its conclusion and also to its later consequences, consists of the following elements. The victor sets out the conditions, and these are drawn up in a treaty on which agreement is reached with the defeated party in order that peace may be concluded. A treaty of this kind is not determined by any pretended right which the victor possesses over his opponent because of an alleged injury the latter has done him; the victor should not concern himself with such questions, but should rely only on his own power for support. Thus he cannot claim compensation for the costs of the war, for he would then have to pronounce his opponent unjust in waging it. And even if this argument should occur to him, he could not make use of it, or else he would have to maintain that the war was a punitive one, which would in turn mean that he had committed an offence in waging it himself. A peace treaty should also provide for the exchange of prisoners without ransom, whether the numbers on both sides are equal or not.

The vanquished state and its subjects cannot forfeit their civil freedom through the conquest of the country. Consequently, the former cannot be degraded to the rank of a colony or the latter to the rank of bondsmen. Otherwise, the war would have been a punitive one, which is self-contradictory.

A colony or province is a nation which has its own constitution, legislation and territory, and all members of any other state are no more than foreigners on its soil, even if the state to which they belong has supreme executive power over the colonial nation. The state with executive power is called the mother state. The daughter state is ruled by it, although it governs itself through its own parliament, which in turn functions under the presidency of a viceroy (*civitas hybrida*). The relationship of Athens to various islands was of this kind, as is that of Great Britain towards Ireland at the present moment.

It is even less possible to infer the rightful existence of slavery from the military conquest of a people, for one would then have to assume that the war had been a punitive one. Least of all would this justify hereditary slavery, which is completely absurd, for the guilt of a person's crime cannot be inherited. It is implicit in the very concept of a peace treaty that it includes an amnesty.

The rights of peace are as follows: firstly, the right to remain at peace when nearby states are at war (i.e. the right of neutrality); secondly, the right to secure the continued maintenance of peace once it has been concluded (i.e. the right of guarantee); and thirdly, the right to form alliances or confederate leagues of several states for the purpose of communal defence

against any possible attacks from internal or external sources – although these must never become leagues for promoting aggression and internal expansion.

The rights of a state against an unjust enemy are unlimited in quantity or degree, although they do have limits in relation to quality. In other words, while the threatened state may not employ every means to assert its own rights, it may employ any intrinsically permissible means to whatever degree its own strength allows. But what can the expression ‘an unjust enemy’ mean in relation to the concepts of international right, which requires that every state should act as judge of its own cause just as it would do in a state of nature? It must mean someone whose publicly expressed will, whether expressed in word or in deed, displays a maxim which, would make peace among nations impossible and would lead to a perpetual state of nature if it were made into a general rule. Under this heading would come violations of public contracts, which can be assumed to affect the interests of all nations. For they are a threat to their freedom, and a challenge to them to unite against such misconduct and to deprive, the culprit of the power to act in a similar way again. But this does not entitle them to divide up the offending state among themselves and to make it disappear, as it were, from the face of the earth. For this would be an injustice against the people, who cannot lose their original right to unite into a commonwealth. They can only be made to accept a new constitution of a nature that is unlikely to encourage their warlike inclinations.

Besides, the expression ‘an unjust enemy’ is a pleonasm if applied to any situation in a state of nature, for this state is itself one of injustice. A just enemy would be one whom I could not resist without injustice. But if this were so, he would not be my enemy in any case.

Since the state of nature among nations (as among individual human beings) is a state which one ought to abandon in order to enter a state governed by law, all international rights, as well as all the external property of states such as can be acquired or preserved by war, are purely provisional until the state of nature has been abandoned. Only within a universal union of states (analogous to the union through which a nation becomes a state) can such rights and property acquire peremptory validity and a true state of peace be attained. But if an international state of this kind extends over too wide an area of land, it will eventually become impossible to govern it and thence to protect each of its members, and the multitude of corporations this would require must again lead to a state of war. It naturally follows that perpetual peace, the ultimate end of all international right, is an idea incapable of realisation. But the political principles which have this aim, i.e. those principles which encourage the formation of international alliances designed to approach the idea itself by a continual process, are not

impracticable. For this is a project based upon duty, hence also upon the rights of man and of states, and it can indeed be put into execution.

Such a union of several states designed to preserve peace may be called a permanent congress of states, and all neighbouring states are free to join it. A congress of this very kind (at least as far as the formalities of international right in relation to the preservation of peace are concerned) found expression in the assembly of the States General at The Hague in the first half of this century. To this assembly, the ministers of most European courts and even of the smallest republics brought their complaints about any aggression suffered by one of their number at the hands of another. They thus thought of all Europe as a single federated state, which they accepted as an arbiter in all their public disputes. Since then, however, international right has disappeared from cabinets, surviving only in books, or it has been consigned to the obscurity of the archives as a form of empty deduction after violent measures have already been employed.

In the present context, however, a congress merely signifies a voluntary gathering of various states which can be dissolved at any time, not an association which, like that of the American states, is based on a political constitution and is therefore indissoluble. For this is the only means of realising the idea of public international right as it ought to be instituted, thereby enabling the nations to settle their disputes in a civilised manner by legal proceedings, not in a barbaric manner (like that of the savages) by acts of war.

The rational idea, as discussed above, of a peaceful (if not exactly amicable) international community of all those of the earth's peoples who can enter into active relations with one another, is not a philanthropic principle of ethics, but a principle of right. Through the spherical shape of the planet they inhabit (*globus terraqueus*), nature has confined them all within an area of definite limits. Accordingly, the only conceivable way in which anyone can possess habitable land on earth is by possessing a part within a determinate whole in which everyone has an original right to share. Thus all nations are originally members of a community of the land. But this is not a legal community of possession (*communio*) and utilisation of the land, nor a community of ownership. It is a community of reciprocal action (*commercium*), which is physically possible, and each member of it accordingly has constant relations with all the others. Each may offer to have commerce with the rest, and they all have a right to make such overtures without being treated by foreigners as enemies. This right, in so far as it affords the prospect that all nations may unite for the purpose of creating certain universal laws to regulate the intercourse they may have with one another, may be termed cosmopolitan (*ius cosmopolitanicum*).

The oceans may appear to cut nations off from the community of their fellows. But with the art of navigation, they constitute the greatest

natural incentive to international commerce, and the greater the number of neighbouring coastlines there are (as in the Mediterranean), the livelier this commerce will be. Yet these visits to foreign shores, and even more so, attempts to settle on them with a view to linking them with the motherland, can also occasion evil and violence in one part of the globe with ensuing repercussions which are felt everywhere else. But although such abuses are possible, they do not deprive the world's citizens of the right to attempt to enter into a community with everyone else and to visit all regions of the earth with this intention. This does not, however, amount to a right to settle on another nation's territory (*ius incolatus*), for the latter would require a special contract.

But one might ask whether a nation may establish a settlement alongside another nation (*accolatus*) in newly discovered regions, or whether it may take possession of land in the vicinity of a nation which has already settled in the same area, even without the latter's consent. The answer is that the right to do so is incontestable, so long as such settlements are established sufficiently far away from the territory of the original nation for neither party to interfere with the other in their use of the land. But if the nations involved are pastoral or hunting peoples (like the Hottentots, the Tun-guses, and most native American nations) who rely upon large tracts of wasteland for their sustenance, settlements should not be established by violence, but only by treaty; and even then, there must be no attempt to exploit the ignorance of the natives in persuading them to give up their territories. Nevertheless, there are plausible enough arguments for the use of violence on the grounds that it is in the best interests of the world as a whole. For on the one hand, it may bring culture to uncivilised peoples (this is the excuse with which even Biisching tries to extenuate the bloodshed which accompanied the introduction of Christianity into Germany); and on the other, it may help us to purge our country of depraved characters, at the same time affording the hope that they or their offspring will become reformed in another continent (as in New Holland). But all these supposedly good intentions cannot wash away the stain of injustice from the means which are used to implement them. Yet one might object that the whole world would perhaps still be in a lawless condition if men had had any such compunction about using violence when they first created a law-governed state. But this can as little annul the above condition of right as can the plea of political revolutionaries that the people are entitled to reform constitutions by force if they have become corrupt, and to act completely unjustly for once and for all, in order to put justice on a more secure basis and ensure that it flourishes in the future.

Jean Jacques Rousseau

THE SOCIAL CONTRACT

Source: "Constitution Society": <http://www.constitution.org/jjr/socon.htm>

MAN is born free; and everywhere he is in chains. One thinks himself the master of others, and still remains a greater slave than they. How did this change come about? I do not know. What can make it legitimate? That question I think I can answer.

If I took into account only force, and the effects derived from it, I should say: "As long as a people is compelled to obey, and obeys, it does well; as soon as it can shake off the yoke, and shakes it off, it does still better; for, regaining its liberty by the same right as took it away, either it is justified in resuming it, or there was no justification for those who took it away." But the social order is a sacred right which is the basis of all other rights. Nevertheless, this right does not come from nature, and must therefore be founded on conventions. Before coming to that, I have to prove what I have just asserted. [...]

To say that a man gives himself gratuitously, is to say what is absurd and inconceivable; such an act is null and illegitimate, from the mere fact that he who does it is out of his mind. To say the same of a whole people is to suppose a people of madmen; and madness creates no right.

Even if each man could alienate himself, he could not alienate his children: they are born men and free; their liberty belongs to them, and no one but they has the right to dispose of it. Before they come to years of discretion, the father can, in their name, lay down conditions for their preservation and well-being, but he cannot give them irrevocably and without conditions: such a gift is contrary to the ends of nature, and exceeds the rights of paternity. It would therefore be necessary, in order to legitimise an arbitrary government, that in every generation the people should be in a position to accept or reject it; but, were this so, the government would be no longer arbitrary.

To renounce liberty is to renounce being a man, to surrender the rights of humanity and even its duties. For him who renounces everything no indemnity is possible. Such a renunciation is incompatible with man's nature; to remove all liberty from his will is to remove all morality from his acts. Finally, it is an empty and contradictory convention that sets up, on the one side, absolute authority, and, on the other, unlimited obedience. Is it not clear that we can be under no obligation to a person from whom we have the right to exact everything? Does not this condition alone, in the absence of

equivalence or exchange, in itself involve the nullity of the act? For what right can my slave have against me, when all that he has belongs to me, and, his right being mine, this right of mine against myself is a phrase devoid of meaning?

Grotius and the rest find in war another origin for the so-called right of slavery. The victor having, as they hold, the right of killing the vanquished, the latter can buy back his life at the price of his liberty; and this convention is the more legitimate because it is to the advantage of both parties.

But it is clear that this supposed right to kill the conquered is by no means deducible from the state of war. Men, from the mere fact that, while they are living in their primitive independence, they have no mutual relations stable enough to constitute either the state of peace or the state of war, cannot be naturally enemies. War is constituted by a relation between things, and not between persons; and, as the state of war cannot arise out of simple personal relations, but only out of real relations, private war, or war of man with man, can exist neither in the state of nature, where there is no constant property, nor in the social state, where everything is under the authority of the laws.

Individual combats, duels and encounters, are acts which cannot constitute a state; while the private wars, authorised by the Establishments of Louis IX, King of France, and suspended by the Peace of God, are abuses of feudalism, in itself an absurd system if ever there was one, and contrary to the principles of natural right and to all good polity.

War then is a relation, not between man and man, but between State and State, and individuals are enemies only accidentally, not as men, nor even as citizens, but as soldiers; not as members of their country, but as its defenders. Finally, each State can have for enemies only other States, and not men; for between things disparate in nature there can be no real relation.

Furthermore, this principle is in conformity with the established rules of all times and the constant practice of all civilised peoples. Declarations of war are intimations less to powers than to their subjects. The foreigner, whether king, individual, or people, who robs, kills or detains the subjects, without declaring war on the prince, is not an enemy, but a brigand. Even in real war, a just prince, while laying hands, in the enemy's country, on all that belongs to the public, respects the lives and goods of individuals: he respects rights on which his own are founded. The object of the war being the destruction of the hostile State, the other side has a right to kill its defenders, while they are bearing arms; but as soon as they lay them down and surrender, they cease to be enemies or instruments of the enemy, and become once more merely men, whose life no one has any right to take. Sometimes it is possible to kill the State without killing a single one of its members; and war gives no right which is not necessary to the gaining of its object. These principles are not those of Grotius: they are not based on the authority of poets, but derived from the nature of reality and based on reason.

The right of conquest has no foundation other than the right of the strongest. If war does not give the conqueror the right to massacre the conquered peoples, the right to enslave them cannot be based upon a right which does not exist. No one has a right to kill an enemy except when he cannot make him a slave, and the right to enslave him cannot therefore be derived from the right to kill him. It is accordingly an unfair exchange to make him buy at the price of his liberty his life, over which the victor holds no right. Is it not clear that there is a vicious circle in founding the right of life and death on the right of slavery, and the right of slavery on the right of life and death?

Even if we assume this terrible right to kill everybody, I maintain that a slave made in war, or a conquered people, is under no obligation to a master, except to obey him as far as he is compelled to do so. By taking an equivalent for his life, the victor has not done him a favour; instead of killing him without profit, he has killed him usefully. So far then is he from acquiring over him any authority in addition to that of force, that the state of war continues to subsist between them: their mutual relation is the effect of it, and the usage of the right of war does not imply a treaty of peace. A convention has indeed been made; but this convention, so far from destroying the state of war, presupposes its continuance.

So, from whatever aspect we regard the question, the right of slavery is null and void, not only as being illegitimate, but also because it is absurd and meaningless. The words slave and right contradict each other, and are mutually exclusive. It will always be equally foolish for a man to say to a man or to a people: "I make with you a convention wholly at your expense and wholly to my advantage; I shall keep it as long as I like, and you will keep it as long as I like." [...]

THE passage from the state of nature to the civil state produces a very remarkable change in man, by substituting justice for instinct in his conduct, and giving his actions the morality they had formerly lacked. Then only, when the voice of duty takes the place of physical impulses and right of appetite, does man, who so far had considered only himself, find that he is forced to act on different principles, and to consult his reason before listening to his inclinations. Although, in this state, he deprives himself of some advantages which he got from nature, he gains in return others so great, his faculties are so stimulated and developed, his ideas so extended, his feelings so ennobled, and his whole soul so uplifted, that, did not the abuses of this new condition often degrade him below that which he left, he would be bound to bless continually the happy moment which took him from it for ever, and, instead of a stupid and unimagined animal, made him an intelligent being and a man.

Let us draw up the whole account in terms easily commensurable. What man loses by the social contract is his natural liberty and an unlimited right

to everything he tries to get and succeeds in getting; what he gains is civil liberty and the proprietorship of all he possesses. If we are to avoid mistake in weighing one against the other, we must clearly distinguish natural liberty, which is bounded only by the strength of the individual, from civil liberty, which is limited by the general will; and possession, which is merely the effect of force or the right of the first occupier, from property, which can be founded only on a positive title.

We might, over and above all this, add, to what man acquires in the civil state, moral liberty, which alone makes him truly master of himself; for the mere impulse of appetite is slavery, while obedience to a law which we prescribe to ourselves is liberty. But I have already said too much on this head, and the philosophical meaning of the word liberty does not now concern us. [...]

BY the social compact we have given the body politic existence and life; we have now by legislation to give it movement and will. For the original act by which the body is formed and united still in no respect determines what it ought to do for its preservation.

What is well and in conformity with order is so by the nature of things and independently of human conventions. All justice comes from God, who is its sole source; but if we knew how to receive so high an inspiration, we should need neither government nor laws. Doubtless, there is a universal justice emanating from reason alone; but this justice, to be admitted among us, must be mutual. Humanly speaking, in default of natural sanctions, the laws of justice are ineffective among men: they merely make for the good of the wicked and the undoing of the just, when the just man observes them towards everybody and nobody observes them towards him. Conventions and laws are therefore needed to join rights to duties and refer justice to its object. In the state of nature, where everything is common, I owe nothing to him whom I have promised nothing; I recognise as belonging to others only what is of no use to me. In the state of society all rights are fixed by law, and the case becomes different.

But what, after all, is a law? As long as we remain satisfied with attaching purely metaphysical ideas to the word, we shall go on arguing without arriving at an understanding; and when we have defined a law of nature, we shall be no nearer the definition of a law of the State. [...]

IN order to discover the rules of society best suited to nations, a superior intelligence beholding all the passions of men without experiencing any of them would be needed. This intelligence would have to be wholly unrelated to our nature, while knowing it through and through; its happiness would have to be independent of us, and yet ready to occupy itself with ours; and lastly, it would have, in the march of time, to look forward to a distant glory,

and, working in one century, to be able to enjoy in the next. It would take gods to give men laws. [...]

He who dares to undertake the making of a people's institutions ought to feel himself capable, so to speak, of changing human nature, of transforming each individual, who is by himself a complete and solitary whole, into part of a greater whole from which he in a manner receives his life and being; of altering man's constitution for the purpose of strengthening it; and of substituting a partial and moral existence for the physical and independent existence nature has conferred on us all. He must, in a word, take away from man his own resources and give him instead new ones alien to him, and incapable of being made use of without the help of other men. The more completely these natural resources are annihilated, the greater and the more lasting are those which he acquires, and the more stable and perfect the new institutions; so that if each citizen is nothing and can do nothing without the rest, and the resources acquired by the whole are equal or superior to the aggregate of the resources of all the individuals, it may be said that legislation is at the highest possible point of perfection.

The legislator occupies in every respect an extraordinary position in the State. If he should do so by reason of his genius, he does so no less by reason of his office, which is neither magistracy, nor Sovereignty. This office, which sets up the Republic, nowhere enters into its constitution; it is an individual and superior function, which has nothing in common with human empire; for if he who holds command over men ought not to have command over the laws, he who has command over the laws ought not any more to have it over men; or else his laws would be the ministers of his passions and would often merely serve to perpetuate his injustices: his private aims would inevitably mar the sanctity of his work. [...]

AS, before putting up a large building, the architect surveys and sounds the site to see if it will bear the weight, the wise legislator does not begin by laying down laws good in themselves, but by investigating the fitness of the people, for which they are destined, to receive them. Plato refused to legislate for the Arcadians and the Cyrenaeans, because he knew that both peoples were rich and could not put up with equality; and good laws and bad men were found together in Crete, because Minos had inflicted discipline on a people already burdened with vice. [...]

A thousand nations have achieved earthly greatness, that could never have endured good laws; even such as could have endured them could have done so only for a very brief period of their long history. Most peoples, like most men, are docile only in youth; as they grow old they become incorrigible. When once customs have become established and prejudices inveterate, it is dangerous and useless to attempt their reformation; the people, like the foolish and cowardly patients who rave at sight of the doctor,

can no longer bear that any one should lay hands on its faults to remedy them.

There are indeed times in the history of States when, just as some kinds of illness turn men's heads and make them forget the past, periods of violence and revolutions do to peoples what these crises do to individuals: horror of the past takes the place of forgetfulness, and the State, set on fire by civil wars, is born again, so to speak, from its ashes, and takes on anew, fresh from the jaws of death, the vigour of youth. Such were Sparta at the time of Lycurgus, Rome after the Tarquins, and, in modern times, Holland and Switzerland after the expulsion of the tyrants.

But such events are rare; they are exceptions, the cause of which is always to be found in the particular constitution of the State concerned. They cannot even happen twice to the same people, for it can make itself free as long as it remains barbarous, but not when the civic impulse has lost its vigour. Then disturbances may destroy it, but revolutions cannot mend it: it needs a master, and not a liberator. Free peoples, be mindful of this maxim: "Liberty may be gained, but can never be recovered." [...]

IF we ask in what precisely consists the greatest good of all, which should be the end of every system of legislation, we shall find it reduce itself to two main objects, liberty and equality – liberty, because all particular dependence means so much force taken from the body of the State and equality, because liberty cannot exist without it.

I have already defined civil liberty; by equality, we should understand, not that the degrees of power and riches are to be absolutely identical for everybody; but that power shall never be great enough for violence, and shall always be exercised by virtue of rank and law; and that, in respect of riches, no citizen shall ever be wealthy enough to buy another, and none poor enough to be forced to sell himself: which implies, on the part of the great, moderation in goods and position, and, on the side of the common sort, moderation in avarice and covetousness.

Such equality, we are told, is an unpractical ideal that cannot actually exist. But if its abuse is inevitable, does it follow that we should not at least make regulations concerning it? It is precisely because the force of circumstances tends continually to destroy equality that the force of legislation should always tend to its maintenance.

But these general objects of every good legislative system need modifying in every country in accordance with the local situation and the temper of the inhabitants; and these circumstances should determine, in each case, the particular system of institutions which is best, not perhaps in itself, but for the State for which it is destined. If, for instance, the soil is barren and unproductive, or the land too crowded for its inhabitants, the people should turn to industry and the crafts, and exchange what they produce for the

commodities they lack. If, on the other hand, a people dwells in rich plains and fertile slopes, or, in a good land, lacks inhabitants, it should give all its attention to agriculture, which causes men to multiply, and should drive out the crafts, which would only result in depopulation, by grouping in a few localities the few inhabitants there are. If a nation dwells on an extensive and convenient coast-line, let it cover the sea with ships and foster commerce and navigation. It will have a life that will be short and glorious. If, on its coasts, the sea washes nothing but almost inaccessible rocks, let it remain barbarous and ichthyophagous: it will have a quieter, perhaps a better, and certainly a happier life. In a word, besides the principles that are common to all, every nation has in itself something that gives them a particular application, and makes its legislation peculiarly its own. Thus, among the Jews long ago and more recently among the Arabs, the chief object was religion, among the Athenians letters, at Carthage and Tyre commerce, at Rhodes shipping, at Sparta war, at Rome virtue. The author of *The Spirit of the Laws* has shown with many examples by what art the legislator directs the constitution towards each of these objects. What makes the constitution of a State really solid and lasting is the due observance of what is proper, so that the natural relations are always in agreement with the laws on every point, and law only serves, so to speak, to assure, accompany and rectify them. But if the legislator mistakes his object and adopts a principle other than circumstances naturally direct; if his principle makes for servitude while they make for liberty, or if it makes for riches, while they make for populousness, or if it makes for peace, while they make for conquest – the laws will insensibly lose their influence, the constitution will alter, and the State will have no rest from trouble till it is either destroyed or changed, and nature has resumed her invincible sway. [...]

IF the whole is to be set in order, and the commonwealth put into the best possible shape, there are various relations to be considered. First, there is the action of the complete body upon itself, the relation of the whole to the whole, of the Sovereign to the State; and this relation, as we shall see, is made up of the relations of the intermediate terms.

The laws which regulate this relation bear the name of political laws, and are also called fundamental laws, not without reason if they are wise. For, if there is, in each State, only one good system, the people that is in possession of it should hold fast to this; but if the established order is bad, why should laws that prevent men from being good be regarded as fundamental? Besides, in any case, a people is always in a position to change its laws, however good; for, if it choose to do itself harm, who can have a right to stop it?

The second relation is that of the members one to another, or to the body as a whole; and this relation should be in the first respect as unimportant, and in the second as important, as possible. Each citizen would then be

perfectly independent of all the rest, and at the same time very dependent on the city; which is brought about always by the same means, as the strength of the State can alone secure the liberty of its members. From this second relation arise civil laws.

We may consider also a third kind of relation between the individual and the law, a relation of disobedience to its penalty. This gives rise to the setting up of criminal laws, which, at bottom, are less a particular class of law than the sanction behind all the rest.

Along with these three kinds of law goes a fourth, most important of all, which is not graven on tablets of marble or brass, but on the hearts of the citizens. This forms the real constitution of the State, takes on every day new powers, when other laws decay or die out, restores them or takes their place, keeps a people in the ways in which it was meant to go, and insensibly replaces authority by the force of habit. I am speaking of morality, of custom, above all of public opinion; a power unknown to political thinkers, on which none the less success in everything else depends. With this the great legislator concerns himself in secret, though he seems to confine himself to particular regulations; for these are only the arc of the arch, while manners and morals, slower to arise, form in the end its immovable keystone. [...]

Edmund Burke

REFLECTIONS ON THE REVOLUTION IN FRANCE

Source: "Constitution Society":
http://www.constitution.org/eb/rev_fran.htm

Far am I from denying in theory, full as far is my heart from withholding in practice (if I were of power to give or to withhold) the real rights of men. In denying their false claims of right, I do not mean to injure those which are real, and are such as their pretended rights would totally destroy. If civil society be made for the advantage of man, all the advantages for which it is made become his right. It is an institution of beneficence; and law itself is only beneficence acting by a rule. Men have a right to live by that rule; they have a right to do justice, as between their fellows, whether their fellows are in public function or in ordinary occupation. They have a right to the fruits of their industry and to the means of making their industry fruitful. They have a right to the acquisitions of their parents, to the nourishment and improvement of their offspring, to instruction in life, and to consolation in death. Whatever each man can separately do, without trespassing upon others, he has a right to do for himself; and he has a right to a fair portion of all which society, with all its combinations of skill and force, can do in his favor. In this partnership all men have equal rights, but not to equal things. He that has but five shillings in the partnership has as good a right to it as he that has five hundred pounds has to his larger proportion. But he has not a right to an equal dividend in the product of the joint stock; and as to the share of power, authority, and direction which each individual ought to have in the management of the state, that I must deny to be amongst the direct original rights of man in civil society; for I have in my contemplation the civil social man, and no other. It is a thing to be settled by convention.

If civil society be the offspring of convention, that convention must be its law. That convention must limit and modify all the descriptions of constitution which are formed under it. Every sort of legislative, judicial, or executory power are its creatures. They can have no being in any other state of things; and how can any man claim under the conventions of civil society rights which do not so much as suppose its existence – rights which are absolutely repugnant to it? One of the first motives to civil society, and which becomes one of its fundamental rules, is that no man should be judge in his own cause. By this each person has at once divested himself of the first fundamental right of uncovenanted man, that is, to judge for himself and

to assert his own cause. He abdicates all right to be his own governor. He inclusively, in a great measure, abandons the right of self-defense, the first law of nature. Men cannot enjoy the rights of an uncivil and of a civil state together. That he may obtain justice, he gives up his right of determining what it is in points the most essential to him. That he may secure some liberty, he makes a surrender in trust of the whole of it.

Government is not made in virtue of natural rights, which may and do exist in total independence of it, and exist in much greater clearness and in a much greater degree of abstract perfection; but their abstract perfection is their practical defect. By having a right to everything they want everything. Government is a contrivance of human wisdom to provide for human wants. Men have a right that these wants should be provided for by this wisdom. Among these wants is to be reckoned the want, out of civil society, of a sufficient restraint upon their passions. Society requires not only that the passions of individuals should be subjected, but that even in the mass and body, as well as in the individuals, the inclinations of men should frequently be thwarted, their will controlled, and their passions brought into subjection. This can only be done by a power out of themselves, and not, in the exercise of its function, subject to that will and to those passions which it is its office to bridle and subdue. In this sense the restraints on men, as well as their liberties, are to be reckoned among their rights. But as the liberties and the restrictions vary with times and circumstances and admit to infinite modifications, they cannot be settled upon any abstract rule; and nothing is so foolish as to discuss them upon that principle.

The moment you abate anything from the full rights of men, each to govern himself, and suffer any artificial, positive limitation upon those rights, from that moment the whole organization of government becomes a consideration of convenience. This it is which makes the constitution of a state and the due distribution of its powers a matter of the most delicate and complicated skill. It requires a deep knowledge of human nature and human necessities, and of the things which facilitate or obstruct the various ends which are to be pursued by the mechanism of civil institutions. The state is to have recruits to its strength, and remedies to its distempers. What is the use of discussing a man's abstract right to food or medicine? The question is upon the method of procuring and administering them. In that deliberation I shall always advise to call in the aid of the farmer and the physician rather than the professor of metaphysics.

The science of constructing a commonwealth, or renovating it, or reforming it, is, like every other experimental science, not to be taught *a priori*. Nor is it a short experience that can instruct us in that practical science, because the real effects of moral causes are not always immediate; but that which in the first instance is prejudicial may be excellent in its remoter

operation, and its excellence may arise even from the ill effects it produces in the beginning. The reverse also happens: and very plausible schemes, with very pleasing commencements, have often shameful and lamentable conclusions. In states there are often some obscure and almost latent causes, things which appear at first view of little moment, on which a very great part of its prosperity or adversity may most essentially depend. The science of government being therefore so practical in itself and intended for such practical purposes – a matter which requires experience, and even more experience than any person can gain in his whole life, however sagacious and observing he may be – it is with infinite caution that any man ought to venture upon pulling down an edifice which has answered in any tolerable degree for ages the common purposes of society, or on building it up again without having models and patterns of approved utility before his eyes.

These metaphysic rights entering into common life, like rays of light which pierce into a dense medium, are by the laws of nature refracted from their straight line. Indeed, in the gross and complicated mass of human passions and concerns the primitive rights of men undergo such a variety of refractions and reflections that it becomes absurd to talk of them as if they continued in the simplicity of their original direction. The nature of man is intricate; the objects of society are of the greatest possible complexity; and, therefore, no simple disposition or direction of power can be suitable either to man's nature or to the quality of his affairs. When I hear the simplicity of contrivance aimed at and boasted of in any new political constitutions, I am at no loss to decide that the artificers are grossly ignorant of their trade or totally negligent of their duty. The simple governments are fundamentally defective, to say no worse of them. If you were to contemplate society in but one point of view, all these simple modes of polity are infinitely captivating. In effect each would answer its single end much more perfectly than the more complex is able to attain all its complex purposes. But it is better that the whole should be imperfectly and anomalously answered than that, while some parts are provided for with great exactness, others might be totally neglected or perhaps materially injured by the over-care of a favorite member.

The pretended rights of these theorists are all extremes; and in proportion as they are metaphysically true, they are morally and politically false. The rights of men are in a sort of middle, incapable of definition, but not impossible to be discerned. The rights of men in governments are their advantages; and these are often in balances between differences of good, in compromises sometimes between good and evil, and sometimes between evil and evil. Political reason is a computing principle: adding, subtracting, multiplying, and dividing, morally and not metaphysically or mathematically, true moral denominations.

Olympia de Gouges

**DECLARATION OF THE RIGHTS OF WOMAN
AND OF THE [FEMALE] CITIZEN**

Source: "George Mason University":
<http://chnm.gmu.edu/revolution/d/293>

To be decreed by the National Assembly in its last sessions or by the next legislature.

Preamble

Mothers, daughters, sisters, female representatives of the nation ask to be constituted as a national assembly. Considering that ignorance, neglect, or contempt for the rights of woman are the sole causes of public misfortunes and governmental corruption, they have resolved to set forth in a solemn declaration the natural, inalienable, and sacred rights of woman: so that by being constantly present to all the members of the social body this declaration may always remind them of their rights and duties; so that by being liable at every moment to comparison with the aim of any and all political institutions the acts of women's and men's powers may be the more fully respected; and so that by being founded henceforward on simple and incontestable principles the demands of the citizenesses may always tend toward maintaining the constitution, good morals, and the general welfare.

In consequence, the sex that is superior in beauty as in courage, needed in maternal sufferings, recognizes and declares, in the presence and under the auspices of the Supreme Being, the following rights of woman and the citizeness.

1. Woman is born free and remains equal to man in rights. Social distinctions may be based only on common utility.

2. The purpose of all political association is the preservation of the natural and imprescriptible rights of woman and man. These rights are liberty, property, security, and especially resistance to oppression.

3. The principle of all sovereignty rests essentially in the nation, which is but the reuniting of woman and man. No body and no individual may exercise authority which does not emanate expressly from the nation.

4. Liberty and justice consist in restoring all that belongs to another; hence the exercise of the natural rights of woman has no other limits than those that the perpetual tyranny of man opposes to them; these limits must be reformed according to the laws of nature and reason.

5. The laws of nature and reason prohibit all actions which are injurious to society. No hindrance should be put in the way of anything not prohibited by these wise and divine laws, nor may anyone be forced to do what they do not require.

6. The law should be the expression of the general will. All citizenesses and citizens should take part, in person or by their representatives, in its formation. It must be the same for everyone. All citizenesses and citizens, being equal in its eyes, should be equally admissible to all public dignities, offices and employments, according to their ability, and with no other distinction than that of their virtues and talents.

7. No woman is exempted; she is indicted, arrested, and detained in the cases determined by the law. Women like men obey this rigorous law.

8. Only strictly and obviously necessary punishments should be established by the law, and no one may be punished except by virtue of a law established and promulgated before the time of the offense, and legally applied to women.

9. Any woman being declared guilty, all rigor is exercised by the law.

10. No one should be disturbed for his fundamental opinions; woman has the right to mount the scaffold, so she should have the right equally to mount the rostrum, provided that these manifestations do not trouble public order as established by law.

11. The free communication of thoughts and opinions is one of the most precious of the rights of woman, since this liberty assures the recognition of children by their fathers. Every citizeness may therefore say freely, I am the mother of your child; a barbarous prejudice [against unmarried women having children] should not force her to hide the truth, so long as responsibility is accepted for any abuse of this liberty in cases determined by the law [women are not allowed to lie about the paternity of their children].

12. The safeguard of the rights of woman and the citizeness requires public powers. These powers are instituted for the advantage of all and not for the private benefit of those to whom they are entrusted.

13. For maintenance of public authority and for expenses of administration, taxation of women and men is equal; she takes part in all forced labor service, in all painful tasks; she must therefore have the same proportion in the distribution of places, employments, offices, dignities, and in industry.

14. The citizenesses and citizens have the right, by themselves or through their representatives, to have demonstrated to them the necessity of public taxes. The citizenesses can only agree to them upon admission of an equal division, not only in wealth, but also in the public administration, and to determine the means of apportionment, assessment, and collection, and the duration of the taxes.

15. The mass of women, joining with men in paying taxes, have the right to hold accountable every public agent of the administration.

16. Any society in which the guarantee of rights is not assured or the separation of powers not settled has no constitution. The constitution is null and void if the majority of individuals composing the nation has not cooperated in its drafting.

17. Property belongs to both sexes whether united or separated; it is for each of them an inviolable and sacred right, and no one may be deprived of it as a true patrimony of nature, except when public necessity, certified by law, obviously requires it, and then on condition of a just compensation in advance.

Postscript

Women, wake up; the tocsin of reason sounds throughout the universe; recognize your rights. The powerful empire of nature is no longer surrounded by prejudice, fanaticism, superstition, and lies. The torch of truth has dispersed all the clouds of folly and usurpation. Enslaved man has multiplied his force and needs yours to break his chains. Having become free, he has become unjust toward his companion. Oh women! Women, when will you cease to be blind? What advantages have you gathered in the Revolution? A scorn more marked, a disdain more conspicuous. During the centuries of corruption you only reigned over the weakness of men. Your empire is destroyed; what is left to you then? Firm belief in the injustices of men. The reclaiming of your patrimony founded on the wise decrees of nature; why should you fear such a beautiful enterprise? . . . Whatever the barriers set up against you, it is in your power to overcome them; you only have to want it. Let us pass now to the appalling account of what you have been in society; and since national education is an issue at this moment, let us see if our wise legislators will think sanely about the education of women.

Jeremy Bentham

AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION

Source: Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, Clarendon Press, Oxford 1907.

The interest of the community is one of the most general expressions that can occur in the phraseology of morals: no wonder that the meaning of it is often lost. When it has a meaning, it is this. The community is a fictitious body, composed of the individual persons who are considered as constituting as it were its members. The interest of the community then is, what? – the sum of the interests of the several members who compose it.

It is in vain to talk of the interest of the community, without understanding what is the interest of the individual. A thing is said to promote the interest, or to be for the interest, of an individual, when it tends to add to the sum total of his pleasures: or, what comes to the same thing, to diminish the sum total of his pains.

An action then may be said to be conformable to the principle of utility, or, for shortness sake, to utility, (meaning with respect to the community at large) when the tendency it has to augment the happiness of the community is greater than any it has to diminish it.

A measure of government (which is but a particular kind of action, performed by a particular person or persons) may be said to be conformable to or dictated by the principle of utility, when in like manner the tendency which it has to augment the happiness of the community is greater than any which it has to diminish it.

When an action, or in particular a measure of government, is supposed by a man to be conformable to the principle of utility, it may be convenient, for the purposes of discourse, to imagine a kind of law or dictate, called a law or dictate of utility: and to speak of the action in question, as being conformable to such law or dictate.

A man may be said to be a partizan of the principle of utility, when the approbation or disapprobation he annexes to any action, or to any measure, is determined by and proportioned to the tendency which he conceives it to have to augment or to diminish the happiness of the community: or in other words, to its conformity or unconformity to the laws or dictates of utility.

Of an action that is conformable to the principle of utility one may always say either that it is one that ought to be done, or at least that it is not one that

ought not to be done. One may say also, that it is right it should be done; at least that it is not wrong it should be done: that it is a right action; at least that it is not a wrong action. When thus interpreted, the words ought, and right and wrong and others of that stamp, have a meaning: when otherwise, they have none.

[...]

Pleasures then, and the avoidance of pains, are the ends that the legislator has in view; it behoves him therefore to understand their value. Pleasures and pains are the instruments he has to work with: it behoves him therefore to understand their force, which is again, in other words, their value.

To a person considered by himself, the value of a pleasure or pain considered by itself, will be greater or less, according to the four following circumstances:

1. Its intensity.
2. Its duration.
3. Its certainty or uncertainty.
4. Its propinquity or remoteness.

These are the circumstances which are to be considered in estimating a pleasure or a pain considered each of them by itself. But when the value of any pleasure or pain is considered for the purpose of estimating the tendency of any act by which it is produced, there are two other circumstances to be taken into the account; these are,

5. Its fecundity, or the chance it has of being followed by sensations of the same kind: that is, pleasures, if it be a pleasure: pains, if it be a pain.

6. Its purity, or the chance it has of not being followed by sensations of the opposite kind: that is, pains, if it be a pleasure: pleasures, if it be a pain.

These two last, however, are in strictness scarcely to be deemed properties of the pleasure or the pain itself; they are not, therefore, in strictness to be taken into the account of the value of that pleasure or that pain. They are in strictness to be deemed properties only of the act, or other event, by which such pleasure or pain has been produced; and accordingly are only to be taken into the account of the tendency of such act or such event. [...]

To a number of persons, with reference to each of whom to the value of a pleasure or a pain is considered, it will be greater or less, according to seven circumstances: to wit, the six preceding ones; viz.

1. Its intensity.
2. Its duration.
3. Its certainty or uncertainty.
4. Its propinquity or remoteness.
5. Its fecundity.

6. Its purity.

And one other; to wit:

7. Its extent; that is, the number of persons to whom it extends; or (in other words) who are affected by it.

To take an exact account then of the general tendency of any act, by which the interests of a community are affected, proceed as follows. Begin with any one person of those whose interests seem most immediately to be affected by it: and take an account,

1. Of the value of each distinguishable pleasure which appears to be produced by it in the first instance.

2. Of the value of each pain which appears to be produced by it in the first instance.

3. Of the value of each pleasure which appears to be produced by it after the first. This constitutes the fecundity of the first pleasure and the impurity of the first pain.

4. Of the value of each pain which appears to be produced by it after the first. This constitutes the fecundity of the first pain, and the impurity of the first pleasure.

5. Sum up all the values of all the pleasures on the one side, and those of all the pains on the other. The balance, if it be on the side of pleasure, will give the good tendency of the act upon the whole, with respect to the interests of that individual person; if on the side of pain, the bad tendency of it upon the whole.

6. Take an account of the number of persons whose interests appear to be concerned; and repeat the above process with respect to each. Sum up the numbers expressive of the degrees of good tendency, which the act has, with respect to each individual, in regard to whom the tendency of it is good upon the whole: do this again with respect to each individual, in regard to whom the tendency of it is good upon the whole: do this again with respect to each individual, in regard to whom the tendency of it is bad upon the whole. Take the balance which if on the side of pleasure, will give the general good tendency of the act, with respect to the total number or community of individuals concerned; if on the side of pain, the general evil tendency, with respect to the same community.

It is not to be expected that this process should be strictly pursued previously to every moral judgment, or to every legislative or judicial operation. It may, however, be always kept in view: and as near as the process actually pursued on these occasions approaches to it, so near will such process approach to the character of an exact one.

The same process is alike applicable to pleasure and pain, in whatever shape they appear: and by whatever denomination they are distinguished:

to pleasure, whether it be called good (which is properly the cause or instrument of pleasure) or profit (which is distant pleasure, or the cause or instrument of distant pleasure), or convenience, or advantage, benefit, emolument, happiness, and so forth: to pain, whether it be called evil, (which corresponds to good) or mischief, or inconvenience, or disadvantage, or loss, or unhappiness, and so forth.

Nor is this a novel and unwarranted, any more than it is a useless theory. In all this there is nothing but what the practice of mankind, wheresoever they have a clear view of their own interest, is perfectly conformable to. An article of property, an estate in land, for instance, is valuable, on what account? On account of the pleasures of all kinds which it enables a man to produce, and what comes to the same thing the pains of all kinds which it enables him to avert. But the value of such an article of property is universally understood to rise or fall according to the length or shortness of the time which a man has in it: the certainty or uncertainty of its coming into possession: and the nearness or remoteness of the time at which, if at all, it is to come into possession. As to the intensity of the pleasures which a man may derive from it, this is never thought of, because it depends upon the use which each particular person may come to make of it; which cannot be estimated till the particular pleasures he may come to derive from it, or the particular pains he may come to exclude by means of it, are brought to view. For the same reason, neither does he think of the fecundity or purity of those pleasures.

Thus much for pleasure and pain, happiness and unhappiness, in general. We come now to consider the several particular kinds of pain and pleasure.

Benjamin Constant

THE LIBERTY OF ANCIENTS COMPARED WITH THAT OF MODERNS

Source: "University of Arkansas":

<http://www.uark.edu/depts/comminfo/cambridge/ancients.html>

Gentlemen,

I wish to submit for your attention a few distinctions, still rather new, between two kinds of liberty: these differences have thus far remained unnoticed, or at least insufficiently remarked. The first is the liberty the exercise of which was so dear to the ancient peoples; the second the one the enjoyment of which is especially precious to the modern nations. If I am right, this investigation will prove interesting from two different angles.

Firstly, the confusion of these two kinds of liberty has been amongst us, in the all too famous days of our revolution, the cause of many an evil. France was exhausted by useless experiments, the authors of which, irritated by their poor success, sought to force her to enjoy the good she did not want, and denied her the good which she did want. Secondly, called as we are by our happy revolution (I call it happy, despite its excesses, because I concentrate my attention on its results) to enjoy the benefits of representative government, it is curious and interesting to discover why this form of government, the only one in the shelter of which we could find some freedom and peace today, was totally unknown to the free nations of antiquity.

I know that there are writers who have claimed to distinguish traces of it among some ancient peoples, in the Lacedaemonian republic for example, or amongst our ancestors the Gauls; but they are mistaken. The Lacedaemonian government was a monastic aristocracy, and in no way a representative government. The power of the kings was limited, but it was limited by the ephors, and not by men invested with a mission similar to that which election confers today on the defenders of our liberties. The ephors, no doubt, though originally created by the kings, were elected by the people. But there were only five of them. Their authority was as much religious as political; they even shared in the administration of government, that is, in the executive power. Thus their prerogative, like that of almost all popular magistrates in the ancient republics, far from being simply a barrier against tyranny became sometimes itself an insufferable tyranny.

The regime of the Gauls, which quite resembled the one that a certain party would like to restore to us, was at the same time theocratic and warlike.

The priests enjoyed unlimited power. The military class or nobility had markedly insolent and oppressive privileges; the people had no rights and no safeguards.

In Rome the tribunes had, up to a point, a representative mission. They were the organs of those plebeians whom the oligarchy – which is the same in all ages – had submitted, in overthrowing the kings, to so harsh a slavery. The people, however, exercised a large part of the political rights directly. They met to vote on the laws and to judge the patricians against whom charges had been leveled: thus there were, in Rome, only feeble traces of a representative system.

This system is a discovery of the moderns, and you will see, Gentlemen, that the condition of the human race in antiquity did not allow for the introduction or establishment of an institution of this nature. The ancient peoples could neither feel the need for it, nor appreciate its advantages. Their social organization led them to desire an entirely different freedom from the one which this system grants to us. Tonight's lecture will be devoted to demonstrating this truth to you.

First ask yourselves, Gentlemen, what an Englishman, a Frenchman, and a citizen of the United States of America understand today by the word 'liberty'. For each of them it is the right to be subjected only to the laws, and to be neither arrested, detained, put to death or maltreated in any way by the arbitrary will of one or more individuals. It is the right of everyone to express their opinion, choose a profession and practice it, to dispose of property, and even to abuse it; to come and go without permission, and without having to account for their motives or undertakings. It is everyone's right to associate with other individuals, either to discuss their interests, or to profess the religion which they and their associates prefer, or even simply to occupy their days or hours in a way which is most compatible with their inclinations or whims. Finally it is everyone's right to exercise some influence on the administration of the government, either by electing all or particular officials, or through representations, petitions, demands to which the authorities are more or less compelled to pay heed. Now compare this liberty with that of the ancients.

The latter consisted in exercising collectively, but directly, several parts of the complete sovereignty; in deliberating, in the public square, over war and peace; in forming alliances with foreign governments; in voting laws, in pronouncing judgments; in examining the accounts, the acts, the stewardship of the magistrates; in calling them to appear in front of the assembled people, in accusing, condemning or absolving them. But if this was what the ancients called liberty, they admitted as compatible with this collective freedom the complete subjection of the individual to the authority of the community. You find among them almost none of the enjoyments

which we have just seen form part of the liberty of the moderns. All private actions were submitted to a severe surveillance. No importance was given to individual independence, neither in relation to opinions, nor to labor, nor, above all, to religion. The right to choose one's own religious affiliation, a right which we regard as one of the most precious, would have seemed to the ancients a crime and a sacrilege. In the domains which seem to us the most useful, the authority of the social body interposed itself and obstructed the will of individuals. Among the Spartans, Therpandrus could not add a string to his lyre without causing offense to the ephors. In the most domestic of relations the public authority again intervened. The young Lacedaemonian could not visit his new bride freely. In Rome, the censors cast a searching eye over family life. The laws regulated customs, and as customs touch on everything, there was hardly anything that the laws did not regulate.

Thus among the ancients the individual, almost always sovereign in public affairs, was a slave in all his private relations. As a citizen, he decided on peace and war; as a private individual, he was constrained, watched and repressed in all his movements; as a member of the collective body, he interrogated, dismissed, condemned, beggared, exiled, or sentenced to death his magistrates and superiors; as a subject of the collective body he could himself be deprived of his status, stripped of his privileges, banished, put to death, by the discretionary will of the whole to which he belonged. Among the moderns, on the contrary, the individual, independent in his private life, is, even in the freest of states, sovereign only in appearance. His sovereignty is restricted and almost always suspended. If, at fixed and rare intervals, in which he is again surrounded by precautions and obstacles, he exercises this sovereignty, it is always only to renounce it.

I must at this point, Gentlemen, pause for a moment to anticipate an objection which may be addressed to me. There was in antiquity a republic where the enslavement of individual existence to the collective body was not as complete as I have described it. This republic was the most famous of all: you will guess that I am speaking of Athens. I shall return to it later, and in subscribing to the truth of this fact, I shall also indicate its cause. We shall see why, of all the ancient states, Athens was the one which most resembles the modern ones. Everywhere else social jurisdiction was unlimited. The ancients, as Condorcet says, had no notion of individual rights. Men were, so to speak, merely machines, whose gears and cog-wheels were regulated by the law. The same subjection characterized the golden centuries of the Roman republic; the individual was in some way lost in the nation, the citizen in the city. We shall now trace this essential difference between the ancients and ourselves back to its source.

All ancient republics were restricted to a narrow territory. The most populous, the most powerful, the most substantial among them, was not equal

in extension to the smallest of modern states. As an inevitable consequence of their narrow territory, the spirit of these republics was bellicose; each people incessantly attacked their neighbors or was attacked by them. Thus driven by necessity against one another, they fought or threatened each other constantly. Those who had no ambition to be conquerors, could still not lay down their weapons, lest they should themselves be conquered. All had to buy their security, their independence, their whole existence at the price of war. This was the constant interest, the almost habitual occupation of the free states of antiquity. Finally, by an equally necessary result of this way of being, all these states had slaves. The mechanical professions and even, among some nations, the industrial ones, were committed to people in chains.

The modern world offers us a completely opposing view. The smallest states of our day are incomparably larger than Sparta or than Rome was over five centuries. Even the division of Europe into several states is, thanks to the progress of enlightenment, more apparent than real. While each people, in the past, formed an isolated family, the born enemy of other families, a mass of human beings now exists, that under different names and under different forms of social organization are essentially homogeneous in their nature. This mass is strong enough to have nothing to fear from barbarian hordes. It is sufficiently civilized to find war a burden. Its uniform tendency is towards peace.

This difference leads to another one. War precedes commerce. War and commerce are only two different means of achieving the same end, that of getting what one wants. Commerce is simply a tribute paid to the strength of the possessor by the aspirant to possession. It is an attempt to conquer, by mutual agreement, what one can no longer hope to obtain through violence. A man who was always the stronger would never conceive the idea of commerce. It is experience, by proving to him that war, that is the use of his strength against the strength of others, exposes him to a variety of obstacles and defeats, that leads him to resort to commerce, that is to a milder and surer means of engaging the interest of others to agree to what suits his own. War is all impulse, commerce, calculation. Hence it follows that an age must come in which commerce replaces war. We have reached this age.

I do not mean that amongst the ancients there were no trading peoples. But these peoples were to some degree an exception to the general rule. The limits of this lecture do not allow me to illustrate all the obstacles which then opposed the progress of commerce; you know them as well as I do; I shall only mention one of them.

Their ignorance of the compass meant that the sailors of antiquity always had to keep close to the coast. To pass through the pillars of Hercules, that is, the straits of Gibraltar, was considered the most daring of enterprises. The Phoenicians and the Carthaginians, the most able of navigators, did not risk

it until very late, and their example for long remained without imitators. In Athens, of which we shall talk soon, the interest on maritime enterprises was around 60%, while current interest was only 12%: that was how dangerous the idea of distant navigation seemed.

Moreover, if I could permit myself a digression which would unfortunately prove too long, I would show you, Gentlemen, through the details of the customs, habits, way of trading with others of the trading peoples of antiquity, that their commerce was itself impregnated by the spirit of the age, by the atmosphere of war and hostility which surrounded it. Commerce then was a lucky accident, today it is the normal state of things, the only aim, the universal tendency, the true life of nations. They want repose, and with repose comfort, and as a source of comfort, industry. Every day war becomes a more ineffective means of satisfying their wishes. Its hazards no longer offer to individuals benefits that match the results of peaceful work and regular exchanges.

Among the ancients, a successful war increased both private and public wealth in slaves, tributes and lands shared out. For the moderns, even a successful war costs infallibly more than it is worth. Finally, thanks to commerce, to religion, to the moral and intellectual progress of the human race, there are no longer slaves among the European nations. Free men must exercise all professions, provide for all the needs of society.

It is easy to see, Gentlemen, the inevitable outcome of these differences. Firstly, the size of a country causes a corresponding decrease of the political importance allotted to each individual. The most obscure republican of Sparta or Rome had power. The same is not true of the simple citizen of Britain or of the United States. His personal influence is an imperceptible part of the social will which impresses on the government its direction.

Secondly, the abolition of slavery has deprived the free population of all the leisure which resulted from the fact that slaves took care of most of the work. Without the slave population of Athens, 20,000 Athenians could never have spent every day at the public square in discussions. Thirdly, commerce does not, like war, leave in men's lives intervals of inactivity. The constant exercise of political rights, the daily discussion of the affairs of the state, disagreements, confabulations, the whole entourage and movement of factions, necessary agitations, the compulsory filling, if I may use the term, of the life of the peoples of antiquity, who, without this resource would have languished under the weight of painful inaction, would only cause trouble and fatigue to modern nations, where each individual, occupied with his speculations, his enterprises, the pleasures he obtains or hopes for, does not wish to be distracted from them other than momentarily, and as little as possible.

Finally, commerce inspires in men a vivid love of individual independence. Commerce supplies their needs, satisfies their desires, without the

intervention of the authorities. This intervention is almost always – and I do not know why I say almost – this intervention is indeed always a trouble and an embarrassment. Every time collective power wishes to meddle with private speculations, it harasses the speculators. Every time governments pretend to do our own business, they do it more incompetently and expensively than we would.

I said, Gentlemen, that I would return to Athens, whose example might be opposed to some of my assertions, but which will in fact confirm all of them. Athens, as I have already pointed out, was of all the Greek republics the most closely engaged in trade, thus it allowed to its citizens an infinitely greater individual liberty than Sparta or Rome. If I could enter into historical details, I would show you that, among the Athenians, commerce had removed several of the differences which distinguished the ancient from the modern peoples. The spirit of the Athenian merchants was similar to that of the merchants of our days. Xenophon tells us that during the Peloponnesian war, they moved their capitals from the continent of Attica to place them on the islands of the archipelago. Commerce had created among them the circulation of money. In Isocrates there are signs that bills of exchange were used. Observe how their customs resemble our own. In their relations with women, you will see, again I cite Xenophon, husbands, satisfied when peace and a decorous friendship reigned in their households, make allowances for the wife who is too vulnerable before the tyranny of nature, close their eyes to the irresistible power of passions, forgive the first weakness and forget the second. In their relations with strangers, we shall see them extending the rights of citizenship to whoever would, by moving among them with his family, establish some trade or industry.

Finally, we shall be struck by their excessive love of individual independence. In Sparta, says a philosopher, the citizens quicken their step when they are called by a magistrate; but an Athenian would be desperate if he were thought to be dependent on a magistrate. However, as several of the other circumstances which determined the character of ancient nations existed in Athens as well; as there was a slave population and the territory was very restricted; we find there too the traces of the liberty proper to the ancients. The people made the laws, examined the behavior of the magistrates, called Pericles to account for his conduct, sentenced to death the generals who had commanded the battle of the Arginusae. Similarly ostracism, that legal arbitrariness, extolled by all the legislators of the age; ostracism, which appears to us, and rightly so, a revolting iniquity, proves that the individual was much more subservient to the supremacy of the social body in Athens, than he is in any of the free states of Europe today.

It follows from what I have just indicated that we can no longer enjoy the liberty of the ancients, which consisted in an active and constant participation

in collective power. Our freedom must consist of peaceful enjoyment and private independence. The share which in antiquity everyone held in national sovereignty was by no means an abstract presumption as it is in our own day. The will of each individual had real influence: the exercise of this will was a vivid and repeated pleasure. Consequently the ancients were ready to make many a sacrifice to preserve their political rights and their share in the administration of the state. Everybody, feeling with pride all that his suffrage was worth, found in this awareness of his personal importance a great compensation.

This compensation no longer exists for us today. Lost in the multitude, the individual can almost never perceive the influence he exercises. Never does his will impress itself upon the whole; nothing confirms in his eyes his own cooperation. The exercise of political rights, therefore, offers us but a part of the pleasures that the ancients found in it, while at the same time the progress of civilization, the commercial tendency of the age, the communication amongst peoples, have infinitely multiplied and varied the means of personal happiness.

It follows that we must be far more attached than the ancients to our individual independence. For the ancients when they sacrificed that independence to their political rights, sacrificed less to obtain more; while in making the same sacrifice! we would give more to obtain less. The aim of the ancients was the sharing of social power among the citizens of the same fatherland: this is what they called liberty. The aim of the moderns is the enjoyment of security in private pleasures; and they call liberty the guarantees accorded by institutions to these pleasures .

I said at the beginning that, through their failure to perceive these differences, otherwise well-intentioned men caused infinite evils during our long and stormy revolution. God forbid that I should reproach them too harshly. Their error itself was excusable. One could not read the beautiful pages of antiquity, one could not recall the actions of its great men, without feeling an indefinable and special emotion, which nothing modern can possibly arouse. The old elements of a nature, one could almost say, earlier than our own, seem to awaken in us in the face of these memories. It is difficult not to regret the time when the faculties of man developed along an already trodden path, but in so wide a career, so strong in their own powers, with such a feeling of energy and dignity. Once we abandon ourselves to this regret, it is impossible not to wish to imitate what we regret. This impression was very deep, especially when we lived under vicious governments, which, without being strong, were repressive in their effects; absurd in their principles; wretched in action; governments which had as their strength arbitrary power; for their purpose the belittling of mankind; and which some individuals still dare to praise to us today, as if we could ever forget that we have been the

witnesses and the victims of their obstinacy, of their impotence and of their overthrow. The aim of our reformers was noble and generous. Who among us did not feel his heart beat with hope at the outset of the course which they seemed to open up? And shame, even today, on whoever does not feel the need to declare that acknowledging a few errors committed by our first guides does not mean blighting their memory or disowning the opinions which the friends of mankind have professed throughout the ages.

But those men had derived several of their theories from the works of two philosophers who had themselves failed to recognize the changes brought by two thousand years in the dispositions of mankind. I shall perhaps at some point examine the system of the most illustrious of these philosophers, of Jean-Jacques Rousseau, and I shall show that, by transposing into our modern age an extent of social power, of collective sovereignty, which belonged to other centuries, this sublime genius, animated by the purest love of liberty, has nevertheless furnished deadly pretexts for more than one kind of tyranny. No doubt, in pointing out what I regard as a misunderstanding which it is important to uncover, I shall be careful in my refutation, and respectful in my criticism. I shall certainly refrain from joining myself to the detractors of a great man. When chance has it that I find myself apparently in agreement with them on some one particular point, I suspect myself; and to console myself for appearing for a moment in agreement with them on a single partial question, I need to disown and denounce with all my energies these pretended allies.

Nevertheless, the interests of truth must prevail over considerations which make the glory of a prodigious talent and the authority of an immense reputation so powerful. Moreover, as we shall see, it is not to Rousseau that we must chiefly attribute the error against which I am going to argue; this is to be imputed much more to one of his successors, less eloquent but no less austere and a hundred times more exaggerated. The latter, the abbe de Mably, can be regarded as the representative of the system which, according to the maxims of ancient liberty, demands that the citizens should be entirely subjected in order for the nation to be sovereign, and that the individual should be enslaved for the people to be free.

The abbe de Mably, like Rousseau and many others, had mistaken, just as the ancients did, the authority of the social body for liberty; and to him any means seemed good if it extended his area of authority over that recalcitrant part of human existence whose independence he deplored. The regret he expresses everywhere in his works is that the law can only cover actions. He would have liked it to cover the most fleeting thoughts and impressions; to pursue man relentlessly, leaving him no refuge in which he might escape from its power. No sooner did he learn, among no matter what people, of some oppressive measure, than he thought he had made a discovery and

proposed it as a model. He detested individual liberty like a personal enemy; and whenever in history he came across a nation totally deprived of it, even if it had no political liberty, he could not help admiring it. He went into ecstasies over the Egyptians, because, as he said, among them everything was prescribed by the law, down to relaxations and needs: everything was subjected to the empire of the legislator. Every moment of the day was filled by some duty; love itself was the object of this respected intervention, and it was the law that in turn opened and closed the curtains of the nuptial bed.

Sparta, which combined republican forms with the same enslavement of individuals, aroused in the spirit of that philosopher an even more vivid enthusiasm. That vast monastic barracks to him seemed the ideal of a perfect republic. He had a profound contempt for Athens, and would gladly have said of this nation, the first of Greece, what an academician and great nobleman said of the French Academy: What an appalling despotism! Everyone does what he likes there. I must add that this great nobleman was talking of the Academy as it was thirty years ago.

Montesquieu, who had a less excitable and therefore more observant mind, did not fall into quite the same errors. He was struck by the differences which I have related; but he did not discover their true cause. The Greek politicians who lived under the popular government did not recognize, he argues, any other power but virtue. Politicians of today talk only of manufactures, of commerce, of finances, of wealth and even of luxury. He attributes this difference to the republic and the monarchy. It ought instead to be attributed to the opposed spirit of ancient and modern times. Citizens of republics, subjects of monarchies, all want pleasures, and indeed no-one, in the present condition of societies can help wanting them. The people most attached to their liberty in our own days, before the emancipation of France, was also the most attached to all the pleasures of life; and it valued its liberty especially because it saw in this the guarantee of the pleasures which it cherished. In the past, where there was liberty, people could bear hardship. Now, wherever there is hardship, despotism is necessary for people to resign themselves to it. It would be easier today to make Spartans of an enslaved people than to turn free men into Spartans.

The men who were brought by events to the head of our revolution were, by a necessary consequence of the education they had received, steeped in ancient views which are no longer valid, which the philosophers whom I mentioned above had made fashionable. The metaphysics of Rousseau, in the midst of which flashed the occasional sublime thought and passages of stirring eloquence; the austerity of Mably, his intolerance, his hatred of all human passions, his eagerness to enslave them all, his exaggerated principles on the competence of the law, the difference between what he recommended and what had ever previously existed, his declamations against wealth and

even against property; all these things were bound to charm men heated by their recent victory, and who, having won power over the law, were only too keen to extend this power to all things. It was a source of invaluable support that two disinterested writers anathematizing human despotism, should have drawn up the text of the law in axioms. They wished to exercise public power as they had learnt from their guides it had once been exercised in the free states. They believed that everything should give way before collective will, and that all restrictions on individual rights would be amply compensated by participation in social power.

We all know, Gentlemen, what has come of it. Free institutions, resting upon the knowledge of the spirit of the age, could have survived. The restored edifice of the ancients collapsed, notwithstanding many efforts and many heroic acts which call for our admiration. The fact is that social power injured individual independence in every possible war, without destroying the need for it. The nation did not find that an ideal share in an abstract sovereignty was worth the sacrifices required from her. She was vainly assured, on Rousseau's authority, that the laws of liberty are a thousand times more austere than the yoke of tyrants. She had no desire for those austere laws, and believed sometimes that the yoke of tyrants would be preferable to them. Experience has come to undeceive her. She has seen that the arbitrary power of men was even worse than the worst of laws. But laws too must have their limits.

If I have succeeded, Gentlemen, in making you share the persuasion which in my opinion these facts must produce, you will acknowledge with me the truth of the following principles. Individual independence is the first need of the moderns: consequently one must never require from them any sacrifices to establish political liberty. It follows that none of the numerous and too highly praised institutions which in the ancient republics hindered individual liberty is any longer admissible in the modern times.

You may, in the first place, think, Gentlemen, that it is superfluous to establish this truth. Several governments of our days do not seem in the least inclined to imitate the republics of antiquity. However, little as they may like republican institutions, there are certain republican usages for which they feel a certain affection. It is disturbing that they should be precisely those which allow them to banish, to exile, or to despoil. I remember that in 1802, they slipped into the law on special tribunals an article which introduced into France Greek ostracism; and God knows how many eloquent speakers, in order to have this article approved, talked to us about the freedom of Athens and all the sacrifices that individuals must make to preserve this freedom! Similarly, in much more recent times, when fearful authorities attempted, with a timid hand, to rig the elections, a journal which can hardly be suspected of republicanism proposed to revive Roman censorship to eliminate all dangerous candidates.

I do not think therefore that I am engaging in a useless discussion if, to support my assertion, I say a few words about these two much vaunted institutions. Ostracism in Athens rested upon the assumption that society had complete authority over its members. On this assumption it could be justified; and in a small state, where the influence of a single individual, strong in his credit, his clients, his glory, often balanced the power of the mass, ostracism may appear useful. But amongst us individuals have rights which society must respect, and individual interests are, as I have already observed, so lost in a multitude of equal or superior influences, that any oppression motivated by the need to diminish this influence is useless and consequently unjust. No one has the right to exile a citizen, if he is not condemned by a regular tribunal, according to a formal law which attaches the penalty of exile to the action of which he is guilty. No one has the right to tear the citizen from his country, the owner away from his possessions, the merchant away from his trade, the husband from his wife, the father from his children, the writer from his studious meditations, the old man from his accustomed way of life. All political exile is a political abuse. All exile pronounced by an assembly for alleged reasons of public safety is a crime which the assembly itself commits against public safety, which resides only in respect for the laws, in the observance of forms, and in the maintenance of safeguards.

Roman censorship implied, like ostracism, a discretionary power. In a republic where all the citizens, kept by poverty to an extremely simple moral code, lived in the same town, exercised no profession which might distract their attention from the affairs of the state, and thus constantly found themselves the spectators and judges of the usage of public power, censorship could on the one hand have greater influence: while on the other, the arbitrary power of the censors was restrained by a kind of moral surveillance exercised over them. But as soon as the size of the republic, the complexity of social relations and the refinements of civilization deprived this institution of what at the same time served as its basis and its limit, censorship degenerated even in Rome. It was not censorship which had created good morals; it was the simplicity of those morals which constituted the power and efficacy of censorship.

In France, an institution as arbitrary as censorship would be at once ineffective and intolerable. In the present conditions of society, morals are formed by subtle, fluctuating, elusive nuances, which would be distorted in a thousand ways if one attempted to define them more precisely. Public opinion alone can reach them; public opinion alone can judge them, because it is of the same nature. It would rebel against any positive authority which wanted to give it greater precision. If the government of a modern people wanted, like the censors in Rome, to censure a citizen arbitrarily, the entire

nation would protest against this arrest by refusing to ratify the decisions of the authority.

What I have just said of the revival of censorship in modern times applies also to many other aspects of social organization, in relation to which antiquity is cited even more frequently and with greater emphasis. As for example, education; what do we not hear of the need to allow the government to take possession of new generations to shape them to its pleasure, and how many erudite quotations are employed to support this theory! The Persians, the Egyptians, Gaul, Greece and Italy are one after another set before us. Yet, Gentlemen, we are neither Persians subjected to a despot, nor Egyptians subjugated by priests, nor Gauls who can be sacrificed by their druids, nor, finally, Greeks or Romans, whose share in social authority consoled them for their private enslavement. We are modern men, who wish each to enjoy our own rights, each to develop our own faculties as we like best, without harming anyone; to watch over the development of these faculties in the children whom nature entrusts to our affection, the more enlightened as it is more vivid; and needing the authorities only to give us the general means of instruction which they can supply, as travelers accept from them the main roads without being told by them which route to take.

Religion is also exposed to these memories of bygone ages. Some brave defenders of the unity of doctrine cite the laws of the ancients against foreign gods, and sustain the rights of the Catholic church by the example of the Athenians, who killed Socrates for having undermined polytheism, and that of Augustus, who wanted the people to remain faithful to the cult of their fathers; with the result, shortly afterwards, that the first Christians were delivered to the lions. Let us mistrust, Gentlemen, this admiration for certain ancient memories. Since we live in modern times, I want a liberty suited to modern times; and since we live under monarchies, I humbly beg these monarchies not to borrow from the ancient republics the means to oppress us.

Individual liberty, I repeat, is the true modern liberty. Political liberty is its guarantee, consequently political liberty is indispensable. But to ask the peoples of our day to sacrifice, like those of the past, the whole of their individual liberty to political liberty, is the surest means of detaching them from the former and, once this result has been achieved, it would be only too easy to deprive them of the latter.

As you see, Gentlemen, my observations do not in the least tend to diminish the value of political liberty. I do not draw from the evidence I have put before your eyes the same conclusions that some others have. From the fact that the ancients were free, and that we cannot any longer be free like them, they conclude that we are destined to be slaves. They would like to reconstitute the new social state with a small number of elements which,

they say, are alone appropriate to the situation of the world today. These elements are prejudices to frighten men, egoism to corrupt them, frivolity to stupefy them, gross pleasures to degrade them, despotism to lead them; and, indispensably, constructive knowledge and exact sciences to serve despotism the more adroitly. It would be odd indeed if this were the outcome of forty centuries during which mankind has acquired greater moral and physical means: I cannot believe it. I derive from the differences which distinguish us from antiquity totally different conclusions. It is not security which we must weaken; it is enjoyment which we must extend. It is not political liberty which I wish to renounce; it is civil liberty which I claim, along with other forms of political liberty. Governments, no more than they did before, have the right to arrogate to themselves an illegitimate power.

But the governments which emanate from a legitimate source have even less right than before to exercise an arbitrary supremacy over individuals. We still possess today the rights we have always had, those eternal rights to assent to the laws, to deliberate on our interests, to be an integral part of the social body of which we are members. But governments have new duties; the progress of civilization, the changes brought by the centuries require from the authorities greater respect for customs, for affections, for the independence of individuals. They must handle all these issues with a lighter and more prudent hand.

This reserve on the part of authority, which is one of its strictest duties, equally represents its well-conceived interest; since, if the liberty that suits the moderns is different from that which suited the ancients, the despotism which was as possible amongst the ancients is no longer possible amongst the moderns. Because we are often less concerned with political liberty than they could be, and in ordinary circumstances less passionate about it, it may follow that we neglect, sometimes too much and always wrongly, the guarantees which this assures us. But at the same time, as we are much more preoccupied with individual liberty than the ancients, we shall defend it, if it is attacked, with much more skill and persistence; and we have means to defend it which the ancients did not.

Commerce makes the action of arbitrary power over our existence more oppressive than in the past, because, as our speculations are more varied, arbitrary power must multiply itself to reach them. But commerce also makes the action of arbitrary power easier to elude, because it changes the nature of property, which becomes, in virtue of this change, almost impossible to seize.

Commerce confers a new quality on property, circulation. Without circulation, property is merely a usufruct; political authority can always affect usufruct, because it can prevent its enjoyment; but circulation creates an invisible and invincible obstacle to the actions of social power.

The effects of commerce extend even further: not only does it emancipate individuals, but, by creating credit, it places authority itself in a position of dependence. Money, says a French writer, 'is the most dangerous weapon of despotism; yet it is at the same time its most powerful restraint; credit is subject to opinion; force is useless; money hides itself or flees; all the operations of the state are suspended'. Credit did not have the same influence amongst the ancients; their governments were stronger than individuals, while in our time individuals are stronger than the political powers. Wealth is a power which is more readily available in all circumstances, more readily applicable to all interests, and consequently more real and better obeyed. Power threatens; wealth rewards: one eludes power by deceiving it; to obtain the favors of wealth one must serve it: the latter is therefore bound to win.

As a result, individual existence is less absorbed in political existence. Individuals carry their treasures far away; they take with them all the enjoyments of private life. Commerce has brought nations closer, it has given them customs and habits which are almost identical; the heads of states may be enemies: the peoples are compatriots. Let power therefore resign itself: we must have liberty and we shall have it. But since the liberty we need is different from that of the ancients, it needs a different organization from the one which would suit ancient liberty. In the latter, the more time and energy man dedicated to the exercise of his political rights, the freer he thought himself; on the other hand, in the kind of liberty of which we are capable, the more the exercise of political rights leaves us the time for our private interests, the more precious will liberty be to us.

Hence, Sirs, the need for the representative system. The representative system is nothing but an organization by means of which a nation charges a few individuals to do what it cannot or does not wish to do herself. Poor men look after their own business; rich men hire stewards. This is the history of ancient and modern nations. The representative system is a proxy given to a certain number of men by the mass of the people who wish their interests to be defended and who nevertheless do not have the time to defend them themselves. But, unless they are idiots, rich men who employ stewards keep a close watch on whether these stewards are doing their duty, lest they should prove negligent, corruptible, or incapable; and, in order to judge the management of these proxies, the landowners, if they are prudent, keep themselves well-informed about affairs, the management of which they entrust to them. Similarly, the people who, in order to enjoy the liberty which suits them, resort to the representative system, must exercise an active and constant surveillance over their representatives, and reserve for themselves, at times which should not be separated by too lengthy intervals, the right to discard them if they betray their trust, and to revoke the powers which they might have abused.

For from the fact that modern liberty differs from ancient liberty, it follows that it is also threatened by a different sort of danger. The danger of ancient liberty was that men, exclusively concerned with securing their share of social power, might attach too little value to individual rights and enjoyments.

The danger of modern liberty is that, absorbed in the enjoyment of our private independence, and in the pursuit of our particular interests, we should surrender our right to share in political power too easily. The holders of authority are only too anxious to encourage us to do so. They are so ready to spare us all sort of troubles, except those of obeying and paying! They will say to us: what, in the end, is the aim of your efforts, the motive of your labors, the object of all your hopes? Is it not happiness? Well, leave this happiness to us and we shall give it to you. No, Sirs, we must not leave it to them. No matter how touching such a tender commitment may be, let us ask the authorities to keep within their limits. Let them confine themselves to being just. We shall assume the responsibility of being happy for ourselves.

Could we be made happy by diversions, if these diversions were without guarantees? And where should we find guarantees, without political liberty? To renounce it, Gentlemen, would be a folly like that of a man who, because he only lives on the first floor, does not care if the house itself is built on sand.

Moreover, Gentlemen, is it so evident that happiness, of whatever kind, is the only aim of mankind? If it were so, our course would be narrow indeed, and our destination far from elevated. There is not one single one of us who, if he wished to abase himself, restrain his moral faculties, lower his desires, abjure activity, glory, deep and generous emotions, could not demean himself and be happy. No, Sirs, I bear witness to the better part of our nature, that noble disquiet which pursues and torments us, that desire to broaden our knowledge and develop our faculties. It is not to happiness alone, it is to self-development that our destiny calls us; and political liberty is the most powerful, the most effective means of self-development that heaven has given us.

Political liberty, by submitting to all the citizens, without exception, the care and assessment of their most sacred interests, enlarges their spirit, ennobles their thoughts, and establishes among them a kind of intellectual equality which forms the glory and power of a people.

Thus, see how a nation grows with the first institution which restores to her the regular exercise of political liberty. See our countrymen of all classes, of all professions, emerge from the sphere of their usual labors and private industry, find themselves suddenly at the level of important functions which the constitutions confers upon them, choose with discernment, resist with energy, brave threats, nobly withstand seduction. See a pure, deep and

sincere patriotism triumph in our towns, revive even our smallest villages, permeate our workshops, enliven our countryside, penetrate the just and honest spirits of the useful farmer and the industrious tradesman with a sense of our rights and the need for safeguards; they, learned in the history of the evils they have suffered, and no less enlightened as to the remedies which these evils demand, take in with a glance the whole of France and, bestowing a national gratitude, repay with their suffrage, after thirty years, the fidelity to principles embodied in the most illustrious of the defenders of liberty.

Therefore, Sirs, far from renouncing either of the two sorts of freedom which I have described to you, it is necessary, as I have shown, to learn to combine the two together. Institutions, says the famous author of the history of the republics in the Middle Ages, must accomplish the destiny of the human race; they can best achieve their aim if they elevate the largest possible number of citizens to the highest moral position.

The work of the legislator is not complete when he has simply brought peace to the people. Even when the people are satisfied, there is much left to do. Institutions must achieve the moral education of the citizens. By respecting their individual rights, securing their independence, refraining from troubling their work, they must nevertheless consecrate their influence over public affairs, call them to contribute by their votes to the exercise of power, grant them a right of control and supervision by expressing their opinions; and, by forming them through practice for these elevated functions, give them both the desire and the right to discharge these.

Karl Marx

ON THE JEWISH QUESTION

Source: "Marxists Internet Archive":

<http://trotsky.org/archive/marx/works/1844/jewish-question/index.htm>

The *droits de l'homme*, the rights of man, are, as such, distinct from the *droits du citoyen*, the rights of the citizen. Who is *homme* as distinct from citizen? None other than the member of civil society. Why is the member of civil society called "man," simply man; why are his rights called the rights of man? How is this fact to be explained? From the relationship between the political state and civil society, from the nature of political emancipation.

Above all, we note the fact that the so-called rights of man, the *droits de l'homme* as distinct from the *droits du citoyen*, are nothing but the rights of a member of civil society – i.e., the rights of egoistic man, of man separated from other men and from the community. Let us hear what the most radical Constitution, the Constitution of 1793, has to say:

Declaration of the Rights of Man and of the Citizen.

Article 2. "These rights, etc., (the natural and imprescriptible rights) are: equality, liberty, security, property."

What constitutes liberty?

Article 6. "Liberty is the power which man has to do everything that does not harm the rights of others," or, according to the Declaration of the Rights of Man of 1791: "Liberty consists in being able to do everything which does not harm others."

Liberty, therefore, is the right to do everything that harms no one else. The limits within which anyone can act without harming someone else are defined by law, just as the boundary between two fields is determined by a boundary post. It is a question of the liberty of man as an isolated monad, withdrawn into himself. Why is the Jew, according to Bauer, incapable of acquiring the rights of man?

"As long as he is a Jew, the restricted nature which makes him a Jew is bound to triumph over the human nature which should link him as a man with other men, and will separate him from non-Jews."

But, the right of man to liberty is based not on the association of man with man, but on the separation of man from man. It is the right of this separation, the right of the restricted individual, withdrawn into himself.

The practical application of man's right to liberty is man's right to private property.

What constitutes man's right to private property?

Article 16. (Constitution of 1793): "The right of property is that which every citizen has of enjoying and of disposing at his discretion of his goods and income, of the fruits of his labor and industry."

The right of man to private property is, therefore, the right to enjoy one's property and to dispose of it at one's discretion (*à son gré*), without regard to other men, independently of society, the right of self-interest. This individual liberty and its application form the basis of civil society. It makes every man see in other men not the realization of his own freedom, but the barrier to it. But, above all, it proclaims the right of man "of enjoying and of disposing at his discretion of his goods and income, of the fruits of his labor and industry."

There remain the other rights of man: *égalité* and *sûreté*.

Equality, used here in its non-political sense, is nothing but the equality of the *liberté* described above – namely: each man is to the same extent regarded as such a self-sufficient monad. The Constitution of 1795 defines the concept of this equality, in accordance with this significance, as follows:

Article 3 (Constitution of 1795): "Equality consists in the law being the same for all, whether it protects or punishes."

And security?

Article 8 (Constitution of 1793): "Security consists in the protection afforded by society to each of its members for the preservation of his person, his rights, and his property."

Security is the highest social concept of civil society, the concept of police, expressing the fact that the whole of society exists only in order to guarantee to each of its members the preservation of his person, his rights, and his property. It is in this sense that Hegel calls civil society "the state of need and reason."

The concept of security does not raise civil society above its egoism. On the contrary, security is the insurance of egoism.

None of the so-called rights of man, therefore, go beyond egoistic man, beyond man as a member of civil society – that is, an individual withdrawn into himself, into the confines of his private interests and private caprice, and separated from the community. In the rights of man, he is far from being conceived as a species-being; on the contrary, species-like itself, society, appears as a framework external to the individuals, as a restriction of their original independence. The sole bond holding them together is natural necessity, need and private interest, the preservation of their property and their egoistic selves.

It is puzzling enough that a people which is just beginning to liberate itself, to tear down all the barriers between its various sections, and to establish

a political community, that such a people solemnly proclaims (Declaration of 1791) the rights of egoistic man separated from his fellow men and from the community, and that indeed it repeats this proclamation at a moment when only the most heroic devotion can save the nation, and is therefore imperatively called for, at a moment when the sacrifice of all the interest of civil society must be the order of the day, and egoism must be punished as a crime. (Declaration of the Rights of Man, etc., of 1793) This fact becomes still more puzzling when we see that the political emancipators go so far as to reduce citizenship, and the political community, to a mere means for maintaining these so-called rights of man, that, therefore, the citizen is declared to be the servant of egotistic *homme*, that the sphere in which man acts as a communal being is degraded to a level below the sphere in which he acts as a partial being, and that, finally, it is not man as citizen, but man as private individual [*bourgeois*] who is considered to be the essential and true man.

“The aim of all political association is the preservation of the natural and imprescriptible rights of man.” (Declaration of the Rights, etc., of 1791, Article 2)

“Government is instituted in order to guarantee man the enjoyment of his natural and imprescriptible rights.” (Declaration, etc., of 1793, Article 1)

Hence, even in moments when its enthusiasm still has the freshness of youth and is intensified to an extreme degree by the force of circumstances, political life declares itself to be a mere means, whose purpose is the life is civil society. It is true that its revolutionary practice is in flagrant contradiction with its theory. Whereas, for example, security is declared one of the rights of man, violation of the privacy of correspondence is openly declared to be the order of the day. Whereas “unlimited freedom of the press” (Constitution of 1793, Article 122) is guaranteed as a consequence of the right of man to individual liberty, freedom of the press is totally destroyed, because “freedom of the press should not be permitted when it endangers public liberty.” (“*Robespierre jeune*,” *Historie parlementaire de la Révolution française* by *Buchez and Roux*, vol.28, p. 159) That is to say, therefore: The right of man to liberty ceases to be a right as soon as it comes into conflict with political life, whereas in theory political life is only the guarantee of human rights, the rights of the individual, and therefore must be abandoned as soon as it comes into contradiction with its aim, with these rights of man. But, practice is merely the exception, theory is the rule. But even if one were to regard revolutionary practice as the correct presentation of the relationship, there would still remain the puzzle of why the relationship is turned upside-down in the minds of the political emancipators and the aim appears as the means, while the means appears as the aim. This optical illusion of their consciousness would still remain a puzzle, although now a psychological, a theoretical puzzle.

The puzzle is easily solved.

Political emancipation is, at the same time, the dissolution of the old society on which the state alienated from the people, the sovereign power, is based. What was the character of the old society? It can be described in one word – feudalism. The character of the old civil society was directly political – that is to say, the elements of civil life, for example, property, or the family, or the mode of labor, were raised to the level of elements of political life in the form of seigniorship, estates, and corporations. In this form, they determined the relation of the individual to the state as a whole – i.e., his political relation, that is, his relation of separation and exclusion from the other components of society. For that organization of national life did not raise property or labor to the level of social elements; on the contrary, it completed their separation from the state as a whole and constituted them as discrete societies within society. Thus, the vital functions and conditions of life of civil society remained, nevertheless, political, although political in the feudal sense – that is to say, they secluded the individual from the state as a whole and they converted the particular relation of his corporation to the state as a whole into his general relation to the life of the nation, just as they converted his particular civil activity and situation into his general activity and situation. As a result of this organization, the unity of the state, and also the consciousness, will, and activity of this unity, the general power of the state, are likewise bound to appear as the particular affair of a ruler isolated from the people, and of his servants.

The political revolution which overthrew this sovereign power and raised state affairs to become affairs of the people, which constituted the political state as a matter of general concern, that is, as a real state, necessarily smashed all estates, corporations, guilds, and privileges, since they were all manifestations of the separation of the people from the community. The political revolution thereby abolished the political character of civil society. It broke up civil society into its simple component parts; on the one hand, the individuals; on the other hand, the material and spiritual elements constituting the content of the life and social position of these individuals. It set free the political spirit, which had been, as it were, split up, partitioned, and dispersed in the various blind alleys of feudal society. It gathered the dispersed parts of the political spirit, freed it from its intermixture with civil life, and established it as the sphere of the community, the general concern of the nation, ideally independent of those particular elements of civil life. A person's distinct activity and distinct situation in life were reduced to a merely individual significance. They no longer constituted the general relation of the individual to the state as a whole. Public affairs as such, on the other hand, became the general affair of each individual, and the political function became the individual's general function.

But, the completion of the idealism of the state was at the same time the completion of the materialism of civil society. Throwing off the political yoke meant at the same time throwing off the bonds which restrained the egoistic spirit of civil society. Political emancipation was, at the same time, the emancipation of civil society from politics, from having even the semblance of a universal content.

Feudal society was resolved into its basic element – man, but man as he really formed its basis – egoistic man.

This man, the member of civil society, is thus the basis, the precondition, of the political state. He is recognized as such by this state in the rights of man.

The liberty of egoistic man and the recognition of this liberty, however, is rather the recognition of the unrestrained movement of the spiritual and material elements which form the content of his life.

Hence, man was not freed from religion, he received religious freedom. He was not freed from property, he received freedom to own property. He was not freed from the egoism of business, he received freedom to engage in business.

The establishment of the political state and the dissolution of civil society into independent individuals – whose relation with one another on law, just as the relations of men in the system of estates and guilds depended on privilege – is accomplished by one and the same act. Man as a member of civil society, unpolitical man, inevitably appears, however, as the natural man. The “rights of man” appears as “natural rights,” because conscious activity is concentrated on the political act. Egoistic man is the passive result of the dissolved society, a result that is simply found in existence, an object of immediate certainty, therefore a natural object. The political revolution resolves civil life into its component parts, without revolutionizing these components themselves or subjecting them to criticism. It regards civil society, the world of needs, labor, private interests, civil law, as the basis of its existence, as a precondition not requiring further substantiation and therefore as its natural basis. Finally, man as a member of civil society is held to be man in his sensuous, individual, immediate existence, whereas political man is only abstract, artificial man, man as an allegorical, juridical person. The real man is recognized only in the shape of the egoistic individual, the true man is recognized only in the shape of the abstract citizen.

Therefore, Rousseau correctly described the abstract idea of political man as follows:

“Whoever dares undertake to establish a people’s institutions must feel himself capable of changing, as it were, human nature, of transforming each individual, who by himself is a complete and solitary whole, into a part of a larger whole, from which, in a sense, the individual receives his life and

his being, of substituting a limited and mental existence for the physical and independent existence. He has to take from man his own powers, and give him in exchange alien powers which he cannot employ without the help of other men.”

All emancipation is a reduction of the human world and relationships to man himself.

Political emancipation is the reduction of man, on the one hand, to a member of civil society, to an egoistic, independent individual, and, on the other hand, to a citizen, a juridical person.

Only when the real, individual man re-absorbs in himself the abstract citizen, and as an individual human being has become a species-being in his everyday life, in his particular work, and in his particular situation, only when man has recognized and organized his “own powers” as social powers, and, consequently, no longer separates social power from himself in the shape of political power, only then will human emancipation have been accomplished.

John Stuart Mill

ON LIBERTY

Source: "Serendipity": http://www.serendipity.li/jsmill/on_lib.html

I believe that the sayings of Christ are all, that I can see any evidence of their having been intended to be; that they are irreconcilable with nothing which a comprehensive morality requires; that everything which is excellent in ethics may be brought within them, with no greater violence to their language than has been done to it by all who have attempted to deduce from them any practical system of conduct whatever. But it is quite consistent with this, to believe that they contain and were meant to contain, only a part of the truth; that many essential elements of the highest morality are among the things which are not provided for, nor intended to be provided for, in the recorded deliverances of the Founder of Christianity, and which have been entirely thrown aside in the system of ethics erected on the basis of those deliverances by the Christian Church. And this being so, I think it a great error to persist in attempting to find in the Christian doctrine that complete rule for our guidance, which its author intended it to sanction and enforce, but only partially to provide. I believe, too, that this narrow theory is becoming a grave practical evil, detracting greatly from the value of the moral training and instruction, which so many wellmeaning persons are now at length exerting themselves to promote. I much fear that by attempting to form the mind and feelings on an exclusively religious type, and discarding those secular standards (as for want of a better name they may be called) which heretofore coexisted with and supplemented the Christian ethics, receiving some of its spirit, and infusing into it some of theirs, there will result, and is even now resulting, a low, abject, servile type of character, which, submit itself as it may to what it deems the Supreme Will, is incapable of rising to or sympathizing in the conception of Supreme Goodness.

I believe that other ethics than any one which can be evolved from exclusively Christian sources, must exist side by side with Christian ethics to produce the moral regeneration of mankind; and that the Christian system is no exception to the rule that in an imperfect state of the human mind, the interests of truth require a diversity of opinions. It is not necessary that in ceasing to ignore the moral truths not contained in Christianity, men should ignore any of those which it does contain. Such prejudice, or oversight, when it occurs, is altogether an evil; but it is one from which we cannot hope to be

always exempt, and must be regarded as the price paid for an inestimable good. The exclusive pretension made by a part of the truth to be the whole, must and ought to be protested against, and if a reactionary impulse should make the protestors unjust in their turn, this one-sidedness, like the other, may be lamented, but must be tolerated. If Christians would teach infidels to be just to Christianity, they should themselves be just to infidelity. It can do truth no service to blink the fact, known to all who have the most ordinary acquaintance with literary history, that a large portion of the noblest and most valuable moral teaching has been the work, not only of men who did not know, but of men who knew and rejected, the Christian faith.

I do not pretend that the most unlimited use of the freedom of enunciating all possible opinions would put an end to the evils of religious or philosophical sectarianism. Every truth which men of narrow capacity are in earnest about, is sure to be asserted, inculcated, and in many ways even acted on, as if no other truth existed in the world, or at all events none that could limit or qualify the first. I acknowledge that the tendency of all opinions to become sectarian is not cured by the freest discussion, but is often heightened and exacerbated thereby; the truth which ought to have been, but was not, seen, being rejected all the more violently because proclaimed by persons regarded as opponents. But it is not on the impassioned partisan, it is on the calmer and more disinterested bystander, that this collision of opinions works its salutary effect. Not the violent conflict between parts of the truth, but the quiet suppression of half of it, is the formidable evil: there is always hope when people are forced to listen to both sides; it is when they attend only to one that errors harden into prejudices, and truth itself ceases to have the effect of truth, by being exaggerated into falsehood. And since there are few mental attributes more rare than that judicial faculty which can sit in intelligent judgment between two sides of a question, of which only one is represented by an advocate before it, truth has no chance but in proportion as every side of it, every opinion which embodies any fraction of the truth, not only finds advocates, but is so advocated as to be listened to.

We have now recognized the necessity to the mental wellbeing of mankind (on which all their other well-being depends) of freedom of opinion, and freedom of the expression of opinion, on four distinct grounds; which we will now briefly recapitulate.

First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility.

Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any object is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied.

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction, from reason or personal experience. [...]

Such being the reasons which make it imperative that human beings should be free to form opinions, and to express their opinions without reserve; and such the baneful consequences to the intellectual, and through that to the moral nature of man, unless this liberty is either conceded, or asserted in spite of prohibition; let us next examine whether the same reasons do not require that men should be free to act upon their opinions – to carry these out in their lives, without hindrance, either physical or moral, from their fellow-men, so long as it is at their own risk and peril. This last proviso is of course indispensable. No one pretends that actions should be as free as opinions. On the contrary, even opinions lose their immunity, when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act. An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard. Acts of whatever kind, which, without justifiable cause, do harm to others, may be, and in the more important cases absolutely require to be, controlled by the unfavorable sentiments, and, when needful, by the active interference of mankind.

The liberty of the individual must be thus far limited; he must not make himself a nuisance to other people. But if he refrains from molesting others in what concerns them, and merely acts according to his own inclination and judgment in things which concern himself, the same reasons which show that opinion should be free, prove also that he should be allowed, without molestation, to carry his opinions into practice at his own cost. That mankind are not infallible; that their truths, for the most part, are only half-truths; that unity of opinion, unless resulting from the fullest and freest comparison of opposite opinions, is not desirable, and diversity not an evil, but a good, until mankind are much more capable than at present of recognizing all sides of the truth, are principles applicable to men's modes of action, not less than to their opinions. As it is useful that while mankind are imperfect there should be different opinions, so is it that there should be

different experiments of living; that free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of life should be proved practically, when any one thinks fit to try them. It is desirable, in short, that in things which do not primarily concern others, individuality should assert itself. Where, not the person's own character, but the traditions of customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress.

In maintaining this principle, the greatest difficulty to be encountered does not lie in the appreciation of means towards an acknowledged end, but in the indifference of persons in general to the end itself. If it were felt that the free development of individuality is one of the leading essentials of well-being; that it is not only a coordinate element with all that is designated by the terms civilization, instruction, education, culture, but is itself a necessary part and condition of all those things; there would be no danger that liberty should be undervalued, and the adjustment of the boundaries between it and social control would present no extraordinary difficulty. But the evil is, that individual spontaneity is hardly recognized by the common modes of thinking as having any intrinsic worth, or deserving any regard on its own account. The majority, being satisfied with the ways of mankind as they now are (for it is they who make them what they are), cannot comprehend why those ways should not be good enough for everybody; and what is more, spontaneity forms no part of the ideal of the majority of moral and social reformers, but is rather looked on with jealousy, as a troublesome and perhaps rebellious obstruction to the general acceptance of what these reformers, in their own judgment, think would be best for mankind.

Few persons, out of Germany, even comprehend the meaning of the doctrine which Wilhelm von Humboldt, so eminent both as a savant and as a politician, made the text of a treatise – that “the end of man, or that which is prescribed by the eternal or immutable dictates of reason, and not suggested by vague and transient desires, is the highest and most harmonious development of his powers to a complete and consistent whole;” that, therefore, the object “towards which every human being must ceaselessly direct his efforts, and on which especially those who design to influence their fellow-men must ever keep their eyes, is the individuality of power and development;” that for this there are two requisites, “freedom, and a variety of situations;” and that from the union of these arise “individual vigor and manifold diversity,” which combine themselves in “originality.” [...]

I have reserved for the last place a large class of questions respecting the limits of government interference, which, though closely connected with the subject of this Essay, do not, in strictness, belong to it. These are cases in which the reasons against interference do not turn upon the principle of

liberty: the question is not about restraining the actions of individuals, but about helping them: it is asked whether the government should do, or cause to be done, something for their benefit, instead of leaving it to be done by themselves, individually, or in voluntary combination.

The objections to government interference, when it is not such as to involve infringement of liberty, may be of three kinds.

The first is, when the thing to be done is likely to be better done by individuals than by the government. Speaking generally, there is no one so fit to conduct any business, or to determine how or by whom it shall be conducted, as those who are personally interested in it. This principle condemns the interferences, once so common, of the legislature, or the officers of government, with the ordinary processes of industry. But this part of the subject has been sufficiently enlarged upon by political economists, and is not particularly related to the principles of this Essay.

The second objection is more nearly allied to our subject. In many cases, though individuals may not do the particular thing so well, on the average, as the officers of government, it is nevertheless desirable that it should be done by them, rather than by the government, as a means to their own mental education – a mode of strengthening their active faculties, exercising their judgment, and giving them a familiar knowledge of the subjects with which they are thus left to deal. This is a principal, though not the sole, recommendation of jury trial (in cases not political); of free and popular local and municipal institutions; of the conduct of industrial and philanthropic enterprises by voluntary associations. These are not questions of liberty, and are connected with that subject only by remote tendencies; but they are questions of development. It belongs to a different occasion from the present to dwell on these things as parts of national education; as being, in truth, the peculiar training of a citizen, the practical part of the political education of a free people, taking them out of the narrow circle of personal and family selfishness, and accustoming them to the comprehension of joint interests, the management of joint concerns – habituating them to act from public or semipublic motives, and guide their conduct by aims which unite instead of isolating them from one another. Without these habits and powers, a free constitution can neither be worked nor preserved, as is exemplified by the too-often transitory nature of political freedom in countries where it does not rest upon a sufficient basis of local liberties.

The management of purely local business by the localities, and of the great enterprises of industry by the union of those who voluntarily supply the pecuniary means, is further recommended by all the advantages which have been set forth in this Essay as belonging to individuality of development, and diversity of modes of action. Government operations tend to be everywhere alike. With individuals and voluntary associations, on the contrary, there

are varied experiments, and endless diversity of experience. What the State can usefully do, is to make itself a central depository, and active circulator and diffuser, of the experience resulting from many trials. Its business is to enable each experimentalist to benefit by the experiments of others, instead of tolerating no experiments but its own.

The third, and most cogent reason for restricting the interference of government, is the great evil of adding unnecessarily to its power. Every function superadded to those already exercised by the government, causes its influence over hopes and fears to be more widely diffused, and converts, more and more, the active and ambitious part of the public into hangers-on of the government, or of some party which aims at becoming the government. If the roads, the railways, the banks, the insurance offices, the great joint-stock companies, the universities, and the public charities, were all of them branches of the government; if, in addition, the municipal corporations and local boards, with all that now devolves on them, became departments of the central administration; if the employes of all these different enterprises were appointed and paid by the government, and looked to the government for every rise in life; not all the freedom of the press and popular constitution of the legislature would make this or any other country free otherwise than in name.

And the evil would be greater, the more efficiently and scientifically the administrative machinery was constructed – the more skilful the arrangements for obtaining the best qualified hands and heads with which to work it. In England it has of late been proposed that all the members of the civil service of government should be selected by competitive examination, to obtain for those employments the most intelligent and instructed persons procurable; and much has been said and written for and against this proposal. One of the arguments most insisted on by its opponents is that the occupation of a permanent official servant of the State does not hold out sufficient prospects of emolument and importance to attract the highest talents, which will always be able to find a more inviting career in the professions, or in the service of companies and other public bodies. One would not have been surprised if this argument had been used by the friends of the proposition, as an answer to its principal difficulty. Coming from the opponents it is strange enough. What is urged as an objection is the safety-valve of the proposed system. If indeed all the high talent of the country could be drawn into the service of the government, a proposal tending to bring about that result might well inspire uneasiness. If every part of the business of society which required organized concert, or large and comprehensive views, were in the hands of the government, and if government offices were universally filled by the ablest men, all the enlarged culture and practised intelligence in the country, except the purely speculative, would be concentrated in a numerous bureaucracy,

to whom alone the rest of the community would look for all things: the multitude for direction and dictation in all they had to do; the able and aspiring for personal advancement. To be admitted into the ranks of this bureaucracy, and when admitted, to rise therein, would be the sole objects of ambition. Under this regime, not only is the outside public ill-qualified, for want of practical experience, to criticize or check the mode of operation of the bureaucracy, but even if the accidents of despotic or the natural working of popular institutions occasionally raise to the summit a ruler or rulers of reforming inclinations, no reform can be effected which is contrary to the interest of the bureaucracy. Such is the melancholy condition of the Russian empire, as is shown in the accounts of those who have had sufficient opportunity of observation.

The Czar himself is powerless against the bureaucratic body: he can send any one of them to Siberia, but he cannot govern without them, or against their will. On every decree of his they have a tacit veto, by merely refraining from carrying it into effect. In countries of more advanced civilization and of a more insurrectionary spirit the public, accustomed to expect everything to be done for them by the State, or at least to do nothing for themselves without asking from the State not only leave to do it, but even how it is to be done, naturally hold the State responsible for all evil which befalls them, and when the evil exceeds their amount of patience, they rise against the government and make what is called a revolution; whereupon somebody else, with or without legitimate authority from the nation, vaults into the seat, issues his orders to the bureaucracy, and everything goes on much as it did before; the bureaucracy being unchanged, and nobody else being capable of taking their place.

A very different spectacle is exhibited among a people accustomed to transact their own business. In France, a large part of the people having been engaged in military service, many of whom have held at least the rank of noncommissioned officers, there are in every popular insurrection several persons competent to take the lead, and improvise some tolerable plan of action. What the French are in military affairs, the Americans are in every kind of civil business; let them be left without a government, every body of Americans is able to improvise one, and to carry on that or any other public business with a sufficient amount of intelligence, order and decision. This is what every free people ought to be: and a people capable of this is certain to be free; it will never let itself be enslaved by any man or body of men because these are able to seize and pull the reins of the central administration. No bureaucracy can hope to make such a people as this do or undergo anything that they do not like. But where everything is done through the bureaucracy, nothing to which the bureaucracy is really adverse can be done at all. The constitution of such countries is an organization of the experience and

practical ability of the nation, into a disciplined body for the purpose of governing the rest; and the more perfect that organization is in itself, the more successful in drawing to itself and educating for itself the persons of greatest capacity from all ranks of the community, the more complete is the bondage of all, the members of the bureaucracy included. For the governors are as much the slaves of their organization and discipline, as the governed are of the governors. A Chinese mandarin is as much the tool and creature of a despotism as the humblest cultivator. An individual Jesuit is to the utmost degree of abasement the slave of his order though the order itself exists for the collective power and importance of its members.

Pope Leo XIII

LIBERTAS PRAESTANTISSIMUM

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From this it is manifest that the eternal law of God is the sole standard and rule of human liberty, not only in each individual man, but also in the community and civil society which men constitute when united. Therefore, the true liberty of human society does not consist in every man doing what he pleases, for this would simply end in turmoil and confusion, and bring on the overthrow of the State; but rather in this, that through the injunctions of the civil law all may more easily conform to the prescriptions of the eternal law. Likewise, the liberty of those who are in authority does not consist in the power to lay unreasonable and capricious commands upon their subjects, which would equally be criminal and would lead to the ruin of the commonwealth; but the binding force of human laws is in this, that they are to be regarded as applications of the eternal law, and incapable of sanctioning anything which is not contained in the eternal law, as in the principle of all law. Thus, St. Augustine most wisely says: "I think that you can see, at the same time, that there is nothing just and lawful in that temporal law, unless what men have gathered from this eternal law." If, then, by anyone in authority, something be sanctioned out of conformity with the principles of right reason, and consequently hurtful to the commonwealth, such an enactment can have no binding force of law, as being no rule of justice, but certain to lead men away from that good which is the very end of civil society.

Therefore, the nature of human liberty, however it be considered, whether in individuals or in society, whether in those who command or in those who obey, supposes the necessity of obedience to some supreme and eternal law, which is no other than the authority of God, commanding good and forbidding evil. And, so far from this most just authority of God over men diminishing, or even destroying their liberty, it protects and perfects it, for the real perfection of all creatures is found in the prosecution and attainment of their respective ends; but the supreme end to which human liberty must aspire is God.

These precepts of the truest and highest teaching, made known to us by the light of reason itself, the Church, instructed by the example and doctrine of her divine Author, has ever propagated and asserted; for she has ever made them the measure of her office and of her teaching to the Christian

nations. As to morals, the laws of the Gospel not only immeasurably surpass the wisdom of the heathen, but are an invitation and an introduction to a state of holiness unknown to the ancients; and, bringing man nearer to God, they make him at once the possessor of a more perfect liberty. Thus, the powerful influence of the Church has ever been manifested in the custody and protection of the civil and political liberty of the people [...]

Moreover, the highest duty is to respect authority, and obediently to submit to just law; and by this the members of a community are effectually protected from the wrong-doing of evil men. Lawful power is from God, "and whosoever resisteth authority resisteth the ordinance of God"; wherefore, obedience is greatly ennobled when subjected to an authority which is the most just and supreme of all. But where the power to command is wanting, or where a law is enacted contrary to reason, or to the eternal law, or to some ordinance of God, obedience is unlawful, lest, while obeying man, we become disobedient to God. Thus, an effectual barrier being opposed to tyranny, the authority in the State will not have all its own way, but the interests and rights of all will be safeguarded—the rights of individuals, of domestic society, and of all the members of the commonwealth; all being free to live according to law and right reason; and in this, as We have shown, true liberty really consists.

If when men discuss the question of liberty they were careful to grasp its true and legitimate meaning, such as reason and reasoning have just explained, they would never venture to affix such a calumny on the Church as to assert that she is the foe of individual and public liberty. But many there are who follow in the footsteps of Lucifer, and adopt as their own his rebellious cry, "I will not serve"; and consequently substitute for true liberty what is sheer and most foolish license. Such, for instance, are the men belonging to that widely spread and powerful organization, who, usurping the name of liberty, style themselves liberals.

What naturalists or rationalists aim at in philosophy, that the supporters of Liberalism, carrying out the principles laid down by naturalism, are attempting in the domain of morality and politics. The fundamental doctrine of rationalism is the supremacy of the human reason, which, refusing due submission to the divine and eternal reason, proclaims its own independence, and constitutes itself the supreme principle and source and judge of truth. Hence, these followers of liberalism deny the existence of any divine authority to which obedience is due, and proclaim that every man is the law to himself; from which arises that ethical system which they style independent morality, and which, under the guise of liberty, exonerates man from any obedience to the commands of God, and substitutes a boundless license. The end of all this it is not difficult to foresee, especially when society is in question. For, when once man is firmly persuaded that he is subject to no one, it follows

that the efficient cause of the unity of civil society is not to be sought in any principle external to man, or superior to him, but simply in the free will of individuals; that the authority in the State comes from the people only; and that, just as every man's individual reason is his only rule of life, so the collective reason of the community should be the supreme guide in the management of all public affairs. Hence the doctrine of the supremacy of the greater number, and that all right and all duty reside in the majority. But, from what has been said, it is clear that all this is in contradiction to reason. To refuse any bond of union between man and civil society, on the one hand, and God the Creator and consequently the supreme Law-giver, on the other, is plainly repugnant to the nature, not only of man, but of all created things; for, of necessity, all effects must in some proper way be connected with their cause; and it belongs to the perfection of every nature to contain itself within that sphere and grade which the order of nature has assigned to it, namely, that the lower should be subject and obedient to the higher.

Moreover, besides this, a doctrine of such character is most hurtful both to individuals and to the State. For, once ascribe to human reason the only authority to decide what is true and what is good, and the real distinction between good and evil is destroyed; honor and dishonor differ not in their nature, but in the opinion and judgment of each one; pleasure is the measure of what is lawful; and, given a code of morality which can have little or no power to restrain or quiet the unruly propensities of man, a way is naturally opened to universal corruption. With reference also to public affairs: authority is severed from the true and natural principle whence it derives all its efficacy for the common good; and the law determining what it is right to do and avoid doing is at the mercy of a majority. Now, this is simply a road leading straight to tyranny. The empire of God over man and civil society once repudiated, it follows that religion, as a public institution, can have no claim to exist, and that everything that belongs to religion will be treated with complete indifference. Furthermore, with ambitious designs on sovereignty, tumult and sedition will be common amongst the people; and when duty and conscience cease to appeal to them, there will be nothing to hold them back but force, which of itself alone is powerless to keep their covetousness in check. Of this we have almost daily evidence in the conflict with socialists and members of other seditious societies, who labor unceasingly to bring about revolution. It is for those, then, who are capable of forming a just estimate of things to decide whether such doctrines promote that true liberty which alone is worthy of man, or rather, pervert and destroy it. [...]

There are, indeed, some adherents of liberalism who do not subscribe to these opinions, which we have seen to be fearful in their enormity, openly opposed to the truth, and the cause of most terrible evils. Indeed, very many

amongst them, compelled by the force of truth, do not hesitate to admit that such liberty is vicious, nay, is simple license, whenever intemperate in its claims, to the neglect of truth and justice; and therefore they would have liberty ruled and directed by right reason, and consequently subject to the natural law and to the divine eternal law. But here they think they may stop, holding that man as a free being is bound by no law of God except such as He makes known to us through our natural reason. In this they are plainly inconsistent. For if – as they must admit, and no one can rightly deny – the will of the Divine Law-giver is to be obeyed, because every man is under the power of God, and tends toward Him as his end, it follows that no one can assign limits to His legislative authority without failing in the obedience which is due. Indeed, if the human mind be so presumptuous as to define the nature and extent of God's rights and its own duties, reverence for the divine law will be apparent rather than real, and arbitrary judgment will prevail over the authority and providence of God. Man must, therefore, take his standard of a loyal and religious life from the eternal law; and from all and every one of those laws which God, in His infinite wisdom and power, has been pleased to enact, and to make known to us by such clear and unmistakable signs as to leave no room for doubt. And the more so because laws of this kind have the same origin, the same author, as the eternal law, are absolutely in accordance with right reason, and perfect the natural law. These laws it is that embody the government of God, who graciously guides and directs the intellect and the will of man lest these fall into error. Let, then, that continue to remain in a holy and inviolable union which neither can nor should be separated; and in all things – for this is the dictate of right reason itself – let God be dutifully and obediently served.

There are others, somewhat more moderate though not more consistent, who affirm that the morality of individuals is to be guided by the divine law, but not the morality of the State, for that in public affairs the commands of God may be passed over, and may be entirely disregarded in the framing of laws. Hence follows the fatal theory of the need of separation between Church and State. But the absurdity of such a position is manifest. Nature herself proclaims the necessity of the State providing means and opportunities whereby the community may be enabled to live properly, that is to say, according to the laws of God. For, since God is the source of all goodness and justice, it is absolutely ridiculous that the State should pay no attention to these laws or render them abortive by contrary enactments. Besides, those who are in authority owe it to the commonwealth not only to provide for its external well-being and the conveniences of life, but still more to consult the welfare of men's souls in the wisdom of their legislation. But, for the increase of such benefits, nothing more suitable can be conceived than the laws which have God for their author; and, therefore, they who in

their government of the State take no account of these laws abuse political power by causing it to deviate from its proper end and from what nature itself prescribes. And, what is still more important, and what We have more than once pointed out, although the civil authority has not the same proximate end as the spiritual, nor proceeds on the same lines, nevertheless in the exercise of their separate powers they must occasionally meet. For their subjects are the same, and not infrequently they deal with the same objects, though in different ways. Whenever this occurs, since a state of conflict is absurd and manifestly repugnant to the most wise ordinance of God, there must necessarily exist some order or mode of procedure to remove the occasions of difference and contention, and to secure harmony in all things. This harmony has been not inaptly compared to that which exists between the body and the soul for the well-being of both one and the other, the separation of which brings irremediable harm to the body, since it extinguishes its very life.

To make this more evident, the growth of liberty ascribed to our age must be considered apart in its various details. And, first, let us examine that liberty in individuals which is so opposed to the virtue of religion, namely, the liberty of worship, as it is called. This is based on the principle that every man is free to profess as he may choose any religion or none.

But, assuredly, of all the duties which man has to fulfill, that, without doubt, is the chiefest and holiest which commands him to worship God with devotion and piety. This follows of necessity from the truth that we are ever in the power of God, are ever guided by His will and providence, and, having come forth from Him, must return to Him. Add to which, no true virtue can exist without religion, for moral virtue is concerned with those things which lead to God as man's supreme and ultimate good; and therefore religion, which (as St. Thomas says) "performs those actions which are directly and immediately ordained for the divine honor", rules and tempers all virtues. And if it be asked which of the many conflicting religions it is necessary to adopt, reason and the natural law unhesitatingly tell us to practice that one which God enjoins, and which men can easily recognize by certain exterior notes, whereby Divine Providence has willed that it should be distinguished, because, in a matter of such moment, the most terrible loss would be the consequence of error. Wherefore, when a liberty such as We have described is offered to man, the power is given him to pervert or abandon with impunity the most sacred of duties, and to exchange the unchangeable good for evil; which, as We have said, is no liberty, but its degradation, and the abject submission of the soul to sin.

This kind of liberty, if considered in relation to the State, clearly implies that there is no reason why the State should offer any homage to God, or should desire any public recognition of Him; that no one form of worship is

to be preferred to another, but that all stand on an equal footing, no account being taken of the religion of the people, even if they profess the Catholic faith. But, to justify this, it must needs be taken as true that the State has no duties toward God, or that such duties, if they exist, can be abandoned with impunity, both of which assertions are manifestly false. For it cannot be doubted but that, by the will of God, men are united in civil society; whether its component parts be considered; or its form, which implies authority; or the object of its existence; or the abundance of the vast services which it renders to man. [...]

From all this may be understood the nature and character of that liberty which the followers of liberalism so eagerly advocate and proclaim. On the one hand, they demand for themselves and for the State a license which opens the way to every perversity of opinion; and on the other, they hamper the Church in divers ways, restricting her liberty within narrowest limits, although from her teaching not only is there nothing to be feared, but in every respect very much to be gained.

Another liberty is widely advocated, namely, liberty of conscience. If by this is meant that everyone may, as he chooses, worship God or not, it is sufficiently refuted by the arguments already adduced. But it may also be taken to mean that every man in the State may follow the will of God and, from a consciousness of duty and free from every obstacle, obey His commands. This, indeed, is true liberty, a liberty worthy of the sons of God, which nobly maintains the dignity of man and is stronger than all violence or wrong – a liberty which the Church has always desired and held most dear. This is the kind of liberty the Apostles claimed for themselves with intrepid constancy, which the apologists of Christianity confirmed by their writings, and which the martyrs in vast numbers consecrated by their blood. And deservedly so; for this Christian liberty bears witness to the absolute and most just dominion of God over man, and to the chief and supreme duty of man toward God. It has nothing in common with a seditious and rebellious mind; and in no tittle derogates from obedience to public authority; for the right to command and to require obedience exists only so far as it is in accordance with the authority of God, and is within the measure that He has laid down. But when anything is commanded which is plainly at variance with the will of God, there is a wide departure from this divinely constituted order, and at the same time a direct conflict with divine authority; therefore, it is right not to obey.

By the patrons of liberalism, however, who make the State absolute and omnipotent, and proclaim that man should live altogether independently of God, the liberty of which We speak, which goes hand in hand with virtue and religion, is not admitted; and whatever is done for its preservation is accounted an injury and an offense against the State. Indeed, if what they say

were really true, there would be no tyranny, no matter how monstrous, which we should not be bound to endure and submit to. [...]

For this reason, while not conceding any right to anything save what is true and honest, she does not forbid public authority to tolerate what is at variance with truth and justice, for the sake of avoiding some greater evil, or of obtaining or preserving some greater good. God Himself in His providence, though infinitely good and powerful, permits evil to exist in the world, partly that greater good may not be impeded, and partly that greater evil may not ensue. In the government of States it is not forbidden to imitate the Ruler of the world; and, as the authority of man is powerless to prevent every evil, it has (as St. Augustine says) to overlook and leave unpunished many things which are punished, and rightly, by Divine Providence. But if, in such circumstances, for the sake of the common good (and this is the only legitimate reason), human law may or even should tolerate evil, it may not and should not approve or desire evil for its own sake; for evil of itself, being a privation of good, is opposed to the common welfare which every legislator is bound to desire and defend to the best of his ability. In this, human law must endeavor to imitate God, who, as St. Thomas teaches, in allowing evil to exist in the world, “neither wills evil to be done, nor wills it not to be done, but wills only to permit it to be done; and this is good.” This saying of the Angelic Doctor contains briefly the whole doctrine of the permission of evil.

But, to judge aright, we must acknowledge that, the more a State is driven to tolerate evil, the further is it from perfection; and that the tolerance of evil which is dictated by political prudence should be strictly confined to the limits which its justifying cause, the public welfare, requires. Wherefore, if such tolerance would be injurious to the public welfare, and entail greater evils on the State, it would not be lawful; for in such case the motive of good is wanting. And although in the extraordinary condition of these times the Church usually acquiesces in certain modern liberties, not because she prefers them in themselves, but because she judges it expedient to permit them, she would in happier times exercise her own liberty; and, by persuasion, exhortation, and entreaty would endeavor, as she is bound, to fulfill the duty assigned to her by God of providing for the eternal salvation of mankind. One thing, however, remains always true—that the liberty which is claimed for all to do all things is not, as We have often said, of itself desirable, inasmuch as it is contrary to reason that error and truth should have equal rights. [...]

Lastly, there remain those who, while they do not approve the separation of Church and State, think nevertheless that the Church ought to adapt herself to the times and conform to what is required by the modern system of government. Such an opinion is sound, if it is to be understood of some equitable adjustment consistent with truth and justice; in so far, namely, that

the Church, in the hope of some great good, may show herself indulgent, and may conform to the times in so far as her sacred office permits. But it is not so in regard to practices and doctrines which a perversion of morals and a warped judgment have unlawfully introduced. Religion, truth, and justice must ever be maintained; and, as God has intrusted these great and sacred matters to her office as to dissemble in regard to what is false or unjust, or to connive at what is hurtful to religion.

From what has been said it follows that it is quite unlawful to demand, to defend, or to grant unconditional freedom of thought, of speech, or writing, or of worship, as if these were so many rights given by nature to man. For, if nature had really granted them, it would be lawful to refuse obedience to God, and there would be no restraint on human liberty. It likewise follows that freedom in these things may be tolerated wherever there is just cause, but only with such moderation as will prevent its degenerating into license and excess. And, where such liberties are in use, men should employ them in doing good, and should estimate them as the Church does; for liberty is to be regarded as legitimate in so far only as it affords greater facility for doing good, but no farther.

Whenever there exists, or there is reason to fear, an unjust oppression of the people on the one hand, or a deprivation of the liberty of the Church on the other, it is lawful to seek for such a change of government as will bring about due liberty of action. In such case, an excessive and vicious liberty is not sought, but only some relief, for the common welfare, in order that, while license for evil is allowed by the State, the power of doing good may not be hindered.

Henry David Thoreau

CIVIL DISOBEDIENCE

Source: "University of California, Berkeley":
<http://sunsite.berkeley.edu/Literature/Thoreau/CivilDisobedience.html>

I heartily accept the motto, "That government is best which governs least"; and I should like to see it acted up to more rapidly and systematically. Carried out, it finally amounts to this, which also I believe – "That government is best which governs not at all"; and when men are prepared for it, that will be the kind of government which they will have. Government is at best but an expedient; but most governments are usually, and all governments are sometimes, inexpedient. The objections which have been brought against a standing army, and they are many and weighty, and deserve to prevail, may also at last be brought against a standing government. The standing army is only an arm of the standing government. The government itself, which is only the mode which the people have chosen to execute their will, is equally liable to be abused and perverted before the people can act through it. Witness the present Mexican war, the work of comparatively a few individuals using the standing government as their tool; for in the outset, the people would not have consented to this measure.

This American government – what is it but a tradition, though a recent one, endeavoring to transmit itself unimpaired to posterity, but each instant losing some of its integrity? It has not the vitality and force of a single living man; for a single man can bend it to his will. It is a sort of wooden gun to the people themselves. But it is not the less necessary for this; for the people must have some complicated machinery or other, and hear its din, to satisfy that idea of government which they have. Governments show thus how successfully men can be imposed upon, even impose on themselves, for their own advantage. It is excellent, we must all allow. Yet this government never of itself furthered any enterprise, but by the alacrity with which it got out of its way. It does not keep the country free. It does not settle the West. It does not educate. The character inherent in the American people has done all that has been accomplished; and it would have done somewhat more, if the government had not sometimes got in its way. For government is an expedient, by which men would fain succeed in letting one another alone; and, as has been said, when it is most expedient, the governed are most let alone by it. Trade and commerce, if they were not made of india-rubber, would never manage to bounce over obstacles which legislators are

continually putting in their way; and if one were to judge these men wholly by the effects of their actions and not partly by their intentions, they would deserve to be classed and punished with those mischievous persons who put obstructions on the railroads.

But, to speak practically and as a citizen, unlike those who call themselves no-government men, I ask for, not at once no government, but at once a better government. Let every man make known what kind of government would command his respect, and that will be one step toward obtaining it.

After all, the practical reason why, when the power is once in the hands of the people, a majority are permitted, and for a long period continue, to rule is not because they are most likely to be in the right, nor because this seems fairest to the minority, but because they are physically the strongest. But a government in which the majority rule in all cases can not be based on justice, even as far as men understand it. Can there not be a government in which the majorities do not virtually decide right and wrong, but conscience? – in which majorities decide only those questions to which the rule of expediency is applicable? Must the citizen ever for a moment, or in the least degree, resign his conscience to the legislator? Why has every man a conscience then? I think that we should be men first, and subjects afterward. It is not desirable to cultivate a respect for the law, so much as for the right. The only obligation which I have a right to assume is to do at any time what I think right. It is truly enough said that a corporation has no conscience; but a corporation of conscientious men is a corporation with a conscience. Law never made men a whit more just; and, by means of their respect for it, even the well-disposed are daily made the agents of injustice. A common and natural result of an undue respect for the law is, that you may see a file of soldiers, colonel, captain, corporal, privates, powder-monkeys, and all, marching in admirable order over hill and dale to the wars, against their wills, against their common sense and consciences, which makes it very steep marching indeed, and produces a palpitation of the heart. They have no doubt that it is a damnable business in which they are concerned; they are all peaceably inclined. Now, what are they? Men at all? or small movable forts and magazines, at the service of some unscrupulous man in power? Visit the Navy Yard, and behold a marine, such a man as an American government can make, or such as it can make a man with its black arts – a mere shadow and reminiscence of humanity, a man laid out alive and standing, and already, as one may say, buried under arms with funeral accompaniment, though it may be,

*“Not a drum was heard, not a funeral note,
As his corse to the rampart we hurried;
Not a soldier discharged his farewell shot
O’er the grave where our hero was buried.”*

The mass of men serve the state thus, not as men mainly, but as machines, with their bodies. They are the standing army, and the militia, jailers, constables, posse comitatus, etc. In most cases there is no free exercise whatever of the judgement or of the moral sense; but they put themselves on a level with wood and earth and stones; and wooden men can perhaps be manufactured that will serve the purpose as well. Such command no more respect than men of straw or a lump of dirt. They have the same sort of worth only as horses and dogs. Yet such as these even are commonly esteemed good citizens. Others – as most legislators, politicians, lawyers, ministers, and office-holders – serve the state chiefly with their heads; and, as they rarely make any moral distinctions, they are as likely to serve the devil, without intending it, as God. A very few – as heroes, patriots, martyrs, reformers in the great sense, and men – serve the state with their consciences also, and so necessarily resist it for the most part; and they are commonly treated as enemies by it. A wise man will only be useful as a man, and will not submit to be “clay,” and “stop a hole to keep the wind away,” but leave that office to his dust at least:

*“I am too high born to be propertied,
To be a second at control,
Or useful serving-man and instrument
To any sovereign state throughout the world.”*

He who gives himself entirely to his fellow men appears to them useless and selfish; but he who gives himself partially to them is pronounced a benefactor and philanthropist.

How does it become a man to behave toward the American government today? I answer, that he cannot without disgrace be associated with it. I cannot for an instant recognize that political organization as my government which is the slave’s government also.

All men recognize the right of revolution; that is, the right to refuse allegiance to, and to resist, the government, when its tyranny or its inefficiency are great and unendurable. But almost all say that such is not the case now. But such was the case, they think, in the Revolution of ‘75. If one were to tell me that this was a bad government because it taxed certain foreign commodities brought to its ports, it is most probable that I should not make an ado about it, for I can do without them. All machines have their friction; and possibly this does enough good to counter-balance the evil. At any rate, it is a great evil to make a stir about it. But when the friction comes to have its machine, and oppression and robbery are organized, I say, let us not have such a machine any longer. In other words, when a sixth of the population of a nation which has undertaken to be the refuge of liberty are slaves, and a whole country is unjustly overrun and conquered by a foreign army, and

subjected to military law, I think that it is not too soon for honest men to rebel and revolutionize. What makes this duty the more urgent is the fact that the country so overrun is not our own, but ours is the invading army.

Paley, a common authority with many on moral questions, in his chapter on the "Duty of Submission to Civil Government," resolves all civil obligation into expediency; and he proceeds to say that "so long as the interest of the whole society requires it, that it, so long as the established government cannot be resisted or changed without public inconveniency, it is the will of God (...) that the established government be obeyed – and no longer. This principle being admitted, the justice of every particular case of resistance is reduced to a computation of the quantity of the danger and grievance on the one side, and of the probability and expense of redressing it on the other." Of this, he says, every man shall judge for himself. But Paley appears never to have contemplated those cases to which the rule of expediency does not apply, in which a people, as well as an individual, must do justice, cost what it may. If I have unjustly wrested a plank from a drowning man, I must restore it to him though I drown myself. This, according to Paley, would be inconvenient. But he that would save his life, in such a case, shall lose it. This people must cease to hold slaves, and to make war on Mexico, though it cost them their existence as a people.

In their practice, nations agree with Paley; but does anyone think that Massachusetts does exactly what is right at the present crisis?

*"A drab of state, a cloth-o'-silver slut,
To have her train borne up, and her soul trail in the dirt."*

Practically speaking, the opponents to a reform in Massachusetts are not a hundred thousand politicians at the South, but a hundred thousand merchants and farmers here, who are more interested in commerce and agriculture than they are in humanity, and are not prepared to do justice to the slave and to Mexico, cost what it may. I quarrel not with far-off foes, but with those who, neat at home, co-operate with, and do the bidding of, those far away, and without whom the latter would be harmless. We are accustomed to say, that the mass of men are unprepared; but improvement is slow, because the few are not as materially wiser or better than the many. It is not so important that many should be good as you, as that there be some absolute goodness somewhere; for that will leaven the whole lump. There are thousands who are in opinion opposed to slavery and to the war, who yet in effect do nothing to put an end to them; who, esteeming themselves children of Washington and Franklin, sit down with their hands in their pockets, and say that they know not what to do, and do nothing; who even postpone the question of freedom to the question of free trade, and quietly read the prices-current along with the latest advices from Mexico, after dinner, and,

it may be, fall asleep over them both. What is the price-current of an honest man and patriot today? They hesitate, and they regret, and sometimes they petition; but they do nothing in earnest and with effect. They will wait, well disposed, for others to remedy the evil, that they may no longer have it to regret. At most, they give up only a cheap vote, and a feeble countenance and Godspeed, to the right, as it goes by them. There are nine hundred and ninety-nine patrons of virtue to one virtuous man. But it is easier to deal with the real possessor of a thing than with the temporary guardian of it.

All voting is a sort of gaming, like checkers or backgammon, with a slight moral tinge to it, a playing with right and wrong, with moral questions; and betting naturally accompanies it. The character of the voters is not staked. I cast my vote, perchance, as I think right; but I am not vitally concerned that that right should prevail. I am willing to leave it to the majority. Its obligation, therefore, never exceeds that of expediency. Even voting for the right is doing nothing for it. It is only expressing to men feebly your desire that it should prevail. A wise man will not leave the right to the mercy of chance, nor wish it to prevail through the power of the majority. There is but little virtue in the action of masses of men. When the majority shall at length vote for the abolition of slavery, it will be because they are indifferent to slavery, or because there is but little slavery left to be abolished by their vote. They will then be the only slaves. Only his vote can hasten the abolition of slavery who asserts his own freedom by his vote.

I hear of a convention to be held at Baltimore, or elsewhere, for the selection of a candidate for the Presidency, made up chiefly of editors, and men who are politicians by profession; but I think, what is it to any independent, intelligent, and respectable man what decision they may come to? Shall we not have the advantage of this wisdom and honesty, nevertheless? Can we not count upon some independent votes? Are there not many individuals in the country who do not attend conventions? But no: I find that the respectable man, so called, has immediately drifted from his position, and despairs of his country, when his country has more reasons to despair of him. He forthwith adopts one of the candidates thus selected as the only available one, thus proving that he is himself available for any purposes of the demagogue. His vote is of no more worth than that of any unprincipled foreigner or hireling native, who may have been bought. O for a man who is a man, and, and my neighbor says, has a bone in his back which you cannot pass your hand through! Our statistics are at fault: the population has been returned too large. How many men are there to a square thousand miles in the country? Hardly one. Does not America offer any inducement for men to settle here? The American has dwindled into an Odd Fellow – one who may be known by the development of his organ of gregariousness, and a manifest lack of intellect and cheerful self-reliance; whose first and chief concern, on coming

into the world, is to see that the almshouses are in good repair; and, before yet he has lawfully donned the virile garb, to collect a fund to the support of the widows and orphans that may be; who, in short, ventures to live only by the aid of the Mutual Insurance company, which has promised to bury him decently.

It is not a man's duty, as a matter of course, to devote himself to the eradication of any, even to most enormous, wrong; he may still properly have other concerns to engage him; but it is his duty, at least, to wash his hands of it, and, if he gives it no thought longer, not to give it practically his support. If I devote myself to other pursuits and contemplations, I must first see, at least, that I do not pursue them sitting upon another man's shoulders. I must get off him first, that he may pursue his contemplations too. See what gross inconsistency is tolerated. I have heard some of my townsmen say, "I should like to have them order me out to help put down an insurrection of the slaves, or to march to Mexico – see if I would go"; and yet these very men have each, directly by their allegiance, and so indirectly, at least, by their money, furnished a substitute. The soldier is applauded who refuses to serve in an unjust war by those who do not refuse to sustain the unjust government which makes the war; is applauded by those whose own act and authority he disregards and sets at naught; as if the state were penitent to that degree that it hired one to scourge it while it sinned, but not to that degree that it left off sinning for a moment. Thus, under the name of Order and Civil Government, we are all made at last to pay homage to and support our own meanness. After the first blush of sin comes its indifference; and from immoral it becomes, as it were, unmoral, and not quite unnecessary to that life which we have made.

The broadest and most prevalent error requires the most disinterested virtue to sustain it. The slight reproach to which the virtue of patriotism is commonly liable, the noble are most likely to incur. Those who, while they disapprove of the character and measures of a government, yield to it their allegiance and support are undoubtedly its most conscientious supporters, and so frequently the most serious obstacles to reform.

Some are petitioning the State to dissolve the Union, to disregard the requisitions of the President. Why do they not dissolve it themselves – the union between themselves and the State – and refuse to pay their quota into its treasury? Do not they stand in the same relation to the State that the State does to the Union? And have not the same reasons prevented the State from resisting the Union which have prevented them from resisting the State?

How can a man be satisfied to entertain an opinion merely, and enjoy it? Is there any enjoyment in it, if his opinion is that he is aggrieved? If you are cheated out of a single dollar by your neighbor, you do not rest satisfied with knowing you are cheated, or with saying that you are cheated, or even with

petitioning him to pay you your due; but you take effectual steps at once to obtain the full amount, and see to it that you are never cheated again. Action from principle, the perception and the performance of right, changes things and relations; it is essentially revolutionary, and does not consist wholly with anything which was. It not only divided States and churches, it divides families; it divides the individual, separating the diabolical in him from the divine.

Unjust laws exist: shall we be content to obey them, or shall we endeavor to amend them, and obey them until we have succeeded, or shall we transgress them at once? Men, generally, under such a government as this, think that they ought to wait until they have persuaded the majority to alter them. They think that, if they should resist, the remedy would be worse than the evil. But it is the fault of the government itself that the remedy is worse than the evil. It makes it worse. Why is it not more apt to anticipate and provide for reform? Why does it not cherish its wise minority? Why does it cry and resist before it is hurt? Why does it not encourage its citizens to put out its faults, and do better than it would have them? Why does it always crucify Christ and excommunicate Copernicus and Luther, and pronounce Washington and Franklin rebels?

One would think, that a deliberate and practical denial of its authority was the only offense never contemplated by its government; else, why has it not assigned its definite, its suitable and proportionate, penalty? If a man who has no property refuses but once to earn nine shillings for the State, he is put in prison for a period unlimited by any law that I know, and determined only by the discretion of those who put him there; but if he should steal ninety times nine shillings from the State, he is soon permitted to go at large again.

If the injustice is part of the necessary friction of the machine of government, let it go, let it go: perchance it will wear smooth – certainly the machine will wear out. If the injustice has a spring, or a pulley, or a rope, or a crank, exclusively for itself, then perhaps you may consider whether the remedy will not be worse than the evil; but if it is of such a nature that it requires you to be the agent of injustice to another, then I say, break the law. Let your life be a counter-friction to stop the machine. What I have to do is to see, at any rate, that I do not lend myself to the wrong which I condemn.

As for adopting the ways which the State has provided for remedying the evil, I know not of such ways. They take too much time, and a man's life will be gone. I have other affairs to attend to. I came into this world, not chiefly to make this a good place to live in, but to live in it, be it good or bad. A man has not everything to do, but something; and because he cannot do everything, it is not necessary that he should be petitioning the Governor or the Legislature any more than it is theirs to petition me; and if they should not hear my petition, what should I do then? But in this case the State has

provided no way: its very Constitution is the evil. This may seem to be harsh and stubborn and unconciliatory; but it is to treat with the utmost kindness and consideration the only spirit that can appreciate or deserves it. So is all change for the better, like birth and death, which convulse the body.

I do not hesitate to say, that those who call themselves Abolitionists should at once effectually withdraw their support, both in person and property, from the government of Massachusetts, and not wait till they constitute a majority of one, before they suffer the right to prevail through them. I think that it is enough if they have God on their side, without waiting for that other one. Moreover, any man more right than his neighbors constitutes a majority of one already.

I meet this American government, or its representative, the State government, directly, and face to face, once a year – no more – in the person of its tax-gatherer; this is the only mode in which a man situated as I am necessarily meets it; and it then says distinctly, Recognize me; and the simplest, the most effectual, and, in the present posture of affairs, the indispensablest mode of treating with it on this head, of expressing your little satisfaction with and love for it, is to deny it then. My civil neighbor, the tax-gatherer, is the very man I have to deal with – for it is, after all, with men and not with parchment that I quarrel – and he has voluntarily chosen to be an agent of the government. How shall he ever know well that he is and does as an officer of the government, or as a man, until he is obliged to consider whether he will treat me, his neighbor, for whom he has respect, as a neighbor and well-disposed man, or as a maniac and disturber of the peace, and see if he can get over this obstruction to his neighborliness without a ruder and more impetuous thought or speech corresponding with his action. I know this well, that if one thousand, if one hundred, if ten men whom I could name – if ten honest men only – ay, if one HONEST man, in this State of Massachusetts, ceasing to hold slaves, were actually to withdraw from this co-partnership, and be locked up in the county jail therefor, it would be the abolition of slavery in America. For it matters not how small the beginning may seem to be: what is once well done is done forever. But we love better to talk about it: that we say is our mission. Reform keeps many scores of newspapers in its service, but not one man. If my esteemed neighbor, the State's ambassador, who will devote his days to the settlement of the question of human rights in the Council Chamber, instead of being threatened with the prisons of Carolina, were to sit down the prisoner of Massachusetts, that State which is so anxious to foist the sin of slavery upon her sister – though at present she can discover only an act of inhospitality to be the ground of a quarrel with her – the Legislature would not wholly waive the subject of the following winter.

Under a government which imprisons unjustly, the true place for a just man is also a prison. The proper place today, the only place which Massachusetts has provided for her freer and less despondent spirits, is in her prisons, to be put out and locked out of the State by her own act, as they have already put themselves out by their principles. It is there that the fugitive slave, and the Mexican prisoner on parole, and the Indian come to plead the wrongs of his race should find them; on that separate but more free and honorable ground, where the State places those who are not with her, but against her – the only house in a slave State in which a free man can abide with honor. If any think that their influence would be lost there, and their voices no longer afflict the ear of the State, that they would not be as an enemy within its walls, they do not know by how much truth is stronger than error, nor how much more eloquently and effectively he can combat injustice who has experienced a little in his own person. Cast your whole vote, not a strip of paper merely, but your whole influence. A minority is powerless while it conforms to the majority; it is not even a minority then; but it is irresistible when it clogs by its whole weight. If the alternative is to keep all just men in prison, or give up war and slavery, the State will not hesitate which to choose. If a thousand men were not to pay their tax bills this year, that would not be a violent and bloody measure, as it would be to pay them, and enable the State to commit violence and shed innocent blood. This is, in fact, the definition of a peaceable revolution, if any such is possible. If the tax-gatherer, or any other public officer, asks me, as one has done, “But what shall I do?” my answer is, “If you really wish to do anything, resign your office.” When the subject has refused allegiance, and the officer has resigned from office, then the revolution is accomplished. But even suppose blood shed when the conscience is wounded? Through this wound a man’s real manhood and immortality flow out, and he bleeds to an everlasting death. I see this blood flowing now.

I have contemplated the imprisonment of the offender, rather than the seizure of his goods – though both will serve the same purpose – because they who assert the purest right, and consequently are most dangerous to a corrupt State, commonly have not spent much time in accumulating property. To such the State renders comparatively small service, and a slight tax is wont to appear exorbitant, particularly if they are obliged to earn it by special labor with their hands. If there were one who lived wholly without the use of money, the State itself would hesitate to demand it of him. But the rich man – not to make any invidious comparison – is always sold to the institution which makes him rich. Absolutely speaking, the more money, the less virtue; for money comes between a man and his objects, and obtains them for him; it was certainly no great virtue to obtain it. It puts to rest many questions which he would otherwise be taxed to answer; while the only

new question which it puts is the hard but superfluous one, how to spend it. Thus his moral ground is taken from under his feet. The opportunities of living are diminished in proportion as that are called the "means" are increased. The best thing a man can do for his culture when he is rich is to endeavor to carry out those schemes which he entertained when he was poor. Christ answered the Herodians according to their condition. "Show me the tribute-money", said he – and one took a penny out of his pocket – if you use money which has the image of Caesar on it, and which he has made current and valuable, that is, if you are men of the State, and gladly enjoy the advantages of Caesar's government, then pay him back some of his own when he demands it. "Render therefore to Caesar that which is Caesar's and to God those things which are God's" – leaving them no wiser than before as to which was which; for they did not wish to know.

When I converse with the freest of my neighbors, I perceive that, whatever they may say about the magnitude and seriousness of the question, and their regard for the public tranquillity, the long and the short of the matter is, that they cannot spare the protection of the existing government, and they dread the consequences to their property and families of disobedience to it. For my own part, I should not like to think that I ever rely on the protection of the State. But, if I deny the authority of the State when it presents its tax bill, it will soon take and waste all my property, and so harass me and my children without end. This is hard. This makes it impossible for a man to live honestly, and at the same time comfortably, in outward respects. It will not be worth the while to accumulate property; that would be sure to go again. You must hire or squat somewhere, and raise but a small crop, and eat that soon. You must live within yourself, and depend upon yourself always tucked up and ready for a start, and not have many affairs. A man may grow rich in Turkey even, if he will be in all respects a good subject of the Turkish government. Confucius said: "If a state is governed by the principles of reason, poverty and misery are subjects of shame; if a state is not governed by the principles of reason, riches and honors are subjects of shame." No: until I want the protection of Massachusetts to be extended to me in some distant Southern port, where my liberty is endangered, or until I am bent solely on building up an estate at home by peaceful enterprise, I can afford to refuse allegiance to Massachusetts, and her right to my property and life. It costs me less in every sense to incur the penalty of disobedience to the State than it would to obey. I should feel as if I were worth less in that case.

Some years ago, the State met me in behalf of the Church, and commanded me to pay a certain sum toward the support of a clergyman whose preaching my father attended, but never I myself. "Pay", it said, "or be locked up in the jail." I declined to pay. But, unfortunately, another man saw fit to pay it. I did not see why the schoolmaster should be taxed to support the priest, and

not the priest the schoolmaster; for I was not the State's schoolmaster, but I supported myself by voluntary subscription. I did not see why the lyceum should not present its tax bill, and have the State to back its demand, as well as the Church. However, as the request of the selectmen, I condescended to make some such statement as this in writing: "Know all men by these presents, that I, Henry Thoreau, do not wish to be regarded as a member of any society which I have not joined." This I gave to the town clerk; and he has it. The State, having thus learned that I did not wish to be regarded as a member of that church, has never made a like demand on me since; though it said that it must adhere to its original presumption that time. If I had known how to name them, I should then have signed off in detail from all the societies which I never signed on to; but I did not know where to find such a complete list.

I have paid no poll tax for six years. I was put into a jail once on this account, for one night; and, as I stood considering the walls of solid stone, two or three feet thick, the door of wood and iron, a foot thick, and the iron grating which strained the light, I could not help being struck with the foolishness of that institution which treated me as if I were mere flesh and blood and bones, to be locked up. I wondered that it should have concluded at length that this was the best use it could put me to, and had never thought to avail itself of my services in some way. I saw that, if there was a wall of stone between me and my townsmen, there was a still more difficult one to climb or break through before they could get to be as free as I was. I did not for a moment feel confined, and the walls seemed a great waste of stone and mortar. I felt as if I alone of all my townsmen had paid my tax. They plainly did not know how to treat me, but behaved like persons who are underbred. In every threat and in every compliment there was a blunder; for they thought that my chief desire was to stand the other side of that stone wall. I could not but smile to see how industriously they locked the door on my meditations, which followed them out again without let or hindrance, and they were really all that was dangerous. As they could not reach me, they had resolved to punish my body; just as boys, if they cannot come at some person against whom they have a spite, will abuse his dog. I saw that the State was half-witted, that it was timid as a lone woman with her silver spoons, and that it did not know its friends from its foes, and I lost all my remaining respect for it, and pitied it.

Thus the state never intentionally confronts a man's sense, intellectual or moral, but only his body, his senses. It is not armed with superior wit or honesty, but with superior physical strength. I was not born to be forced. I will breathe after my own fashion. Let us see who is the strongest. What force has a multitude? They only can force me who obey a higher law than I. They force me to become like themselves. I do not hear of men being forced to live this way or that by masses of men. What sort of life were that to live? When

I meet a government which says to me, "Your money or your life", why should I be in haste to give it my money? It may be in a great strait, and not know what to do: I cannot help that. It must help itself; do as I do. It is not worth the while to snivel about it. I am not responsible for the successful working of the machinery of society. I am not the son of the engineer. I perceive that, when an acorn and a chestnut fall side by side, the one does not remain inert to make way for the other, but both obey their own laws, and spring and grow and flourish as best they can, till one, perchance, overshadows and destroys the other. If a plant cannot live according to nature, it dies; and so a man.

The night in prison was novel and interesting enough. The prisoners in their shirtsleeves were enjoying a chat and the evening air in the doorway, when I entered. But the jailer said, "Come, boys, it is time to lock up"; and so they dispersed, and I heard the sound of their steps returning into the hollow apartments. My room-mate was introduced to me by the jailer as "a first-rate fellow and clever man." When the door was locked, he showed me where to hang my hat, and how he managed matters there. The rooms were whitewashed once a month; and this one, at least, was the whitest, most simply furnished, and probably neatest apartment in town. He naturally wanted to know where I came from, and what brought me there; and, when I had told him, I asked him in my turn how he came there, presuming him to be an honest man, of course; and as the world goes, I believe he was. "Why", said he, "they accuse me of burning a barn; but I never did it." As near as I could discover, he had probably gone to bed in a barn when drunk, and smoked his pipe there; and so a barn was burnt. He had the reputation of being a clever man, had been there some three months waiting for his trial to come on, and would have to wait as much longer; but he was quite domesticated and contented, since he got his board for nothing, and thought that he was well treated.

He occupied one window, and I the other; and I saw that if one stayed there long, his principal business would be to look out the window. I had soon read all the tracts that were left there, and examined where former prisoners had broken out, and where a grate had been sawed off, and heard the history of the various occupants of that room; for I found that even there there was a history and a gossip which never circulated beyond the walls of the jail. Probably this is the only house in the town where verses are composed, which are afterward printed in a circular form, but not published. I was shown quite a long list of young men who had been detected in an attempt to escape, who avenged themselves by singing them.

I pumped my fellow-prisoner as dry as I could, for fear I should never see him again; but at length he showed me which was my bed, and left me to blow out the lamp.

It was like travelling into a far country, such as I had never expected to behold, to lie there for one night. It seemed to me that I never had heard the

town clock strike before, nor the evening sounds of the village; for we slept with the windows open, which were inside the grating. It was to see my native village in the light of the Middle Ages, and our Concord was turned into a Rhine stream, and visions of knights and castles passed before me. They were the voices of old burghers that I heard in the streets. I was an involuntary spectator and auditor of whatever was done and said in the kitchen of the adjacent village inn – a wholly new and rare experience to me. It was a closer view of my native town. I was fairly inside of it. I never had seen its institutions before. This is one of its peculiar institutions; for it is a shire town. I began to comprehend what its inhabitants were about.

In the morning, our breakfasts were put through the hole in the door, in small oblong-square tin pans, made to fit, and holding a pint of chocolate, with brown bread, and an iron spoon. When they called for the vessels again, I was green enough to return what bread I had left, but my comrade seized it, and said that I should lay that up for lunch or dinner. Soon after he was let out to work at haying in a neighboring field, whither he went every day, and would not be back till noon; so he bade me good day, saying that he doubted if he should see me again.

When I came out of prison – for some one interfered, and paid that tax – I did not perceive that great changes had taken place on the common, such as he observed who went in a youth and emerged a gray-headed man; and yet a change had come to my eyes come over the scene – the town, and State, and country, greater than any that mere time could effect. I saw yet more distinctly the State in which I lived. I saw to what extent the people among whom I lived could be trusted as good neighbors and friends; that their friendship was for summer weather only; that they did not greatly propose to do right; that they were a distinct race from me by their prejudices and superstitions, as the Chinamen and Malays are that in their sacrifices to humanity they ran no risks, not even to their property; that after all they were not so noble but they treated the thief as he had treated them, and hoped, by a certain outward observance and a few prayers, and by walking in a particular straight though useless path from time to time, to save their souls. This may be to judge my neighbors harshly; for I believe that many of them are not aware that they have such an institution as the jail in their village.

It was formerly the custom in our village, when a poor debtor came out of jail, for his acquaintances to salute him, looking through their fingers, which were crossed to represent the jail window, “How do ye do?” My neighbors did not thus salute me, but first looked at me, and then at one another, as if I had returned from a long journey. I was put into jail as I was going to the shoemaker’s to get a shoe which was mended. When I was let out the next morning, I proceeded to finish my errand, and, having put on my mended

shoe, joined a huckleberry party, who were impatient to put themselves under my conduct; and in half an hour – for the horse was soon tackled – was in the midst of a huckleberry field, on one of our highest hills, two miles off, and then the State was nowhere to be seen.

This is the whole history of “My Prisons.”

I have never declined paying the highway tax, because I am as desirous of being a good neighbor as I am of being a bad subject; and as for supporting schools, I am doing my part to educate my fellow countrymen now. It is for no particular item in the tax bill that I refuse to pay it. I simply wish to refuse allegiance to the State, to withdraw and stand aloof from it effectually. I do not care to trace the course of my dollar, if I could, till it buys a man a musket to shoot one with – the dollar is innocent – but I am concerned to trace the effects of my allegiance. In fact, I quietly declare war with the State, after my fashion, though I will still make use and get what advantages of her I can, as is usual in such cases.

If others pay the tax which is demanded of me, from a sympathy with the State, they do but what they have already done in their own case, or rather they abet injustice to a greater extent than the State requires. If they pay the tax from a mistaken interest in the individual taxed, to save his property, or prevent his going to jail, it is because they have not considered wisely how far they let their private feelings interfere with the public good.

This, then is my position at present. But one cannot be too much on his guard in such a case, lest his actions be biased by obstinacy or an undue regard for the opinions of men. Let him see that he does only what belongs to himself and to the hour.

I think sometimes, Why, this people mean well, they are only ignorant; they would do better if they knew how: why give your neighbors this pain to treat you as they are not inclined to? But I think again, This is no reason why I should do as they do, or permit others to suffer much greater pain of a different kind. Again, I sometimes say to myself, When many millions of men, without heat, without ill will, without personal feelings of any kind, demand of you a few shillings only, without the possibility, such is their constitution, of retracting or altering their present demand, and without the possibility, on your side, of appeal to any other millions, why expose yourself to this overwhelming brute force? You do not resist cold and hunger, the winds and the waves, thus obstinately; you quietly submit to a thousand similar necessities. You do not put your head into the fire. But just in proportion as I regard this as not wholly a brute force, but partly a human force, and consider that I have relations to those millions as to so many millions of men, and not of mere brute or inanimate things, I see that appeal is possible, first and instantaneously, from them to the Maker of them, and, secondly, from them to themselves. But if I put my head deliberately into the fire, there is

no appeal to fire or to the Maker for fire, and I have only myself to blame. If I could convince myself that I have any right to be satisfied with men as they are, and to treat them accordingly, and not according, in some respects, to my requisitions and expectations of what they and I ought to be, then, like a good Mussulman and fatalist, I should endeavor to be satisfied with things as they are, and say it is the will of God. And, above all, there is this difference between resisting this and a purely brute or natural force, that I can resist this with some effect; but I cannot expect, like Orpheus, to change the nature of the rocks and trees and beasts.

I do not wish to quarrel with any man or nation. I do not wish to split hairs, to make fine distinctions, or set myself up as better than my neighbors. I seek rather, I may say, even an excuse for conforming to the laws of the land. I am but too ready to conform to them. Indeed, I have reason to suspect myself on this head; and each year, as the tax-gatherer comes round, I find myself disposed to review the acts and position of the general and State governments, and the spirit of the people to discover a pretext for conformity.

*“We must affect our country as our parents,
And if at any time we alienate
Our love or industry from doing it honor,
We must respect effects and teach the soul
Matter of conscience and religion,
And not desire of rule or benefit.”*

I believe that the State will soon be able to take all my work of this sort out of my hands, and then I shall be no better patriot than my fellow-countrymen. Seen from a lower point of view, the Constitution, with all its faults, is very good; the law and the courts are very respectable; even this State and this American government are, in many respects, very admirable, and rare things, to be thankful for, such as a great many have described them; seen from a higher still, and the highest, who shall say what they are, or that they are worth looking at or thinking of at all?

However, the government does not concern me much, and I shall bestow the fewest possible thoughts on it. It is not many moments that I live under a government, even in this world. If a man is thought-free, fancy-free, imagination-free, that which is not never for a long time appearing to be to him, unwise rulers or reformers cannot fatally interrupt him.

I know that most men think differently from myself; but those whose lives are by profession devoted to the study of these or kindred subjects content me as little as any. Statesmen and legislators, standing so completely within the institution, never distinctly and nakedly behold it. They speak of moving society, but have no resting-place without it. They may be men of a certain

experience and discrimination, and have no doubt invented ingenious and even useful systems, for which we sincerely thank them; but all their wit and usefulness lie within certain not very wide limits. They are wont to forget that the world is not governed by policy and expediency. Webster never goes behind government, and so cannot speak with authority about it. His words are wisdom to those legislators who contemplate no essential reform in the existing government; but for thinkers, and those who legislate for all time, he never once glances at the subject. I know of those whose serene and wise speculations on this theme would soon reveal the limits of his mind's range and hospitality. Yet, compared with the cheap professions of most reformers, and the still cheaper wisdom and eloquence of politicians in general, his are almost the only sensible and valuable words, and we thank Heaven for him. Comparatively, he is always strong, original, and, above all, practical. Still, his quality is not wisdom, but prudence. The lawyer's truth is not Truth, but consistency or a consistent expediency. Truth is always in harmony with herself, and is not concerned chiefly to reveal the justice that may consist with wrong-doing. He well deserves to be called, as he has been called, the Defender of the Constitution. There are really no blows to be given him but defensive ones. He is not a leader, but a follower. His leaders are the men of '87. "I have never made an effort", he says, "and never propose to make an effort; I have never countenanced an effort, and never mean to countenance an effort, to disturb the arrangement as originally made, by which various States came into the Union." Still thinking of the sanction which the Constitution gives to slavery, he says, "Because it was part of the original compact – let it stand." Notwithstanding his special acuteness and ability, he is unable to take a fact out of its merely political relations, and behold it as it lies absolutely to be disposed of by the intellect – what, for instance, it behooves a man to do here in American today with regard to slavery – but ventures, or is driven, to make some such desperate answer to the following, while professing to speak absolutely, and as a private man – from which what new and singular of social duties might be inferred? "The manner", says he, in which the governments of the States where slavery exists are to regulate it is for their own consideration, under the responsibility to their constituents, to the general laws of propriety, humanity, and justice, and to God. Associations formed elsewhere, springing from a feeling of humanity, or any other cause, have nothing whatever to do with it. They have never received any encouragement from me and they never will.

They who know of no purer sources of truth, who have traced up its stream no higher, stand, and wisely stand, by the Bible and the Constitution, and drink at it there with reverence and humanity; but they who behold where it comes trickling into this lake or that pool, gird up their loins once more, and continue their pilgrimage toward its fountainhead.

No man with a genius for legislation has appeared in America. They are rare in the history of the world. There are orators, politicians, and eloquent men, by the thousand; but the speaker has not yet opened his mouth to speak who is capable of settling the much-vexed questions of the day. We love eloquence for its own sake, and not for any truth which it may utter, or any heroism it may inspire. Our legislators have not yet learned the comparative value of free trade and of freed, of union, and of rectitude, to a nation. They have no genius or talent for comparatively humble questions of taxation and finance, commerce and manufactures and agriculture. If we were left solely to the wordy wit of legislators in Congress for our guidance, uncorrected by the seasonable experience and the effectual complaints of the people, America would not long retain her rank among the nations. For eighteen hundred years, though perchance I have no right to say it, the New Testament has been written; yet where is the legislator who has wisdom and practical talent enough to avail himself of the light which it sheds on the science of legislation.

The authority of government, even such as I am willing to submit to – for I will cheerfully obey those who know and can do better than I, and in many things even those who neither know nor can do so well – is still an impure one: to be strictly just, it must have the sanction and consent of the governed. It can have no pure right over my person and property but what I concede to it. The progress from an absolute to a limited monarchy, from a limited monarchy to a democracy, is a progress toward a true respect for the individual. Even the Chinese philosopher was wise enough to regard the individual as the basis of the empire. Is a democracy, such as we know it, the last improvement possible in government? Is it not possible to take a step further towards recognizing and organizing the rights of man? There will never be a really free and enlightened State until the State comes to recognize the individual as a higher and independent power, from which all its own power and authority are derived, and treats him accordingly. I please myself with imagining a State at last which can afford to be just to all men, and to treat the individual with respect as a neighbor; which even would not think it inconsistent with its own repose if a few were to live aloof from it, not meddling with it, nor embraced by it, who fulfilled all the duties of neighbors and fellow men. A State which bore this kind of fruit, and suffered it to drop off as fast as it ripened, would prepare the way for a still more perfect and glorious State, which I have also imagined, but not yet anywhere seen.

Woodrow Wilson

THE FOURTEEN POINTS

Source: "The New York Times", January 9, 1918.

Gentlemen of the Congress:

Once more, as repeatedly before, the spokesmen of the Central Empires have indicated their desire to discuss the objects of the war and the possible basis of a general peace. Parleys have been in progress at Brest-Litovsk between Russian representatives and representatives of the Central Powers to which the attention of all the belligerents have been invited for the purpose of ascertaining whether it may be possible to extend these parleys into a general conference with regard to terms of peace and settlement.

The Russian representatives presented not only a perfectly definite statement of the principles upon which they would be willing to conclude peace but also an equally definite program of the concrete application of those principles. The representatives of the Central Powers, on their part, presented an outline of settlement which, if much less definite, seemed susceptible of liberal interpretation until their specific program of practical terms was added. That program proposed no concessions at all either to the sovereignty of Russia or to the preferences of the populations with whose fortunes it dealt, but meant, in a word, that the Central Empires were to keep every foot of territory their armed forces had occupied – every province, every city, every point of vantage – as a permanent addition to their territories and their power.

It is a reasonable conjecture that the general principles of settlement which they at first suggested originated with the more liberal statesmen of Germany and Austria, the men who have begun to feel the force of their own people's thought and purpose, while the concrete terms of actual settlement came from the military leaders who have no thought but to keep what they have got. The negotiations have been broken off. The Russian representatives were sincere and in earnest. They cannot entertain such proposals of conquest and domination.

The whole incident is full of significances. It is also full of perplexity. With whom are the Russian representatives dealing? For whom are the representatives of the Central Empires speaking? Are they speaking for the majorities of their respective parliaments or for the minority parties, that military and imperialistic minority which has so far dominated their whole

policy and controlled the affairs of Turkey and of the Balkan states which have felt obliged to become their associates in this war?

The Russian representatives have insisted, very justly, very wisely, and in the true spirit of modern democracy, that the conferences they have been holding with the Teutonic and Turkish statesmen should be held within open, not closed, doors, and all the world has been audience, as was desired. To whom have we been listening, then? To those who speak the spirit and intention of the resolutions of the German Reichstag of the 9th of July last, the spirit and intention of the Liberal leaders and parties of Germany, or to those who resist and defy that spirit and intention and insist upon conquest and subjugation? Or are we listening, in fact, to both, unreconciled and in open and hopeless contradiction? These are very serious and pregnant questions. Upon the answer to them depends the peace of the world.

But, whatever the results of the parleys at Brest-Litovsk, whatever the confusions of counsel and of purpose in the utterances of the spokesmen of the Central Empires, they have again attempted to acquaint the world with their objects in the war and have again challenged their adversaries to say what their objects are and what sort of settlement they would deem just and satisfactory. There is no good reason why that challenge should not be responded to, and responded to with the utmost candor. We did not wait for it. Not once, but again and again, we have laid our whole thought and purpose before the world, not in general terms only, but each time with sufficient definition to make it clear what sort of definite terms of settlement must necessarily spring out of them. Within the last week Mr. Lloyd George has spoken with admirable candor and in admirable spirit for the people and Government of Great Britain.

There is no confusion of counsel among the adversaries of the Central Powers, no uncertainty of principle, no vagueness of detail. The only secrecy of counsel, the only lack of fearless frankness, the only failure to make definite statement of the objects of the war, lies with Germany and her allies. The issues of life and death hang upon these definitions. No statesman who has the least conception of his responsibility ought for a moment to permit himself to continue this tragical and appalling outpouring of blood and treasure unless he is sure beyond a peradventure that the objects of the vital sacrifice are part and parcel of the very life of Society and that the people for whom he speaks think them right and imperative as he does.

There is, moreover, a voice calling for these definitions of principle and of purpose which is, it seems to me, more thrilling and more compelling than any of the many moving voices with which the troubled air of the world is filled. It is the voice of the Russian people. They are prostrate and all but hopeless, it would seem, before the grim power of Germany, which has hitherto known no relenting and no pity. Their power, apparently, is

shattered. And yet their soul is not subservient. They will not yield either in principle or in action. Their conception of what is right, of what is humane and honorable for them to accept, has been stated with a frankness, a largeness of view, a generosity of spirit, and a universal human sympathy which must challenge the admiration of every friend of mankind; and they have refused to compound their ideals or desert others that they themselves may be safe.

They call to us to say what it is that we desire, in what, if in anything, our purpose and our spirit differ from theirs; and I believe that the people of the United States would wish me to respond, with utter simplicity and frankness. Whether their present leaders believe it or not, it is our heartfelt desire and hope that some way may be opened whereby we may be privileged to assist the people of Russia to attain their utmost hope of liberty and ordered peace.

It will be our wish and purpose that the processes of peace, when they are begun, shall be absolutely open and that they shall involve and permit henceforth no secret understandings of any kind. The day of conquest and aggrandizement is gone by; so is also the day of secret covenants entered into in the interest of particular governments and likely at some unlooked-for moment to upset the peace of the world. It is this happy fact, now clear to the view of every public man whose thoughts do not still linger in an age that is dead and gone, which makes it possible for every nation whose purposes are consistent with justice and the peace of the world to avow now or at any other time the objects it has in view.

We entered this war because violations of right had occurred which touched us to the quick and made the life of our own people impossible unless they were corrected and the world secure once for all against their recurrence. What we demand in this war, therefore, is nothing peculiar to ourselves. It is that the world be made fit and safe to live in; and particularly that it be made safe for every peace-loving nation which, like our own, wishes to live its own life, determine its own institutions, be assured of justice and fair dealing by the other peoples of the world as against force and selfish aggression. All the peoples of the world are in effect partners in this interest, and for our own part we see very clearly that unless justice be done to others it will not be done to us. The program of the world's peace, therefore, is our program; and that program, the only possible program, as we see it, is this:

I. Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view.

II. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.

III. The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.

IV. Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety.

V. A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

VI. The evacuation of all Russian territory and such a settlement of all questions affecting Russia as will secure the best and freest cooperation of the other nations of the world in obtaining for her an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy and assure her of a sincere welcome into the society of free nations under institutions of her own choosing; and, more than a welcome, assistance also of every kind that she may need and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their good will, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.

VII. Belgium, the whole world will agree, must be evacuated and restored, without any attempt to limit the sovereignty which she enjoys in common with all other free nations. No other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations with one another. Without this healing act the whole structure and validity of international law is forever impaired.

VIII. All French territory should be freed and the invaded portions restored, and the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of the world for nearly fifty years, should be righted, in order that peace may once more be made secure in the interest of all.

IX. A readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality.

X. The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity to autonomous development.

XI. Rumania, Serbia, and Montenegro should be evacuated; occupied territories restored; Serbia accorded free and secure access to the sea; and the relations of the several Balkan states to one another determined by friendly counsel along historically established lines of allegiance and nationality; and

international guarantees of the political and economic independence and territorial integrity of the several Balkan states should be entered into.

XII. The Turkish portion of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.

XIII. An independent Polish state should be erected which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant.

XIV. A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.

In regard to these essential rectifications of wrong and assertions of right we feel ourselves to be intimate partners of all the governments and peoples associated together against the Imperialists. We cannot be separated in interest or divided in purpose. We stand together until the end. For such arrangements and covenants we are willing to fight and to continue to fight until they are achieved; but only because we wish the right to prevail and desire a just and stable peace such as can be secured only by removing the chief provocations to war, which this program does remove. We have no jealousy of German greatness, and there is nothing in this program that impairs it. We grudge her no achievement or distinction of learning or of pacific enterprise such as have made her record very bright and very enviable. We do not wish to injure her or to block in any way her legitimate influence or power. We do not wish to fight her either with arms or with hostile arrangements of trade if she is willing to associate herself with us and the other peace-loving nations of the world in covenants of justice and law and fair dealing. We wish her only to accept a place of equality among the peoples of the world – the new world in which we now live – instead of a place of mastery.

Neither do we presume to suggest to her any alteration or modification of her institutions. But it is necessary, we must frankly say, and necessary as a preliminary to any intelligent dealings with her on our part, that we should know whom her spokesmen speak for when they speak to us, whether for the Reichstag majority or for the military party and the men whose creed is imperial domination.

We have spoken now, surely, in terms too concrete to admit of any further doubt or question. An evident principle runs through the whole program I have outlined. It is the principle of justice to all peoples and nationalities,

and their right to live on equal terms of liberty and safety with one another, whether they be strong or weak.

Unless this principle be made its foundation no part of the structure of international justice can stand. The people of the United States could act upon no other principle; and to the vindication of this principle they are ready to devote their lives, their honor, and everything they possess. The moral climax of this the culminating and final war for human liberty has come, and they are ready to put their own strength, their own highest purpose, their own integrity and devotion to the test.

Mohandas Karamchand Gandhi

STATEMENT IN THE GREAT TRIAL OF 1922

Source: "Mahatma.com":

<http://www.mahatma.com/php/showNews.php?newsid=3&linkid=12>

Before I read this statement I would like to state that I entirely endorse the learned Advocate-General's remarks in connection with my humble self. I think that he has made, because it is very true and I have no desire whatsoever to conceal from this court the fact that to preach disaffection towards the existing system of Government has become almost a passion with me, and the Advocate-General is entirely in the right when he says that my preaching of disaffection did not commence with my connection with Young India but that it commenced much earlier, and in the statement that I am about to read, it will be my painful duty to admit before this court that it commenced much earlier than the period stated by the Advocate-General. It is a painful duty with me but I have to discharge that duty knowing the responsibility that rests upon my shoulders, and I wish to endorse all the blame that the learned Advocate-General has thrown on my shoulders in connection with the Bombay occurrences, Madras occurrences and the Chauri Chaura occurrences. Thinking over these things deeply and sleeping over them night after night, it is impossible for me to dissociate myself from the diabolical crimes of Chauri Chaura or the mad outrages of Bombay. He is quite right when he says, that as a man of responsibility, a man having received a fair share of education, having had a fair share of experience of this world, I should have known the consequences of every one of my acts. I know them. I knew that I was playing with fire. I ran the risk and if I was set free I would still do the same. I have felt it this morning that I would have failed in my duty, if I did not say what I said here just now.

I wanted to avoid violence. Non-violence is the first article of my faith. It is also the last article of my creed. But I had to make my choice. I had either to submit to a system which I considered had done an irreparable harm to my country, or incur the risk of the mad fury of my people bursting forth when they understood the truth from my lips. I know that my people have sometimes gone mad. I am deeply sorry for it and I am, therefore, here to submit not to a light penalty but to the highest penalty. I do not ask for mercy. I do not plead any extenuating act. I am here, therefore, to invite and cheerfully submit to the highest penalty that can be inflicted upon me for

what in law is a deliberate crime, and what appears to me to be the highest duty of a citizen. The only course open to you, the Judge, is, as I am going to say in my statement, either to resign your post, or inflict on me the severest penalty if you believe that the system and law you are assisting to administer are good for the people. I do not except that kind of conversion. But by the time I have finished with my statement you will have a glimpse of what is raging within my breast to run this maddest risk which a sane man can run.

[He then read out the written statement:] I owe it perhaps to the Indian public and to the public in England, to placate which this prosecution is mainly taken up, that I should explain why from a staunch loyalist and co-operator, I have become an uncompromising disaffectionist and non-co-operator. To the court too I should say why I plead guilty to the charge of promoting disaffection towards the Government established by law in India.

My public life began in 1893 in South Africa in troubled weather. My first contact with British authority in that country was not of a happy character. I discovered that as a man and an Indian, I had no rights. More correctly I discovered that I had no rights as a man because I was an Indian.

But I was not baffled. I thought that this treatment of Indians was an excrescence upon a system that was intrinsically and mainly good. I gave the Government my voluntary and hearty co-operation, criticizing it freely where I felt it was faulty but never wishing its destruction.

Consequently when the existence of the Empire was threatened in 1899 by the Boer challenge, I offered my services to it, raised a volunteer ambulance corps and served at several actions that took place for the relief of Ladysmith. Similarly in 1906, at the time of the Zulu 'revolt', I raised a stretcher bearer party and served till the end of the 'rebellion'. On both the occasions I received medals and was even mentioned in dispatches. For my work in South Africa I was given by Lord Hardinge a Kaisar-i-Hind gold medal. When the war broke out in 1914 between England and Germany, I raised a volunteer ambulance cars in London, consisting of the then resident Indians in London, chiefly students. Its work was acknowledge by the authorities to be valuable. Lastly, in India when a special appeal was made at the war Conference in Delhi in 1918 by Lord Chelmsford for recruits, I struggled at the cost of my health to raise a corps in Kheda, and the response was being made when the hostilities ceased and orders were received that no more recruits were wanted. In all these efforts at service, I was actuated by the belief that it was possible by such services to gain a status of full equality in the Empire for my countrymen.

The first shock came in the shape of the Rowlatt Act—a law designed to rob the people of all real freedom. I felt called upon to lead an intensive agitation against it. Then followed the Punjab horrors beginning with the massacre at Jallianwala Bagh and culminating in crawling orders, public flogging and other indescribable humiliations. I discovered too that the plighted word of the Prime Minister to the Mussalmans of India regarding the integrity of Turkey and the holy places of Islam was not likely to be fulfilled. But in spite of the forebodings and the grave warnings of friends, at the Amritsar Congress in 1919, I fought for co-operation and working of the Montagu-Chelmsford reforms, hoping that the Prime Minister would redeem his promise to the Indian Mussalmans, that the Punjab wound would be healed, and that the reforms, inadequate and unsatisfactory though they were, marked a new era of hope in the life of India.

But all that hope was shattered. The Khilafat promise was not to be redeemed. The Punjab crime was whitewashed and most culprits went not only unpunished but remained in service, and some continued to draw pensions from the Indian revenue and in some cases were even rewarded. I saw too that not only did the reforms not mark a change of heart, but they were only a method of further ransacking India of her wealth and of prolonging her servitude.

I came reluctantly to the conclusion that the British connection had made India more helpless than she ever was before, politically and economically. A disarmed India has no power of resistance against any aggressor if she wanted to engage, in an armed conflict with him. So much is this the case that some of our best men consider that India must take generations, before she can achieve Dominion Status. She has become so poor that she has little power of resisting famines. Before the British advent India spun and wove in her millions of cottages, just the supplement she needed for adding to her meagre agricultural resources. This cottage industry, so vital for India's existence, has been ruined by incredibly heartless and inhuman processes as described by English witnesses. Little do town dwellers know the semi-starved masses of India are slowly sinking to lifelessness. Little do they know that their miserable comfort represents the brokerage they get for their work they do for the foreign exploiter, that the profits and the brokerage are sucked from the masses. Little do they realize that the Government established by law in British India is carried on for this exploitation of the masses. No sophistry, no jugglery in figures, can explain away the evidence that the skeletons in many villages present to the naked eye. I have no doubt whatsoever that both England and the town dweller of India will have to answer, if there is a God above, for this crime against humanity, which is perhaps unequalled in history. The law itself in this country has been used to serve the foreign exploiter. My unbiased examination of the Punjab Marital Law cases has led

me to believe that at least ninety-five per cent of convictions were wholly bad. My experience of political cases in India leads me to the conclusion, in nine out of every ten, the condemned men were totally innocent. Their crime consisted in the love of their country. In ninety-nine cases out of hundred, justice has been denied to Indians as against Europeans in the courts of India. This is not an exaggerated picture. It is the experience of almost every Indian who has had anything to do with such cases. In my opinion, the administration of the law is thus prostituted, consciously or unconsciously, for the benefit of the exploiter.

The greater misfortune is that the Englishmen and their Indian associates in the administration of the country do not know that they are engaged in the crime I have attempted to describe. I am satisfied that many Englishmen and Indian officials honestly systems devised in the world, and that India is making steady, though, slow progress. They do not know, a subtle but effective system of terrorism and an organized display of force on the one hand, and the deprivation of all powers of retaliation or self-defense on the other, as emasculated the people and induced in them the habit of simulation. This awful habit has added to the ignorance and the self-deception of the administrators. Section 124 A, under which I am happily charged, is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote, or incite to violence. But the section under which mere promotion of disaffection is a crime. I have studied some of the cases tried under it; I know that some of the most loved of India's patriots have been convicted under it. I consider it a privilege, therefore, to be charged under that section. I have endeavored to give in their briefest outline the reasons for my disaffection. I have no personal ill-will against any single administrator, much less can I have any disaffection towards the King's person. But I hold it to be a virtue to be disaffected towards a Government which in its totality has done more harm to India than any previous system. India is less manly under the British rule than she ever was before. Holding such a belief, I consider it to be a sin to have affection for the system. And it has been a precious privilege for me to be able to write what I have in the various articles tendered in evidence against me.

In fact, I believe that I have rendered a service to India and England by showing in non-co-operation the way out of the unnatural state in which both are living. In my opinion, non-co-operation with evil is as much a duty as is co-operation with good. But in the past, non-co-operation has been deliberately expressed in violence to the evil-doer. I am endeavoring to show to my countrymen that violent non-co-operation only multiples evil, and

that as evil can only be sustained by violence, withdrawal of support of evil requires complete abstention from violence. Non-violence implies voluntary submission to the penalty for non-co-operation with evil. I am here, therefore, to invite and submit cheerfully to the highest penalty that can be inflicted upon me for what in law is deliberate crime, and what appears to me to be the highest duty of a citizen. The only course open to you, the Judge and the assessors, is either to resign your posts and thus dissociate yourselves from evil, if you feel that the law you are called upon to administer is an evil, and that in reality I am innocent, or to inflict on me the severest penalty, if you believe that the system and the law you are assisting to administer are good for the people of this country, and that my activity is, therefore, injurious to the common weal.

Pope Pius XI

MIT BRENNENDER SORGE

Source: "IntraText Digital Library":
http://www.intratext.com/IXT/ENG1128/_P1.HTM

Such is the rush of present-day life that it severs from the divine foundation of Revelation, not only morality, but also the theoretical and practical rights. We are especially referring to what is called the natural law, written by the Creator's hand on the tablet of the heart (Rom. ii. 14) and which reason, not blinded by sin or passion, can easily read. It is in the light of the commands of this natural law, that all positive law, whoever be the lawgiver, can be gauged in its moral content, and hence, in the authority it wields over conscience. Human laws in flagrant contradiction with the natural law are vitiated with a taint which no force, no power can mend. In the light of this principle one must judge the axiom, that "right is common utility", a proposition which may be given a correct significance, it means that what is morally indefensible, can never contribute to the good of the people. But ancient paganism acknowledged that the axiom, to be entirely true, must be reversed and be made to say: "Nothing can be useful, if it is not at the same time morally good" (Cicero, De Off. ii. 30). Emancipated from this oral rule, the principle would in international law carry a perpetual state of war between nations; for it ignores in national life, by confusion of right and utility, the basic fact that man as a person possesses rights he holds from God, and which any collectivity must protect against denial, suppression or neglect. To overlook this truth is to forget that the real common good ultimately takes its measure from man's nature, which balances personal rights and social obligations, and from the purpose of society, established for the benefit of human nature. Society, was intended by the Creator for the full development of individual possibilities, and for the social benefits, which by a give and take process, every one can claim for his own sake and that of others. Higher and more general values, which collectivity alone can provide, also derive from the Creator for the good of man, and for the full development, natural and supernatural, and the realization of his perfection. To neglect this order is to shake the pillars on which society rests, and to compromise social tranquillity, security and existence.

The believer has an absolute right to profess his Faith and live according to its dictates. Laws which impede this profession and practice of Faith are against natural law.

Parents who are earnest and conscious of their educative duties, have a primary right to the education of the children God has given them in the spirit of their Faith, and according to its prescriptions. Laws and measures which in school questions fail to respect this freedom of the parents go against natural law, and are immoral. The Church, whose mission it is to preserve and explain the natural law, as it is divine in its origin, cannot but declare that the recent enrollment into schools organized without a semblance of freedom, is the result of unjust pressure, and is a violation of every common right.

Franklin Delano Roosevelt

THE FOUR FREEDOMS

Source: "Institute for the Study of Civic Values":
<http://www.libertynet.org/edcivic/fdr.html>

Mr. Speaker, members of the 77th Congress :

I address you, the members of this new Congress, at a moment unprecedented in the history of the union. I use the word "unprecedented" because at no previous time has American security been as seriously threatened from without as it is today.

Since the permanent formation of our government under the Constitution in 1789, most of the periods of crisis in our history have related to our domestic affairs. And, fortunately, only one of these – the four-year war between the States – ever threatened our national unity. Today, thank God, 130,000,000 Americans in forty-eight States have forgotten points of the compass in our national unity.

It is true that prior to 1914 the United States often has been disturbed by events in other continents. We have even engaged in two wars with European nations and in a number of undeclared wars in the West Indies, in the Mediterranean and in the Pacific, for the maintenance of American rights and for the Principles of peaceful commerce. But in no case has a serious threat been raised against our national safety or our continued independence.

What I seek to convey is the historic truth that the United States as a nation has at all times maintained opposition – clear, definite opposition – to any attempt to lock us in behind an ancient Chinese wall while the procession of civilization went past. Today, thinking of our children and of their children, we oppose enforced isolation for ourselves or for any other part of the Americas.

That determination of ours, extending over all these years, was proved, for example, in the early days during the quarter century of wars following the French Revolution. While the Napoleonic struggle did threaten interests of the United States because of the French foothold in the West Indies and in Louisiana, and while we engaged in the War of 1812 to vindicate our right to peaceful trade, it is nevertheless clear that neither France nor Great Britain nor any other nation was aiming at domination of the whole world.

And in like fashion, from 1815 to 1914 – ninety-nine years – no single war in Europe or in Asia constituted a real threat against our future or against the future of any other American nation.

Except in the Maximilian interlude in Mexico, no foreign power sought to establish itself in this hemisphere. And the strength of the British fleet in the Atlantic has been a friendly strength; it is still a friendly strength.

Even when the World War broke out in 1941 it seemed to contain only small threat of danger to our own American future. But as time went on, as we remember, the American people began to visualize what the downfall of democratic nations might mean to our own democracy.

We need not overemphasize imperfections in the peace of Versailles. We need not harp on failure of the democracies to deal with problems of world reconstruction. We should remember that the peace of 1919 was far less unjust than the kind of pacification which began even before Munich, and which is being carried on under the new order of tyranny that seeks to spread over every continent today. The American people have unalterably set their faces against that tyranny.

I suppose that every realist knows that the democratic way of life is at this moment being directly assailed in every part of the world – assailed either by arms or by secret spreading of poisonous propaganda by those who seek to destroy unity and promote discord in nations that are still at peace. During sixteen long months this assault has blotted out the whole pattern of democratic life in an appalling number of independent nations, great and small. And the assailants are still on the march, threatening other nations, great and small.

Therefore, as your President, performing my constitutional duty to “give to the Congress information of the state of the union”, I find it unhappily necessary to report that the future and the safety of our country and of our democracy are overwhelmingly involved in events far beyond our borders.

Armed defense of democratic existence is now being gallantly waged in four continents. If that defense fails, all the population and all the resources of Europe and Asia, Africa and Australia will be dominated by conquerors. And let us remember that the total of those populations in those four continents, the total of those populations and their resources greatly exceeds the sum total of the population and the resources of the whole of the Western Hemisphere – yes, many times over.

In times like these it is immature – and, incidentally, untrue – for anybody to brag that an unprepared America, single-handed and with one hand tied behind its back, can hold off the whole world.

No realistic American can expect from a dictator’s peace international generosity, or return of true independence, or world disarmament, or freedom of expression, or freedom of religion – or even good business. Such

a peace would bring no security for us or for our neighbors. Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.

As a nation we may take pride in the fact that we are soft-hearted; but we cannot afford to be soft-headed. We must always be wary of those who with sounding brass and a tinkling cymbal preach the ism of appeasement. We must especially beware of that small group of selfish men who would clip the wings of the American eagle in order to feather their own nests. I have recently pointed out how quickly the tempo of modern warfare could bring into our very midst the physical attack which we must eventually expect if the dictator nation win this war.

There is much loose talk of our immunity from immediate and direct invasion from across the seas. Obviously, as long as the British Navy retains its power, no such danger exists. Even if there were no British Navy, it is not probable that any enemy would be stupid enough to attack us by landing troops in the United States from across thousands of miles of ocean, until it had acquired strategic bases from which to operate. But we learn much from the lessons of the past years in Europe – particularly the lesson of Norway, whose essential seaports were captured by treachery and surprise built up over a series of years.

The first phase of the invasion of this hemisphere would not be the landing of regular troops. The necessary strategic points would be occupied by secret agents and by their dupes – and great numbers of them are already here and in Latin America. As long as the aggressor nations maintain the offensive they, not we, will choose the time and the place and the method of their attack. And that is why the future of all the American Republics is today in serious danger. That is why this annual message to the Congress is unique in our history. That is why every member of the executive branch of the government and every member of the Congress face great responsibility – great accountability.

The need of the moment is that our actions and our policy should be devoted primarily – almost exclusively – to meeting this foreign peril. For all our domestic problems are now a part of the great emergency. Just as our national policy in internal affairs has been based upon a decent respect for the rights and the dignity of all of our fellow men within our gates, so our national policy in foreign affairs has been based on a decent respect for the rights and the dignity of all nations, large and small. And the justice of morality must and will win in the end.

Our national policy is this:

First, by an impressive expression of the public will and without regard to partisanship, we are committed to all-inclusive national defense. Second, by an impressive expression of the public will and without regard to

partisanship, we are committed to full support of all those resolute people everywhere who are resisting aggression and are thereby keeping war away from our hemisphere. By this support we express our determination that the democratic cause shall prevail, and we strengthen the defense and the security of our own nation.

Third, by an impressive expression of the public will and without regard to partisanship, we are committed to the proposition that principle of morality and considerations for our own security will never permit us to acquiesce in a peace dictated by aggressors and sponsored by appeasers. We know that enduring peace cannot be bought at the cost of other people's freedom.

In the recent national election there was no substantial difference between the two great parties in respect to that national policy. No issue was fought out on the line before the American electorate. And today it is abundantly evident that American citizens everywhere are demanding and supporting speedy and complete action in recognition of obvious danger.

Therefore, the immediate need is a swift and driving increase in our armament production. Leaders of industry and labor have responded to our summons. Goals of speed have been set. In some cases these goals are being reached ahead of time. In some cases we are on schedule; in other cases there are slight but not serious delays. And in some cases – and, I am sorry to say, very important cases – we are all concerned by the slowness of the accomplishment of our plans. The Army and Navy, however, have made substantial progress during the past year. Actual experience is improving and speeding up our methods of production with every passing day. And today's best is not good enough for tomorrow.

I am not satisfied with the progress thus far made. The men in charge of the program represent the best in training, in ability and in patriotism. They are not satisfied with the progress thus far made. None of us will be satisfied until the job is done. No matter whether the original goal was set too high or too low, our objective is quicker and better results.

To give you two illustrations:

We are behind schedule in turning out finished airplanes.

We are working day and night to solve the innumerable problems and to catch up.

We are ahead of schedule in building warships, but we are working to get even further ahead of that schedule. To change a whole nation from a basis of peacetime production of implements of peace to a basis of wartime production of implements of war is no small task. The greatest difficulty comes at the beginning of the program, when new tools, new plant facilities, new assembly lines, new shipways must first be constructed before the actual material begins to flow steadily and speedily from them.

The Congress of course, must rightly keep itself informed at all times of the progress of the program. However, there is certain information, as the Congress itself will readily recognize, which, in the interests of our own security and those of the nations that we are supporting, must of needs be kept in confidence. New circumstances are constantly begetting new needs for our safety. I shall ask this Congress for greatly increased new appropriations and authorizations to carry on what we have begun.

I also ask this Congress for authority and for funds sufficient to manufacture additional munitions and war supplies of many kinds, to be turned over to those nations which are now in actual war with aggressor nations. Our most useful and immediate role is to act as an arsenal for them as well as for ourselves. They do not need manpower, but they do need billions of dollars' worth of the weapons of defense. The time is near when they will not be able to pay for them all in ready cash. We cannot, and we will not, tell them that they must surrender merely because of present inability to pay for the weapons which we know they must have.

I do not recommend that we make them a loan of dollars with which to pay for these weapons – a loan to be repaid in dollars. I recommend that we make it possible for those nations to continue to obtain war materials in the United States, fitting their orders into our own program. And nearly all of their material would, if the time ever came, be useful in our own defense. Taking counsel of expert military and naval authorities, considering what is best for our own security, we are free to decide how much should be kept here and how much should be sent abroad to our friends who, by their determined and heroic resistance, are giving us time in which to make ready our own defense.

For what we send abroad we shall be repaid, repaid within a reasonable time following the close of hostilities, repaid in similar materials, or at our option in other goods of many kinds which they can produce and which we need. Let us say to the democracies : “We Americans are vitally concerned in your defense of freedom. We are putting forth our energies, our resources and our organizing powers to give you the strength to regain and maintain a free world. We shall send you in ever-increasing numbers, ships, planes, tanks, guns. That is our purpose and our pledge.”

In fulfillment of this purpose we will not be intimidated by the threats of dictators that they will regard as a breach of international law or as an act of war our aid to the democracies which dare to resist their aggression. Such aid is not an act of war, even if a dictator should unilaterally proclaim it so to be. And when the dictators – if the dictators – are ready to make war upon us, they will not wait for an act of war on our part.

They did not wait for Norway or Belgium or the Netherlands to commit an act of war. Their only interest is in a new one-way international law which lacks

mutuality in its observance and therefore becomes an instrument of oppression. The happiness of future generations of Americans may well depend on how effective and how immediate we can make our aid felt. No one can tell the exact character of the emergency situations that we may be called upon to meet. The nation's hands must not be tied when the nation's life is in danger.

Yes, and we must prepare, all of us prepare, to make the sacrifices that the emergency – almost as serious as war itself – demands. Whatever stands in the way of speed and efficiency in defense, in defense preparations at any time, must give way to the national need. A free nation has the right to expect full cooperation from all groups. A free nation has the right to look to the leaders of business, of labor and of agriculture to take the lead in stimulating effort, not among other groups but within their own groups.

The best way of dealing with the few slackers or trouble-makers in our midst is, first, to shame them by patriotic example, and if that fails, to use the sovereignty of government to save government. As men do not live by bread alone, they do not fight by armaments alone. Those who man our defenses and those behind them who build our defenses must have the stamina and the courage which come from unshakeable belief in the manner of life which they are defending. The mighty action that we are calling for cannot be based on a disregard of all the things worth fighting for.

The nation takes great satisfaction and much strength from the things which have been done to make its people conscious of their individual stake in the preservation of democratic life in America. Those things have toughened the fiber of our people, have renewed their faith and strengthened their devotion to the institutions we make ready to protect. Certainly this is no time for any of us to stop thinking about the social and economic problems which are the root cause of the social revolution which is today a supreme factor in the world. For there is nothing mysterious about the foundations of a healthy and strong democracy.

The basic things expected by our people of their political and economic systems are simple. They are:

- Equality of opportunity for youth and for others.
- Jobs for those who can work. Security for those who need it.
- The ending of special privilege for the few.
- The preservation of civil liberties for all.
- The enjoyment of the fruits of scientific progress
in a wider and constantly rising standard of living.

These are the simple, the basic things that must never be lost sight of in the turmoil and unbelievable complexity of our modern world. The inner and abiding straight of our economic and political systems is dependent upon the degree to which they fulfill these expectations.

Many subjects connected with our social economy call for immediate improvement. As examples:

We should bring more citizens under the coverage of old-age pensions and unemployment insurance. We should widen the opportunities for adequate medical care. We should plan a better system by which persons deserving or needing gainful employment may obtain it. I have called for personal sacrifice, and I am assured of the willingness of almost all Americans to respond to that call. A part of the sacrifice means the payment of more money in taxes. In my budget message I will recommend that a greater portion of this great defense program be paid for from taxation than we are paying for today. No person should try, or be allowed to get rich out of the program, and the principle of tax payments in accordance with ability to pay should be constantly before our eyes to guide our legislation.

If the congress maintains these principles the voters, putting patriotism ahead pocketbooks, will give you their applause. In the future days which we seek to make secure, we look forward to a world founded upon four essential human freedoms.

The first is freedom of speech and expression – everywhere in the world.

The second is freedom of every person to worship God in his own way – everywhere in the world. The third is freedom from want, which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants – everywhere in the world.

The fourth is freedom from fear, which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor – anywhere in the world. That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation. That kind of world is the very antithesis of the so-called “new order” of tyranny which the dictators seek to create with the crash of a bomb.

To that new order we oppose the greater conception – the moral order. A good society is able to face schemes of world domination and foreign revolutions alike without fear. Since the beginning of our American history we have been engaged in change, in a perpetual, peaceful revolution, a revolution which goes on steadily, quietly, adjusting itself to changing conditions without the concentration camp or the quicklime in the ditch. The world order which we seek is the cooperation of free countries, working together in a friendly, civilized society.

This nation has placed its destiny in the hands, heads and hearts of its millions of free men and women, and its faith in freedom under the guidance

of God. Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain those rights and keep them. Our strength is our unity of purpose.

To that high concept there can be no end save victory.

Gustav Radbruch

FIVE MINUTES OF LEGAL PHILOSOPHY

Source: Gustav Radbruch, *Five Minutes of Legal Philosophy* (1945), translated by B. L. Paulson and S. L. Paulson, *Oxford Journal of Legal Studies*, Vo. 26, No. 1 (2006), pp. 13-15.

First Minute

‘An order is an order’, the soldier is told. ‘A law is a law’, says the jurist. The soldier, however, is required neither by duty nor by law to obey an order whose object he knows to be a felony or a misdemeanor, while the jurist – since the last of the natural lawyers died out a hundred years ago – recognizes no such exceptions to the validity of a law or to the requirement of obedience by those subject to it. A law is valid because it is a law, and it is a law if, in the general run of cases, it has the power to prevail.

This view of a law and of its validity (we call it the positivistic theory) has rendered jurists and the people alike defenceless against arbitrary, cruel, or criminal laws, however extreme they might be. In the end, the positivistic theory equates law with power; there is law only where there is power.

Second Minute

Attempts have been made to supplement or replace this tenet with another: Law is what benefits the people.

That is to say, arbitrariness, breach of contract, and illegality – provided only that they benefit the people – are law. Practically speaking, this means that whatever state authorities deem to be of benefit to the people is law, including every despotic whim and caprice, punishment unsanctioned by statute or judicial decision, the lawless murder of the sick. This can mean that the private benefit of those in power is regarded as a public benefit. Indeed, it was the equating of the law with supposed or ostensible benefits to the people that transformed a Rechtsstaat into an outlaw state.

No, this tenet does not mean: Everything that benefits the people is law.

Rather, it is the other way around: Only what law is benefits the people.

Third Minute

Law is the will to justice. Justice means: To judge without regard to the person, to measure everyone by the same standard.

If one applauds the assassination of political opponents, or orders the murder of people of another race, all the while meting out the most cruel

and degrading punishment for the same acts committed against those of one's own persuasion, this is neither justice nor law.

If laws deliberately betray the will to justice – by, for example, arbitrarily granting and withholding human rights – then these laws lack validity, the people owe them no obedience, and jurists, too, must find the courage to deny them legal character.

Fourth Minute

Of course it is true that the public benefit, along with justice, is an objective of the law. And of course laws have value in and of themselves, even bad laws: the value, namely, of securing the law against uncertainty. And of course it is true that, owing to human imperfection, the three values of the law – public benefit, legal certainty, and justice – are not always united harmoniously in laws, and the only recourse, then, is to weigh whether validity is to be granted even to bad, harmful, or unjust laws for the sake of legal certainty, or whether validity is to be withheld because of their injustice or social harmfulness. One thing, however, must be indelibly impressed on the consciousness of the people as well as of jurists: There can be laws that are so unjust and so socially harmful that validity, indeed legal character itself, must be denied them.

Fifth Minute

There are principles of law, therefore, that are weightier than any legal enactment, so that a law in conflict with them is devoid of validity. These principles are known as natural law or the law of reason. To be sure, their details remain open to question, but the work of centuries has in fact established a solid core of them, and they have come to enjoy such far-reaching consensus in the so-called declarations of human and civil rights that only the dogmatic sceptic could still entertain doubts about some of them.

In the language of faith, the same thoughts are recorded in two verses from the Bible. It is written that you are to be obedient to the authorities who have power over you,¹ but it is also written that you are to obey God rather than men – and this is not simply a pious wish, but a valid legal proposition. A solution to the tension between these two directives cannot be found by appealing to a third – say, to the dictum: 'Render to Caesar the things that are Caesar's, and to God the things that are God's'. For this directive, too, leaves the dividing line in doubt. Or, rather, it leaves the solution to the voice of God, which speaks to the conscience of the individual only in the particular case.

Karl Jaspers

THE QUESTION OF GERMAN GUILT

Source: Karl Jaspers, *The Question of German Guilt*, translated by E.B. Ashton, Fordham University Press, New York, pp. 21-117.

All through these years we have heard other people scorned. We do not want to continue that.

But we always succeed only in part. We all tend to justify ourselves, and to attack what we feel are hostile forces with depreciating judgments or moral accusations. Today we must examine ourselves more severely than ever. Let us make this plain: in the course of events the survivor seems always right. Success apparently justifies. The man on top believes that he has the truth of a good cause on his side. This implies the profound injustice of blindness for the failures, for the powerless, for those who are crushed by events. [...]

Let us be clear about this in our minds: that we live and survive is not due to ourselves. If we have a new situation, with new opportunities amidst fearful destruction, it has not been created by our own strength. Let us not claim a legitimacy which is not due us.

As today every German government is an authoritarian government set up by the Allies, so every German, every one of us, owes the scope of his activities today to the Allies' will or permission. This is a cruel fact. Truthfulness prevents us from forgetting it even for a day. It preserves us from arrogance and teaches us humility.

Among the survivors, among those on top, there are today, as ever, the outraged, impassioned ones, all thinking they are right and claiming credit for what has happened through others. The man who is well off, who finds an audience, thinks that this alone makes him right.

No one can avoid this situation altogether. Time and again, when we get on this path for an instant, we must make a real effort to find our way back to self-education. We are outraged ourselves. May outrage cleanse itself, may it stay with us as outrage against outrage, as morals against moralizing. [...]

Full frankness and honesty harbors not only our dignity – possible even in impotence – but our own chance. The question for every German is whether to go this way at the risk of all disappointments, at the risk of additional losses and of convenient abuse by the powerful. The answer is that this is the only way that can save our souls from a pariah existence. What will result from it we shall have to see. It is a spiritual-political venture along the edge

of the precipice. If success is possible, then it will be only at long range. We are going to be distrusted for a long time to come.

A proudly silent bearing may for a short time be a justified mask, to catch one's breath and clear one's head behind it. But it becomes self-deception, and a trap for the other, if it permits us to hide defiantly within ourselves, to bar enlightenment, to elude the grasp of reality. We must guard against evasion. From such a bearing there arises a mood which is discharged in private, safe abuse, a mood of heartless frigidity, rabid indignation and facial distortions, leading to barren self-corrosion. A pride that falsely deems itself masculine, while in fact evading the issue, takes even silence as an act of combat, a final one that remains impotent. [...]

Talking with each other is difficult in Germany today, but the more important for that reason. For we differ extraordinarily in what we have experienced, felt, wished, cherished and done. An enforced superficial community hid that which is full of possibilities and is now able to unfold.

We cannot sensibly talk with each other unless we regard the extraordinary differences as starting points rather than finalities. We have to learn to see and feel the difficulties in situations and attitudes entirely divergent from our own. We must see the different origins – in education, special fates and experiences – of any present attitude.

Today we Germans may have only negative basic features in common: membership in a nation utterly beaten and at the victors' mercy; lack of a common ground linking us all; dispersal – each one is essentially on his own, and yet each one is individually helpless. Common is the non-community.

In the silence underneath the leveling public propaganda talk of the twelve years, we struck very different inner attitudes and passed through very different inner developments. We have no uniformly constituted souls and desires and sets of values in Germany. Because of the great diversity in what we believed all these years, what we took to be true, what to us was the meaning of life, the way of the transformation must also be different now for every individual. We are all being transformed. But we do not all follow the same path to the new ground of common truth, which we seek and which reunites us. In such a disaster everyone may let himself be made over for rebirth, without fear of dishonor. [...]

There were our conceptions of events, differing to the point of irreconcilability: some went through the whole disrupting experience of national indignity as early as 1933, others after June 1934, still others in 1938 during the Jewish pogroms, many in the years since 1942, when defeat became probable, or since 1943 when it became certain, and some not until it actually happened in 1945. For the first group, 1945 was the year of delivery and new chances; for others these days were the hardest, since they brought the end of the supposedly national Reich.

Some radically sought the evil's source and took the consequences. They desired intervention and invasion by the Western powers as early as 1933; for they saw that now, with the gates slammed on the German prison, delivery could only come from outside. The future of the German soul depended on this liberation. If its destruction was not to be completed, it had to be freed as soon as possible by sister nations of Western bent, acting on a common European interest. This delivery did not take place. The way led on to 1945, to the most fearful destruction of all our physical and moral realities.

But this view is by no means general among us. Aside from those who saw or are still seeing the Golden Age in National-Socialism, there were opponents of National-Socialism who were convinced nonetheless that a victory of Hitler's Germany would not result in the destruction of Germanism. Instead, they foresaw a great future based on such a triumph, on the theory that a triumphant Germany – whether immediately or after Hitler's death – would rid itself of the party. They did not believe the old saying that the power of a state can only be maintained by the forces which established it; they did not believe that terrorism would, in the nature of things, be unbreakable precisely after a victory – that after a victory, with the army discharged, Germany would have become a slave nation held in check by the SS for the exercise of a desolate, destructive, free-domless world rule in which all things German would have suffocated.

Another difference lies in the way of the ordeal which, although common to all of us, is extraordinarily varied in the kind and degree of its particular appearance. Close relatives and friends are dead or missing. Homes lie in ruins. Property has been destroyed. With everybody experiencing trouble, severe privations and physical suffering, it is still something altogether different whether one retains a home and household goods or has been ruined by bombs; whether he sustained his suffering and losses in combat at the front, at home, or in a concentration camp; whether he was a hunted Gestapo victim or one of those who, even though in fear, profited by the regime. Virtually everyone has lost close relatives and friends, but how he lost them – in front-line combat, in bombings, in concentration camps or in the mass murders of the regime – results in greatly divergent inner attitudes. Millions of disabled are seeking a way of life. Hundreds of thousands have been rescued from the concentration camps. Millions are being evacuated and forced to roam. The greater part of the male population has passed through the prisoner-of-war camps and gathered very dissimilar experiences. Men have come to the limits of humanity and returned home, unable to forget what really was. Denazification throws countless numbers out of their past course. The suffering differs in kind, and most people have sense only for their kind. Everyone tends to interpret great losses and trials as a sacrifice.

But the possible interpretations of this sacrifice are so abysmally different that, at first, they divide people. [...]

Almost the entire world indicts Germany and the Germans. Our guilt is discussed in terms of outrage, horror, hatred and scorn. Punishment and retribution are desired, not by the victors alone but also by some of the German emigres and even by citizens of neutral countries. In Germany there are some who admit guilt, including their own, and many who hold themselves guiltless but pronounce others guilty.

The temptation to evade this question is obvious; we live in distress – large parts of our population are in so great, such acute distress that they seem to have become insensitive to such discussions. Their interest is in anything that would relieve distress, that would give them work and bread, shelter and warmth. The horizon has shrunk. People do not like to hear of guilt, of the past; world history is not their concern. They simply do not want to suffer any more; they want to get out of this misery, to live but not to think. There is a feeling as though after such fearful suffering one had to be rewarded, as it were, or at least comforted, but not burdened with guilt on top of it all.

And yet, though aware of our helplessness in the face of extremity, we feel at moments an urgent longing for the calm truth. The aggravation of distress by the indictment (of the German people) is not irrelevant, or a mere cause of anger. We want to see clearly whether this indictment is just or unjust, and in what sense. For it is exactly in distress that the most vital need is most strongly felt: to cleanse one's own soul and to think and do right, so that in the face of nothingness we may grasp life from a new authentic origin.

We Germans are indeed obliged without exception to understand clearly the question of our guilt, and to draw the conclusions. What obliges us is our human dignity. First, we cannot be indifferent to what the world thinks of us, for we know we are part of mankind – are human before we are German. More important, however: our own life, in distress and dependence, can have no dignity except by truthfulness toward ourselves. The guilt question is more than a question put to us by others, it is one we put to ourselves. The way we answer it will be decisive for our present approach to the world and ourselves. It is a vital question for the German soul. No other way can lead to a regeneration that would renew us from the source of our being. That the victors condemn us is a political fact which has the greatest consequences for our life, but it does not help us in the decisive point, in our inner regeneration. Here we deal with ourselves alone. Philosophy and theology are called on to illumine the depths of the question of guilt. [...]

FOUR CONCEPTS OF GUILT

We must distinguish between:

(1) Criminal guilt: Crimes are acts capable of objective proof and violate unequivocal laws. Jurisdiction rests with the court, which in formal proceedings can be relied upon to find the facts and apply the law.

(2) Political guilt: This, involving the deeds of statesmen and of the citizenry of a state, results in my having to bear the consequences of the deeds of the state whose power governs me and under whose order I live. Everybody is co-responsible for the way he is governed. Jurisdiction rests with the power and the will of the victor, in both domestic and foreign politics. Success decides. Political prudence, which takes the more distant consequences into account, and the acknowledgment of norms, which are applied as natural and international law, serves to mitigate arbitrary power.

(3) Moral guilt: I, who cannot act otherwise than as an individual, am morally responsible for all my deeds, including the execution of political and military orders. It is never simply true that "orders are orders." Rather – as crimes even though ordered (although, depending on the degree of danger, blackmail and terrorism, there may be mitigating circumstances) – so every deed remains subject to moral judgment. Jurisdiction rests with my conscience, and in communication with my friends and intimates who are lovingly concerned about my soul.

(4) Metaphysical guilt: There exists a solidarity among men as human beings that makes each co-responsible for every wrong and every injustice in the world, especially for crimes committed in his presence or with his knowledge. If I fail to do whatever I can to prevent them, I too am guilty. If I was present at the murder of others without risking my life to prevent it, I feel guilty in a way not adequately conceivable either legally, politically or morally. That I live after such a thing has happened weighs upon me as indelible guilt. As human beings, unless good fortune spares us such situations, we come to a point where we must choose: either to risk our lives unconditionally, without chance of success and therefore to no purpose – or to prefer staying alive, because success is impossible. That somewhere among men the unconditioned prevails – the capacity to live only together or not at all, if crimes are committed against the one or the other, or if physical living requirements have to be shared – therein consists the substance of their being. But that this does not extend to the solidarity of all men, nor to that of fellow-citizens or even of smaller groups, but remains confined to the closest human ties – therein lies this guilt of us all. Jurisdiction rests with God alone. [...]

The guilt question received its universal impact from the charges brought against us Germans by the victors and the world. In the summer of 1945, when in all towns and villages the posters hung with the pictures and stories

from Belsen and the crucial statement, "You are the guilty!" consciences grew uneasy, horror gripped many who had indeed not known this, and something rebelled: who indicts me there? No signature, no authority – the poster came as though from empty space. [...]

That condemnation by the victorious powers became a means of politics and impure in its motives – this fact itself is a guilt pervading history.

After World War I, the Treaty of Versailles decided the war-guilt question, against Germany. Historians of all countries have since discarded the theory that only one side was guilty. [...]

Today things are altogether different. The question of guilt has acquired a more comprehensive meaning. It sounds quite unlike before.

This time the war-guilt question, in the foreground after 1918, is very clear. The war was unleashed by Hitler Germany. Germany is guilty of the war through its regime, which started the war at its own chosen moment, while none of the rest wanted it.

Today, however, "You are the guilty" means much more than war guilt.

That poster has by now been almost forgotten. But what we learned from it has remained: first, the reality of a world opinion which condemns us as a nation – and second, our own concern.

World opinion matters to us. It is mankind which so considers us – a fact to which we cannot be indifferent. Besides, guilt is coming to be a political weapon. Being held guilty, we have in this view deserved whatever grief we have come to, and are yet to come to. Herein lies the justification of the politicians who partition Germany, who restrict its reconstruction possibilities, who would leave it peaceless, suspended between life and death. The political question – which we do not have to decide and whose decision we can scarcely influence even by our most blameless conduct – is whether it is politically sensible, purposeful, safe and just to turn a whole nation into a pariah nation, to degrade it beneath all others, to dishonor it further, once it had dishonored itself. Here we are not discussing this question, nor the political question whether, and in what sense, it is necessary and useful to make admissions of guilt. It may be that the condemnation of the German people will stand. It would have tremendous consequences for us. We still hope that some day the statesmen will revise their decision, and the nations their opinion. Yet ours is not to accuse but to accept. The utter impotence to which National-Socialism brought us, and from which there is no escape in the present, technologically conditioned world situation, leaves us no alternative.

But even more important to us is how we analyze, judge and cleanse ourselves. Those charges from without no longer are our concern. On the other hand, there are the charges from within which have been voiced in German souls for twelve years, for moments at least, more or less clearly but

impossible to overhear. They, by the changes they effect in ourselves, old or young, are the source of whatever self-respect is still possible for us. We must clarify the question of German guilt. This is our own business. It is independent of outside charges, however much we may hear and use them as questions and mirrors.

That statement, "You are the guilty", can have several meanings. It can mean:

"You must answer for the acts of the regime you tolerated" – this involves our political guilt.

Or: "You are guilty, moreover, of giving your support and cooperation to this regime" – therein lies our moral guilt.

Or: "You are guilty of standing by inactively when the crimes were committed" – there, a metaphysical guilt suggests itself.

I hold these three statements to be true – although only the first, concerning political liability, is quite correct and to be made without reservations, while the second and third, on moral and metaphysical guilt, become untrue in legal form, as uncharitable testimony.

A further meaning of "You are the guilty" could be:

"You took part in these crimes, and are therefore criminals yourselves." This statement, applied to the overwhelming majority of Germans, is patently false.

Lastly, the phrase may mean: "You are inferior as a nation, ignoble, criminal, the scum of the earth, different from all other nations." This is the collectivist type of thought and appraisal, classifying every individual under these generalizations. It is radically false and itself inhuman, whether done for good or evil ends. [...]

And today we have something entirely new in world history. The victors are establishing a court. The Nuremberg trial deals with crimes.

The primary result is a clear delimitation in two directions:

First, not the German people are being tried here but individual, criminally accused Germans – on principle all leaders of the Nazi regime. This line was drawn at the outset by the American member of the prosecution. "We want to make it clear", Jackson said in his fundamental address, "that we do not intend to accuse the whole German people."

Second, the suspects are not accused indiscriminately. They are charged with specific crimes expressly defined in the statute of the International Military Tribunal. [...]

At this trial we Germans are spectators. We did not bring it about and we are not running it, although the defendants are men who brought disaster over us. [...]

Many a German smarts under this trial. The sentiment is understandable. Its cause is the same which moved the other side to blame the whole German

people for the Hitler regime and its acts. Every citizen is jointly liable for the doings and jointly affected by the sufferings of his own state. A criminal state is charged against its whole population. Thus the citizen feels the treatment of his leaders as his own, even if they are criminals. In their persons the people are also condemned. Thus the indignity and mortification experienced by the leaders of the state are felt by the people as their own indignity and mortification. Hence their instinctive, initially unthinking rejection of the trial.

The political liability we have to meet here is painful indeed. We must experience mortification if required by our political liability. Thereby, symbolically, we experience our utter political impotence and our elimination as a political factor.

Yet everything depends on how we conceive, interpret, appropriate and translate our instinctive concern.

One possibility is outright rejection of indignity. We look for reasons, then, to deny the right, the truthfulness, the purpose of the whole trial.

(1) We engage in general reflections: There have been wars throughout history and there will be more. No one people is guilty of war. Wars are due to human nature, to the universal culpability of man. A conscience which proclaims itself not guilty is superficial. By its very conduct such self-righteousness breeds future wars.

Rebuttal: This time there can be no doubt that Germany planned and prepared this war and started it without provocation from any other side. It is altogether different from 1914. Germany is not called guilty of war but of this war. And this war itself is something new and different, occurring in a situation unparalleled in the past history of the world.

This objection to the Nuremberg trial may be phrased in other ways, perhaps as follows: It is an insoluble problem of human existence that what must be settled by invoking the judgment of God, keeps pressing time and again for a decision by force. The soldier's feelings are chivalrous, and even in defeat he has a right to be offended if treated in an unchivalrous manner.

Rebuttal: Germany, throwing all chivalry overboard and violating international law, has committed numerous acts resulting in the extermination of populations and in other inhumanities. Hitler's actions from the start were directed against every chance of a reconciliation. It was to be victory or ruin. Now we feel the consequences of the ruin. All claims to chivalry – even though a great many individual soldiers and entire units are guiltless and themselves have always acted chivalrously – is voided by the Wehrmacht's readiness to execute criminal orders as Hitler's organizations. Once betrayed, chivalry and magnanimity cannot be claimed in one's favor, after the fact. This war did not break out between opponents alike in kind, come to a dead end and

chivalrously entering the lists. It was conceived and executed by criminal cunning and the reckless totality of a destructive will. [...]

(2) The trial is said to be a national disgrace for all Germans; if there were Germans on the tribunal, at least, then Germans would be judged by Germans.

Rejoinder: The national disgrace lies not in the tribunal but in what brought it on – in the fact of this regime and its acts. The consciousness of national disgrace is inescapable for every German. It aims in the wrong direction if turning against the trial rather than its cause. [...]

(3) One counterargument runs as follows: How can we speak of crimes in the realm of political sovereignty? To grant this would mean that any victor can make a criminal of the vanquished – and the meaning and the mystery of God-derived authority would cease. Men once obeyed by a nation – in particular former Emperor William II and now “the Fuehrer” – are considered inviolable.

Rebuttal: This is a habit of thought derived from the tradition of political life in Europe, preserved the longest in Germany. Today, however, the halo round the heads of states has vanished. They are men and answer for their deeds. Ever since European nations have tried and beheaded their monarchs, the task of the people has been to keep their leaders in check. [...]

The restriction of the Nuremberg trial to criminals serves to exonerate the German people. Not, however, so as to free them of all guilt – on the contrary. The nature of our real guilt only appears the more clearly.

We were German nationals at the time when the crimes were committed by the regime which called itself German, which claimed to be Germany and seemed to have the right to do so, since the power of the state was in its hands and until 1943 it found no dangerous opposition.

The destruction of any decent, truthful German polity must have its roots also in modes of conduct of the majority of the German population. A people answers for its polity.

Every German is made to share the blame for the crimes committed in the name of the Reich. We are collectively liable. The question is in what sense each of us must feel co-responsible. Certainly in the political sense of the joint liability of all citizens for acts committed by their state – but for that reason not necessarily also in the moral sense of actual or intellectual participation in crime. Are we Germans to be held liable for outrages which Germans inflicted on us, or from which we were saved as by a miracle? Yes – inasmuch as we let such a regime rise among us. [...]

Every German asks himself: how am I guilty?

The question of the guilt of the individual analyzing himself is what we call the moral one. Here we Germans are divided by the greatest differences.

While the decision in self-judgment is up to the individual alone, we are free to talk with one another, insofar as we are in communication, and morally to help each other achieve clarity. The moral sentence on the other is suspended, however – neither the criminal nor the political one.

There is a line at which even the possibility of moral judgment ceases. It can be drawn where we feel the other not even trying for a moral self-analysis – where we perceive mere sophistry in his argument, where he seems not to hear at all. Hitler and his accomplices, that small minority of tens of thousands, are beyond moral guilt for as long as they do not feel it. They seem incapable of repentance and change. They are what they are. Force alone can deal with such men who live by force alone.

But the moral guilt exists for all those who give room to conscience and repentance. The morally guilty are those who are capable of penance, the ones who knew, or could know, and yet walked in ways which self-analysis reveals to them as culpable error – whether conveniently closing their eyes to events, or permitting themselves to be intoxicated, seduced or bought with personal advantages, or obeying from fear. Let us look at some of these possibilities.

(a) By living in disguise – unavoidable for anyone who wanted to survive – moral guilt was incurred. Mendacious avowals of loyalty to threatening bodies like the Gestapo, gestures like the Hitler salute, attendance at meetings, and many other things causing a semblance of participation – who among us in Germany was not guilty of that, at one time or another? Only the forgetful can deceive themselves about it, since they want to deceive themselves. Camouflage had become a basic trait of our existence. It weighs on our moral conscience.

(b) More deeply stirring at the instant of cognition is guilt incurred by a false conscience. Many a young man or woman nowadays awakens with a horrible feeling: my conscience has betrayed me. I thought I was living in idealism and self-sacrifice for the noblest goal, with the best intentions – what can I still rely on? Everyone awakening like this will ask himself how he became guilty, by haziness, by unwillingness to see, by conscious seclusion, isolation of his own life in a “decent” sphere.

Here we first have to distinguish between military honor and political sense. For whatever is said about guilt cannot affect the consciousness of military honor. [...] No guilt is incurred by having stood this test; in fact, if probation here was real, unstained by evil acts or execution of patently evil commands, it is a foundation of the sense of life.

But a soldier’s probation must not be identified with the cause he fought for. To have been a good soldier does not absolve from all other guilt.

The unconditional identification of the actual state with the German nation and army constitutes guilt incurred through false conscience. A first-

class soldier may have succumbed to the falsification of his conscience which enabled him to do and permit obviously evil things because of patriotism. Hence the good conscience in evil deeds.

Yet our duty to the fatherland goes far beneath blind obedience to its rulers of the day. The fatherland ceases to be a fatherland when its soul is destroyed. The power of the state is not an end in itself; rather, it is pernicious if this, state destroys the German character. Therefore, duty to the fatherland did not by any means lead consistently to obedience to Hitler and to the assumption that even as a Hitler state Germany must, of course, win the war at all costs. [...] To do one's duty to the fatherland means to commit one's whole person to the highest demands made on us by the best of our ancestors, not by the idols of a false tradition. [...]

In November 1938, when the synagogues burned and Jews were deported for the first time, the guilt incurred was chiefly moral and political. In either sense, the guilty were those still in power. The generals stood by. In every town the commander could act against crime, for the soldier is there to protect all, if crime occurs on such a scale that the police cannot or fail to stop it. They did nothing. [...] They had dissociated themselves from the soul of the German people, in favor of an absolute military machine that was a law unto itself and took orders.

True, among our people many were outraged and many deeply moved by a horror containing a presentiment of coming calamity. But even more went right on with their activities, undisturbed in their social life and amusements, as if nothing had happened. That is moral guilt.

But the ones who in utter impotence, outraged and despairing, were unable to prevent the crimes took another step in their metamorphosis by a growing consciousness of metaphysical guilt. [...]

If everything said before was not wholly unfounded, there can be no doubt that we Germans, every one of us, are guilty in some way. Hence there occur the consequences of guilt.

(1) All Germans without exception share in the political liability. All must cooperate in making amends to be brought into legal form. All must jointly suffer the effects of the acts of the victors, of their decisions, of their disunity. We are unable here to exert any influence as a factor of power.

Only by striving constantly for a sensible presentation of the facts, opportunities and dangers can we – unless everyone already knows what we say – collaborate on the premises of the decisions. In the proper form, and with reason, we may appeal to the victors.

(2) Not every German – indeed only a very small minority of Germans – will be punished for crimes. Another minority has to atone for National-Socialist activities. All may defend themselves. They will be judged by the courts of the victors, or by German courts established by the victors.

(3) Probably every German – though in greatly diverse forms – will have reasons morally to analyze himself. Here, however, he need not recognize any authority other than his own conscience.

(4) And probably every German capable of understanding will transform his approach to the world and himself in the metaphysical experiences of such a disaster. How that happens none can prescribe, and none anticipate. It is a matter of individual solitude. What comes out of it has to create the essential basis of what will in future be the German soul. [...]

We feel ourselves not only as individuals but as Germans. Every one, in his real being, is the German people. Who does not remember moments in his life when he said to himself, in opposition and in despair of his nation, “I am Germany” – or, in jubilant harmony with it, “I, too, am Germany!” The German character has no other form than these individuals. Hence the demands of transmutation, of rebirth, of rejection of evil are made of the nation in the form of demands from each individual.

Because in my innermost soul I cannot help feeling collectively, being German is to me – is to everyone – not a condition but a task. This is altogether different from making the nation absolute. I am a human being first of all, in particular I am a Frisian, a professor, a German, linked closely enough for a fusion of souls with other collective groups, and more or less closely with all groups I have come in touch with. For moments this proximity enables me to feel almost like a Jew or Dutchman or Englishman. Throughout it, however, the fact of my being German – that is, essentially, of life in the mother tongue – is so emphatic that in a way which is rationally not conceivable, which is even rationally refutable, I feel co-responsible for what Germans do and have done. [...]

By our feeling of collective guilt we feel the entire task of renewing human existence from its origin – the task which is given to all men on earth but which appears more urgently, more perceptibly, as decisively as all existence, when its own guilt brings a people face to face with nothingness. [...]

The form of evasion most easily understood is the glance at our own woes. Help us, many think, but don't talk of atonement. Tremendous suffering excuses. We hear, for example:

“Is the bomb terror forgotten, which cost millions of innocent people their lives or health and all their cherished possessions? Should that not make up for what was sinned in German lands? Should the misery of the refugees which cries to Heaven not act disarmingly?”

“I came to Germany from the South Tyrol as a bride, thirty years ago. I have shared the German ordeal from the the first day to the last, taking blow after blow, making sacrifice after sacrifice, drained the bitter cup to the end – and now I feel accused, too, of things I never did.” [...]

Indeed the disaster is apocalyptic. Everyone complains, and rightly so: those who were rescued from concentration camps or persecution and still remember the frightful suffering; those who lost their dear ones in the most cruel manner; the millions of evacuees and refugees roaming the road without hope; the many hangers-on of the Party now being weeded out and suddenly in want; the Americans and other Allies who gave up years of their lives and had millions killed; the European nations tormented under the terrorist rule of the National-Socialist Germans; the German emigrants forced to live in a foreign-language environment, under the most difficult conditions. Everyone, everyone. [...]

In my enumeration of complainants I put the manifold groups side by side with the intention of making the incongruity felt at once. The distress may as such, as destruction of life, be all of one kind; but it differs essentially in its general connection as well as in its particular place therein. It is unjust to call all equally innocent.

On the whole, the fact remains that we Germans – however much we may now have come into the greatest distress among the nations – also bear the greatest responsibility for the course of events until 1945.

Therefore we, as individuals, should not be so quick to feel innocent, should not pity ourselves as victims of an evil fate, should not expect to be praised for suffering. We should question ourselves, should pitilessly analyze ourselves: where did I feel wrongly, think wrongly, act wrongly – we should, as far as possible, look for guilt within ourselves, not in things, nor in the others; we should not dodge into distress. This follows from the decision to turn about, to improve daily. In doing so we face God as individuals, no longer as Germans and not collectively.

Jacques Maritain

THE RANGE OF REASON

Source: "University of Notre Dame":
<http://www2.nd.edu/Departments//Maritain/aristotl.htm>

EVERY great period of civilization is dominated by a certain peculiar idea that man fashions of man. Our behavior depends on this image as much as on our very nature – an image which appears with striking brilliance in the minds of some particularly representative thinkers, and which, more or less unconscious in the human mass, is none the less strong enough to mold after its own pattern the social and political formations that are characteristic of a given cultural epoch.

In broad outline, the image of man which reigned over medieval Christendom depended upon St Paul and St. Augustine. This image was to disintegrate from the time of the Renaissance and the Reformation – torn between an utter Christian pessimism which despaired of human nature and an utter Christian optimism which counted on human endeavor more than on divine grace. The image of man which reigned over modern times depended upon Descartes, John Locke, the Enlightenment, and Jean-Jacques Rousseau.

Here we are confronted with the process of secularization of the Christian man which took place from the sixteenth century on. Let's not be deceived by the merely philosophical appearance of such a process. In reality the man of Cartesian Rationalism was a pure mind conceived after an angelistic pattern. The man of Natural Religion was a Christian gentleman who did not need grace, miracle, or revelation, and was made virtuous and just by his own good nature. The man of Jean-Jacques Rousseau was, in a much more profound and significant manner, the very man of St. Paul transferred to the plane of pure nature – innocent as Adam before the fall, longing for a state of divine freedom and bliss, corrupted by social life and civilization as the sons of Adam by the original sin. He was to be redeemed and set free, not by Christ, but by the essential goodness of human nature, which must be restored by means of an education without constraint and must reveal itself in the City of Man of coming centuries, in that form of state in which "everyone obeying all, will nevertheless continue to obey only himself."

This process was not at all a merely rational process. It was a process of secularization of something consecrated, elevated above nature by God, called to a divine perfection, and living a divine life in a fragile and

wounded vessel – the man of Christianity, the man of the Incarnation. All that meant simply bringing back this man into the realm of man himself (“anthropocentric humanism”), keeping a Christian façade while replacing the Gospel by human Reason or human Goodness, and expecting from Human Nature what had been expected from the virtue of God giving Himself to His creatures. Enormous promises, divine promises were made to man at the dawn of modern times. Science, it was believed, would liberate man and make him master and possessor of all nature. An automatic and necessary progress would lead him to the earthly realm of peace, to that blessed Jerusalem which our hands would build by transforming social and political life, and which would be the Kingdom of Man, and in which we would become the supreme rulers of our own history, and whose radiance has awakened the hope and energy of the great modern revolutionaries.

If I were to try now to disentangle the ultimate results of this vast process of secularization, I should have to describe the progressive loss, in modern ideology, of all the certitudes, coming either from metaphysical insight or from religious faith, which had given foundation and granted reality to the image of Man in the Christian system. The historical misfortune has been the failure of philosophic Reason which, while taking charge of the old theological heritage in order to appropriate it, found itself unable even to maintain its own metaphysical pretense, its own justification of its secularized Christian man, and was obliged to decline toward a positivist denial of this very justification. Human Reason lost its grasp of Being, and became available only for the mathematical reading of sensory phenomena, and for the building up of corresponding material techniques – a field in which any absolute reality, any absolute truth, and any absolute value is of course forbidden.

Let us therefore say as briefly as possible: As regards man himself, modern man (I mean that man who seemed himself to be modern, and who starts now entering into the past) modern man knew truths -- without the Truth; he was capable of the relative and changing truths of science, incapable and afraid of any supra-temporal truth reached by Reason’s metaphysical effort or of the divine Truth given by the Word of God. Modern man claimed human rights and dignity – without God, for his ideology grounded human rights and human dignity on a godlike, infinite autonomy of human will, which any rule or measurement received from Another would offend and destroy. Modern man trusted in peace and fraternity – without Christ, for he did not need a Redeemer, he was to save himself by himself alone, and his love for mankind did not need to be founded in divine charity. Modern man constantly progressed toward good and toward the possession of the earth – without having to face evil on earth, for he did not believe in the existence of evil; evil was only an imperfect stage in evolution, which a further stage

was naturally and necessarily to transcend. Modern man enjoyed human life and worshipped human life as having an infinite value – without possessing a soul or knowing the gift of oneself, for the soul was an unscientific concept, inherited from the dreams of primitive men. And if a man does not give his soul to the one he loves, what can he give? He can give money, not himself.

As concerns civilization, modern man had in the bourgeois state a social and political life, a life in common without common good or common work, for the aim of common life consisted only of preserving everyone's freedom to enjoy private ownership, acquire wealth, and seek his own pleasure. Modern man believed in liberty – without the mastery of self or moral responsibility, for free will was incompatible with scientific determinism; and he believed in equality – without justice, for justice too was a metaphysical idea that lost any rational foundation and lacked any criterion in our modern biological and sociological outlook. Modern man placed his hope in machinism, in technique, and in mechanical or industrial civilization – without wisdom to dominate them and put them at the service of human good and freedom; for he expected freedom from the development of external techniques themselves, not from any ascetic effort toward the internal possession of self. And how can one who does not possess the standards of human life, which are metaphysical, apply them to our use of the machine? The law of the machine, which is the law of matter, will apply itself to him, and enslave him.

As regards, lastly, the internal dynamism of human life, modern man looked for happiness – without any final end to be aimed at, or any rational pattern to which to adhere; the most natural concept and motive power, that of happiness, was thus warped by the loss of the concept and the sense of purpose or finality (for finality is but one with desirability, and desirability but one with happiness). Happiness became the movement itself toward happiness, a movement at once limitless and increasingly lower, more and more stagnant. And modern man looked for democracy – without any heroic task of justice to be performed and without brotherly love from which to get inspiration. The most significant political improvement of modern times, the concept of, and the devotion to, the rights of the human person and the rights of the people, was thus warped by the same loss of the concept and the sense of purpose or finality, and by the repudiation of the evangelical ferment acting in human history; democracy tended to become an embodiment of the sovereign will of the people in the machinery of a bureaucratic state more and more irresponsible and more and more asleep.

I have spoken just now of the infinite promises made to man at the dawn of modern times. The great undertaking of secularized Christian man has achieved splendid results for everyone but man himself; in what concerns man himself things have turned out badly – and this is not surprising.

The process of secularization of the Christian man concerns above all the idea of man and the philosophy of life which developed in the modern age. In the concrete reality of human history, a process of growth occurred at the same time, great human conquests were achieved, owing to the natural movement of civilization and to the primitive impulse, the evangelical one, toward the democratic ideal. At least the civilization of the nineteenth century remained Christian in its real though forgotten or disregarded principles, in the secularized remnants involved in its very idea of man and civilization; in the religious freedom – thwarted as this may have been at certain moments and in certain countries – that it willingly or unwillingly preserved; even in the very emphasis on reason and human grandeur which its freethinkers used as a weapon against Christianity; and finally in the secularized feeling which inspired, despite a wrong ideology, its social and political improvements, and its great hopes.

But the split had progressively increased between the real behavior of this secularized Christian world and the moral and spiritual principles which had given it its meaning and its internal consistency, and which it came to ignore. Thus this world seemed emptied of its own principles; it tended to become a universe of words, a nominalistic universe, a dough without leaven. It lived and endured by habit and by force acquired from the past, not by its own power; it was pushed forward by a *vis a tergo*, not by an internal dynamism. It was utilitarian, its supreme rule was utility. Yet utility which is not a means toward a goal is of no use at all. It was capitalistic (in the nineteenth-century sense of this word, which is the genuine and unmitigated sense), and capitalist civilization enabled the initiatives of the individual to achieve tremendous conquests over material nature. Yet, as Werner Sombart observed, the man of this age was neither “ontologic” nor “erotic”; that is to say, he had lost the sense of Being because he lived in signs and by signs, and he had lost the sense of Love because he did not enjoy the life of a person dealing with other persons, but he underwent the hard labor of enrichment for the sake of enrichment.

Despite the wrong ideology I have just described, and the disfigured image of man which is linked to it, our civilization bears in its very substance the sacred heritage of human and divine values which depends on the struggle of our forefathers for freedom, on Judaeo-Christian tradition, and on classical antiquity, and which has been sadly weakened in its efficiency but not at all destroyed in its potential reserves.

The most alarming symptom in the present crisis is that, while engaged in a death struggle for the defense of these values, we have too often lost faith and confidence in the principles on which what we are defending is founded, because we have more often than not forgotten the true and authentic principles and because, at the same time, we feel more or less consciously

the weakness of the insubstantial ideology which has prayed upon them like a parasite.

The great revolutionary movements which reacted against our secularized Christian world were to aggravate the evil and bring it to a peak. For they developed toward a definitive break with Christian values. Here it is a question both of a doctrinal opposition to Christianity and of an existential opposition to the presence and action of Christ at the core of human history.

A first development continued and climaxed the trend of secularized reason, the “anthropocentric humanism”, in the direction which it followed from its origin, in the direction of rationalistic hopes, now no longer constituted solely as philosophical ideology but as a lived religion. This development arises from the unfolding of all the consequences of the principle that man alone, and through himself alone, works out his salvation.

The purest case of this tendency is that of Marxism. No matter how strong some of the pessimistic aspects of Marxism may be, it remains attached to this postulate. Marxist materialism remained rationalistic, so much so that for it the movement proper to matter is a dialectical movement.

If man alone and through himself alone works out his salvation, then this salvation is purely and exclusively temporal, and must be accomplished without God, and even against God – I mean against whatever in man and the human world bears the likeness of God, that is to say, from the Marxist point of view, the likeness of “alienation” and enslavement; this salvation demands the giving up of personality, and the organization of collective man into one single body whose supreme destiny is to gain dominion over matter and human history. What becomes then of the image of man? Man is no longer the creature and image of God, a personality which implies free will and is responsible for an eternal destiny, a being which possesses rights and is called to the conquest of freedom and to a self-achievement consisting of love and charity. He is a particle of the social whole and lives on the collective consciousness of the whole, and his happiness and liberty lie in serving the work of the whole. This whole itself is an economic and industrial whole, its essential and primordial work consists of the industrial domination of nature, for the sake of the very whole which alone presents absolute value, and has nothing above itself. There is here a thirst for communion, but communion is sought in economic activity, in pure productivity, which, being regarded as the paradise and only genuine goal of human endeavor, is but the world of a beheaded reason, no longer cut out for truth, but engulfed in a demiurgic task of fabrication and domination over things. The human person is sacrificed to industry’s titanism, which is the god of the merely industrial community.

Rationalistic reason winds up in intoxication with matter. By the same token it enters a process of self-degradation. Thus it is that in the vision of the world offered by Marxist materialism, rationalistic over-optimism comes to coincide, in many respects, with another development, depending upon a quite opposite trend of mind, which may be described as an utter reaction against any kind of rationalism and humanism. The roots of this other development are pessimistic, it corresponds to a process of animalization of the image of man, in which a formless metaphysics avails itself of every misconception of scientific or sociological data to satisfy a hidden resentment against Reason and human dignity. According to this trend of mind the human species is only a branch which sprouted by chance on the genealogical tree of the monkeys; all our systems of ideas and values are only an epiphenomenon of the social evolution of the primitive clan; or an ideological superstructure determined by, and masking the struggle for life of class interests and imperialistic ambitions. All our seemingly rational and free behavior is only an illusory appearance, emerging from the inferno of our unconscious and of instinct. All our seemingly spiritual feelings and activities, poetic creation, human pity and devotion, religious faith, contemplative love, are only the sublimation of sexual libido or an outgrowth of matter. Man is unmasked, the countenance of the beast appears. The human specificity, which rationalism had caused to vanish into pure spirit, now vanishes in animality.

Yet the development of which I am speaking has its real sources in something much more profound, which began to reveal itself from the second half of the last century on: anguish and despair, as exemplified in Dostoevski's *Possessed*. A deeper abyss than animality appears in the unmasking of man. Having given up God so as to be self-sufficient, man has lost track of his soul. He looks in vain for himself; he turns the universe upside down trying to find himself; he finds masks and, behind the masks, death.

Then was to be witnessed the spectacle of a tidal wave of irrationality, of hatred of intelligence, the awakening of a tragic opposition between life and spirit. To overcome despair, Nietzsche proclaimed the advent of the superman of the will to power, the death of truth, the death of God. More terrific voices, the voices of a base multitude whose baseness itself appears as an apocalyptic sign, cry out: We have had enough of lying optimism and illusory morality, enough of freedom and personal dignity and justice and peace and faithfulness and goodness which made us mad with distress. Let us give ground to the infinite promises of evil, and of swarming death, and of blessed enslavement, and of triumphant despair!

The purest case of this tendency was Nazi racism. It was grounded not in an idolatry of reason ending in the hate of every transcendent value, but in a mysticism of instinct and life ending in the hatred of reason. Intelligence for it was of use only to develop techniques of destruction and to pervert

the function of language. Its demonic religiosity tried to pervert the very nature of God, to make of God Himself an idol. It invoked God, but as a spirit protector attached to the glory of a people or a state, or as a demon of the race. A god who will end by being identified with an invincible force at work in the blood was set up against the God of Sinai and against the God of Calvary, against the One Whose law rules nature and human conscience, against the Word Which was at the beginning, against the God of Whom it is said that He is Love.

Here, too, man is no longer the creature and image of God; a person animated by a spiritual soul and endowed with free will, and responsible for an eternal destiny, who possesses rights and is called to the conquest of freedom and to a self-achievement consisting of love and charity. And now this disfigured image of man is rooted in a warring pessimism. Man is a particle of the political whole, and lives by the *Volksgeist*, yet for this collective whole there is even no longer any decoy of happiness and liberty and of universal emancipation, but only power and self-realization through violence. Communion is sought in the glorification of the race and in a common hatred of some enemy, in animal blood, which, separated from the spirit, is no more than a biological inferno. The human person is sacrificed to the demon of the blood, which is the god of the community of blood.

There is nothing but human despair to be expected either from Communism or Racism. On the one hand, Racism, on its irrational and biological basis, rejects all universalism and breaks even the natural unity of the human race, so as to impose the hegemony of a so-called higher racial essence. On the other hand, if it is true that in the dialectic of culture, Communism is the final state of anthropocentric rationalism, it follows that by virtue of the universality inherent in reason – even in reason gone mad – Communism dreams of an all-embracing emancipation and pretends to substitute for the universalism of Christianity its own earthly universalism – the universalism of the good tidings of Deception and Terror, and of the immolation of man to the blind god of History.

If the description which I outlined above is accurate, it appears that the only way of regeneration for the human community is a rediscovery of the true image of man and a definite attempt toward a new Christian civilization, a new Christendom. Modern times have sought many good things along wrong tracks. The question now is to seek these good things along right tracks, and to save the human values and achievements aimed at by our forefathers and endangered by the false philosophy of life of the last century, and to have for that purpose the courage and audacity of proposing to ourselves the biggest task of renewal, of internal and external transformation. A coward flees backward, away from new things. The man of courage flees forward, in the midst of new things.

Christians find themselves today, in the order of temporal civilization, facing problems similar to those which their forefathers met in the sixteenth and seventeenth centuries. At that time modern physics and astronomy in the making were at one with the philosophical systems set up against Christian tradition. The defenders of the latter did not know how to make the necessary distinction; they took a stand both against that which was to become modern science and against the philosophical errors which at the outset preyed upon this science as parasites. Three centuries were needed to get away from this misunderstanding, if it be true that a better philosophical outlook has actually caused us to get away from it. It would be disastrous to fall once again into similar errors today in the field of the philosophy of civilization. The true substance of the nineteenth century's aspirations, as well as the human gains it achieved, must be saved, from its own errors and from the aggression of totalitarian barbarism. A world of genuine humanism and Christian inspiration must be built.

In the eyes of the observer of historical evolution, a new Christian civilization is going to be quite different from medieval civilization, though in both cases Christianity is at the root. For the historical climate of the Middle Ages and that of modern times are utterly diverse. Briefly, medieval civilization, whose historical ideal was the Holy Empire, constituted a "sacral" Christian civilization, in which temporal things, philosophical and scientific reason, and the reigning powers, were subservient organs or instruments of spiritual things, of religious faith, and of the Church. In the course of the following centuries temporal things gained a position of autonomy, and this was in itself a normal process. The misfortune has been that this process became warped, and instead of being a process of distinction for a better form of union, progressively severed earthly civilization from evangelical inspiration.

A new age of Christendom, if it is to come, will be an age of reconciliation of that which was disjoined, the age of a "secular" Christian civilization, in which temporal things, philosophical and scientific reason, and civil society, will enjoy their autonomy and at the same time recognize the quickening and inspiring role that spiritual things, religious faith, and the Church play from their higher plane. Then a Christian philosophy of life would guide a community vitally, not decoratively Christian, a community of human rights and of the dignity of the human person, in which men belonging to diverse racial stocks and to diverse spiritual lineages would work at a temporal common task which was truly human and progressive.

In the last analysis, I would say that from the end of the Middle Ages – a moment at which the human creature, while awakening to itself, felt itself oppressed and crushed in its loneliness – modern times have longed for a rehabilitation of the human creature. They sought this rehabilitation in

a separation from God. It was to be sought in God. The human creature claims the right to be loved; it can be really and efficaciously loved only in God. It must be respected in its very connection with God and because it receives everything – and its very dignity – from Him. After the great disillusionment of “anthropocentric humanism” and the atrocious experience of the anti-humanism of our day, what the world needs is a new humanism, a “theocentric” or integral humanism which would consider man in all his natural grandeur and weakness, in the entirety of his wounded being inhabited by God, in the full reality of nature, sin, and sainthood. Such a humanism would recognize all that is irrational in man, in order to tame it to reason, and all that is supra-rational, in order to have reason vivified by it and to open man to the descent of the divine into him. Its main work would be to cause the Gospel leaven and inspiration to penetrate the secular structures of life – a work of sanctification of the temporal order.

This “humanism of the Incarnation” would care for the masses, for their right to a temporal condition worthy of man and to spiritual life, and for the movement which carries labor toward the social responsibility of its coming of age. It would tend to substitute for materialistic-individualistic civilization, and for an economic system based on the fecundity of money, not a collectivistic economy but a “Christian-personalistic” democracy. This task is joined to today’s crucial effort to preserve freedom from totalitarian aggression, and to a simultaneous work of reconstruction which requires no less vigor. It is also joined to a thorough awakening of the religious conscience. One of the worst diseases of the modern world, as I pointed out in an earlier essay, is its dualism, the dissociation between the things of God and the things of the world. The latter, the things of the social, economic, and political life, have been abandoned to their own carnal law, removed from the exigencies of the Gospel. The result is that it has become more and more impossible to live with them. At the same time, Christian ethics, not really permeating the social life of people, became in this connection – I do not mean in itself or in the Church, I mean in the world, in the general cultural behavior – a universe of formulas and words; and this universe of formulas and words was in effect made subservient in practical cultural behavior to the real energies of this same temporal world existentially detached from Christ.

In addition, modern civilization, which pays dearly today for the past, seems as if it were pushed by the self-contradiction and blind compulsions suffered by it, toward contrasting forms of misery and intensified materialism. To rise above these blind compulsions we need an awakening of liberty and of its creative forces, of which man does not become capable by the grace of the state or any party pedagogy, but by that love which fixes the center of his life infinitely above the world and temporal history. In particular, the general paganization of our civilization has resulted in man’s placing his

hope in force alone and in the efficacy of hate, whereas in the eyes of an integral humanism a political ideal of justice and civic friendship, requiring political strength and technical equipment, but inspired by love, is alone able to direct the work of social regeneration.

The image of man involved in integral humanism is that of a being made of matter and spirit, whose body may have emerged from the historical evolution of animal forms, but whose immortal soul directly proceeds from divine creation. He is made for truth, capable of knowing God as the Cause of Being, by his reason, and of knowing Him in His intimate life, by the gift of faith. Man's dignity is that of an image of God, his rights derive as well as his duties from natural law, whose requirements express in the creature the eternal plan of creative Wisdom. Wounded by sin and death from the first sin of his race, whose burden weighs upon all of us, he is caused by Christ to become of the race and lineage of God, living by divine life, and called upon to enter by suffering and love into Christ's very work of redemption. Called upon by his nature, on the other hand, to unfold historically his internal potentialities by achieving little by little reason's domination over his own animality and the material universe, his progress on earth is not automatic or merely natural, but accomplished in step with freedom and together with the inner help of God, and constantly thwarted by the power of evil, which is the power of created spirits to inject nothingness into being, and which unceasingly tends to degrade human history, while unceasingly and with greater force the creative energies of reason and love revitalize and raise up this same history.

Our natural love for God and for the human being is fragile; charity alone received from God as a participation in His own life, makes man efficaciously love God above everything, and each human person in God. Thus brotherly love brings to earth, through the heart of man, the fire of eternal life, which is the true peacemaker, and it must vitalize from within that natural virtue of friendship, disregarded by so many fools, which is the very soul of social communities. Man's blood is at once of infinite value and must be shed all along mankind's roads "to redeem the blood of man." On the one hand, nothing in the world is more precious than one single human person. On the other hand, man exposes nothing more willingly than his own being to all kinds of danger and waste – and this condition is normal. The meaning of that paradox is that man knows very well that death is not an end, but a beginning. If I think of the perishable life of man, it is something naturally sacred, yet many things are still more precious: Man can be required to sacrifice it by devotion to his neighbor or by his duty to his country. Moreover a single word is more precious than human life if in uttering this word a man braves a tyrant for the sake of truth or liberty. If I think of the imperishable life of man, of that life which makes him

“a god by participation” and, beginning here below, will consist in seeing God face to face, nothing in the world is more precious than human life. And the more a man gives himself, the more he makes this life intense within him. Every self-sacrifice, every gift of oneself involves, be it in the smallest way, a dying for the one we love. The man who knows that “after all, death is only an episode”, is ready to give himself with humility, and nothing is more human and more divine than the gift of oneself, for “it is more blessed to give than to receive.”

As concerns civilization, the man of Christian humanism knows that political life aims at a common good which is superior to a mere collection of the individual’s goods and yet must flow back upon human persons. He knows that the common work must tend above all toward the improvement of human life itself, enabling everyone to exist on earth as a free man and to enjoy the fruits of culture and the spirit. He knows that the authority of those who are in charge of the common good, and who are, in a community of free men, designated by the people, and accountable to the people, originates in the Author of Nature and is therefore binding in conscience, and is binding in conscience on condition that it be just. The man of Christian humanism cherishes freedom as something he must be worthy of; he realizes his essential equality with other men in terms of respect and fellowship, and sees in justice the force of preservation of the political community and the prerequisite which, “bringing unequals to equality”, enables civic friendship to spring forth. He is aware both of the tremendous ordeal which the advent of machinism imposes on human history, and of the marvelous power of liberation it offers to man, if the brute instinct of domination does not avail itself of the techniques of machinism, and of science itself, in order to enslave mankind; and if reason and wisdom are strong enough to turn them to the service of truly human aims and apply to them the standards of human life. The man of Christian humanism does not look for a merely industrial civilization, but for a civilization integrally human (industrial as it may be as to its material conditions) and of evangelical inspiration.

As regards, finally, the internal dynamism of human life, the man of Christian humanism has an ultimate end, God to be seen and possessed – and he tends toward self-perfection, which is the chief element of that imperfect happiness which is accessible to him in earthly existence. Thus life has meaning and a direction for him, and he is able to grow up on the way, without turning and wavering and without remaining spiritually a child. This perfection toward which he tends is not perfection of some stoic athleticism wherein a man would make himself impeccable, but rather the perfection of love, of love toward Another whom he loves more than himself, and whom he craves above all to join and love even more, even though in the process he carries with him imperfections and weaknesses. In such an evangelical

perfection lies perfect freedom, which is to be conquered by ascetic effort but which is finally given by the very One Who is loved, and Who was the first to love us.

But this vertical movement toward divine union and self-perfection is not the only movement involved in the internal dynamism of human life. The second one, the horizontal movement, concerns the evolution of mankind and progressively reveals the substance and creative forces of man in history. The horizontal movement of civilization, when directed toward its authentic temporal aims, helps the vertical movement of souls. And without the movement of souls toward their eternal aim, the movement of civilization would lose the charge of spiritual energy, human pressure, and creative radiance which animates it toward its temporal accomplishment. For the man of Christian humanism history has a meaning and a direction. The progressive integration of humanity is also a progressive emancipation from human servitude and misery as well as from the constraints of material nature. The supreme ideal which the political and social work in mankind has to aim at is thus the inauguration of a brotherly city, which does not imply the hope that all men will someday be perfect on earth and love each other fraternally, but the hope that the existential state of human life and the structures of civilization will draw nearer to their perfection, the standard of which is justice and friendship – and what aim, if not perfection, is to be aimed at? This supreme ideal is the very one of a genuine democracy, of the new democracy we are expecting. It requires not only the development of powerful technical equipment and of a firm and rational politico-social organization in human communities, but also a heroic philosophy of life, and the quickening inner ferment of evangelical inspiration. It is in order to advance toward such an ideal that the community must be strong. The inauguration of a common life which responds to the truth of our nature, freedom to be achieved, and friendship to be set up at the core of a civilization vitalized by virtues higher than civic virtues, all these define the historical ideal for which men can be asked to work, fight, and die. Against the deceptive myths raised by the powers of illusion, a vaster and greater hope must rise up, a bolder promise must be made to the human race. The truth of God's image, as it is naturally impressed upon us, freedom, and fraternity are not dead. If our civilization struggles with death, the reason is not that it dares too much, and that it proposes too much to men. It is that it does not dare enough or propose enough to them. It shall revive, a new civilization shall come to life, on condition that it hope for, and will, and love truly and heroically truth, freedom, and fraternity.

Albert Einstein

HUMAN RIGHTS

Source: Albert Einstein, *Ideas and Opinions*, translated and revised by S. Bargmann, Three Rivers Press, New York 1982, pp. 34.36.

You are assembled today to devote your attention to the problem of human rights. You have decided to offer me an award on this occasion. When I learned about it, I was somewhat depressed by your decision. For in how unfortunate a state must a community find itself if it cannot produce a more suitable candidate upon whom to confer such a distinction?

In a long life I have devoted all my faculties to reach a somewhat deeper insight into the structure of physical reality. Never have I made any systematic effort to ameliorate the lot of men, to fight injustice and suppression, and to improve the traditional forms of human relations. The only thing I did was this: in long intervals I have expressed an opinion on public issues whenever they appeared to me so bad and unfortunate that silence would have made me feel guilty of complicity.

The existence and validity of human rights are not written in the stars. The ideals concerning the conduct of men toward each other and the desirable structure of the community have been conceived and taught by enlightened individuals in the course of history. Those ideals and convictions which resulted from historical experience, from the craving for beauty and harmony, have been readily accepted in theory by man – and at all times, have been trampled upon by the same people under the pressure of their animal instincts. A large part of history is therefore replete with the struggle for those human rights, an eternal struggle in which a final victory can never be won. But to tire in that struggle would mean the ruin of society.

In talking about human rights today, we are referring primarily to the following demands: protection of the individual against arbitrary infringement by other individuals or by the government; the right to work and to adequate earnings from work; freedom of discussion and teaching; adequate participation of the individual in the formation of his government. These human rights are nowadays recognized theoretically, although, by abundant use of formalistic, legal maneuvers, they are being violated to a much greater extent than even a generation ago. There is, however, one other human right which is infrequently mentioned but which seems to be destined to become very important: this is the right, or the duty, of the individual to abstain from cooperating in activities which he considers wrong

or pernicious. The first place in this respect must be given to the refusal of military service. I have known instances where individuals of unusual moral strength and integrity have, for that reason, come into conflict with the organs of the state. The Nuremberg Trial of the German war criminals was tacitly based on the recognition of the principle: criminal actions cannot be excused if committed on government orders; conscience supersedes the authority of the law of the state.

The struggle of our own days is being waged primarily for the freedom of political conviction and discussion as well as for the freedom of research and teaching. The fear of Communism has led to practices which have become incomprehensible to the rest of civilized mankind and exposed our country to ridicule. How long shall we tolerate that politicians, hungry for power, try to gain political advantages in such a way? Sometimes it seems that people have lost their sense of humor to such a degree that the French saying, "Ridicule kills", has lost its validity

Herbert L.A. Hart

ARE THERE ANY NATURAL RIGHTS?

Source: H. L. A. Hart, *Are There Any Natural Rights?* in: J. Waldron (ed.), *Theories of Rights*, Oxford University Press, Oxford 1984, pp. 77-90.

I SHALL advance the thesis that if there are any moral rights at all, it follows that there is at least one natural right, the equal right of all men to be free. By saying that there is this right, I mean that in the absence of certain special conditions which are consistent with the right being an equal right, any adult human being capable of choice has the right to forbearance on the part of all others from the use of coercion or restraint against him save to hinder coercion or restraint and is at liberty to do (i.e. is under no obligation to abstain from) any action which is not one coercing or restraining or designed to injure other persons.

I have two reasons for describing the equal rights of all men to be free as a natural right; both of them were always emphasized by the classical theorists of natural rights. This right is one which all men have if they are capable of choice: they have it *qua* men and not only if they are members of some society or stand in some special relation to each other. This right is not created or conferred by men's voluntary action; other moral rights are. Of course, it is quite obvious that my thesis is not as ambitious as the traditional theories of natural rights; for although on my view all men are equally entitled to be free in the sense explained, no man has an absolute or unconditional right to do or not to do any particular thing or to be treated in any particular way; coercion or restraint of any action may be justified in special conditions consistently with the general principle. So my argument will not show that men have any right (save the equal right of all to be free) which is 'absolute', 'indefeasible', or 'imprescriptible'. This may for many reduce the importance of my contention, but I think that the principle that all men have an equal right to be free, meagre as it may seem, is probably all that the political philosophers of the liberal tradition need have claimed to support any programme of action even if they have claimed more. But my contention that there is this one natural right may appear unsatisfying in another respect; it is only the conditional assertion that if there are any moral rights then there must be this one natural right. Perhaps few would now deny, as some have, that there are moral rights; for the point of that denial was usually to object to some philosophical claim as to the 'ontological status' of rights, and this objection is now expressed not as a denial that there are any moral rights but as a denial of some assumed

logical similarity between sentences used to assert the existence of rights and other kinds of sentences. But it is still important to remember that there may be codes of conduct quite properly termed moral codes (though we can of course say they are 'imperfect') which do not employ the notion of a right, and there is nothing contradictory or otherwise absurd in a code or morality consisting wholly of prescriptions or in a code which prescribed only what should be done for the realization of happiness or some ideal of personal perfection. Human actions in such systems would be evaluated or criticized as compliances with prescriptions or as good or bad, right or wrong, wise or foolish, fitting or unfitting, but no one in such a system would have, exercise, or claim rights, or violate or infringe them. So those who lived by such systems could not of course be committed to the recognition of the equal right of all to be free; nor, I think (and this is one respect in which the notion of a right differs from other moral notions), could any parallel argument be constructed to show that, from the bare fact that actions were recognized as ones which ought or ought not to be done, as right, wrong, good, or bad, it followed that some specific kind of conduct fell under these categories.

(A) Lawyers have for their own purposes carried the dissection of the notion of a legal right some distance, and some of their results are of value in the elucidation of statements of the form 'X has a right to...' outside legal contexts. There is of course no simple identification to be made between moral and legal rights, but there is an intimate connection between the two, and this itself is one feature which distinguishes a moral right from other fundamental moral concepts. It is not merely that as a matter of fact men speak of their moral rights mainly when advocating their incorporation in a legal system, but that the concept of a right belongs to that branch of morality which is specifically concerned to determine when one person's freedom may be limited by another's and so to determine what actions may appropriately be made the subject of coercive legal rules. The words '*droit*', '*diritto*' and '*Recht*', used by continental jurists, have no simple English translation and seem to English jurists to hover uncertainly between law and morals, but they do in fact mark off an area of morality (the morality of law) which has special characteristics. It is occupied by the concepts of justice, fairness, rights, and obligation (if this last is not used as it is by many moral philosophers as an obscuring general label to cover every action that morally we ought to do or forbear from doing). The most important common characteristic of this group of moral concepts is that there is no incongruity, but a special congruity in the use of force or the threat of force to secure that what is just or fair or someone's right to have done shall in fact be done; for it is in just these circumstances that coercion of another human being is legitimate. Kant, in the *Rechtslehre*, discusses the obligations which arise in

this branch of morality under the title of *officia juris*, 'which do not require that respect for duty shall be of itself the determining principle of the will', and contrasts them with *officia virtutis*, which have no moral worth unless done for the sake of the moral principle. His point is, I think, that we must distinguish from the rest of morality those principles regulating the proper distribution of human freedom which alone make it morally legitimate for one human being to determine by his choice how another should act; and a certain specific moral value is secured (to be distinguished from moral virtue in which the goodwill is manifested) if human relationships are conducted in accordance with these principles even though coercion has to be used to secure this, for only if these principles are regarded will freedom be distributed among human beings as it should be. And it is I think a very important feature of a moral right that the possessor of it is conceived as having a moral justification for limiting the freedom of another and that he has this justification not because the action he is entitled to require of another has some moral quality but simply because in the circumstances a certain distribution of human freedom will be maintained if he by his choice is allowed to determine how that other shall act.

(B) I can best exhibit this feature of a moral right by reconsidering the question whether moral rights and 'duties' are correlative. The contention that they are means, presumably, that every statement of the form 'X has a right to...' entails and is entailed by 'Y has a duty (not) to...', and at this stage we must not assume that the values of the name-variables 'X' and 'Y' must be different persons. Now there is certainly one sense of 'a right' (which I have already mentioned) such that it does not follow from X's having a right that X or someone else has any duty. Jurists have isolated rights in this sense and have referred to them as 'liberties' just to distinguish them from rights in the centrally important sense of 'right' which has 'duty' as a correlative. The former sense of 'right' is needed to describe those areas of social life where competition is at least morally unobjectionable. Two people walking along both see a ten-dollar bill in the road twenty yards away, and there is no clue as to the owner. Neither of the two are under a 'duty' to allow the other to pick it up; each has in this sense a right to pick it up. Of course there may be many things which each has a 'duty' not to do in the course of the race to the spot – neither may kill or wound the other – and corresponding to these 'duties' there are rights to forbearances. The moral propriety of all economic competition implies this minimum sense of 'a right' in which to say that 'X has a right to' means merely that X is under no 'duty' not to. Hobbes saw that the expression 'a right' could have this sense but he was wrong if he thought that there is no sense in which it does follow from X's having a right that Y has a duty or at any rate an obligation.

(C) More important for our purpose is the question whether for all moral 'duties' there are correlative moral rights, because those who have given an affirmative answer to this question have usually assumed without adequate scrutiny that to have a right is simply to be capable of benefiting by the performance of a 'duty'; whereas in fact this is not a sufficient condition (and probably not a necessary condition) of having a right. Thus animals and babies who stand to benefit by our performance of our 'duty' not to ill-treat them are said therefore to have rights to proper treatment. The full consequence of this reasoning is not usually followed out; most have shrunk from saying that we have rights against ourselves because we stand to benefit from our performance of our 'duty' to keep ourselves alive or develop our talents. But the moral situation which arises from a promise (where the legal-sounding terminology of rights and obligations is most appropriate) illustrates most clearly that the notion of having a right and that of benefiting by the performance of a 'duty' are not identical. X promises Y in return for some favour that he will look after Y's aged mother in his absence. Rights arise out of this transaction, but it is surely Y to whom the promise has been made and not his mother who has or possesses these rights. Certainly Y's mother is a person concerning whom X has an obligation and a person who will benefit by its performance, but the person to whom he has an obligation to look after her is Y. This is something due to or owed to Y, so it is Y, not his mother, whose right X will disregard and to whom X will have done wrong if he fails to keep his promise, though the mother may be physically injured. And it is Y who has a moral claim upon X; is entitled to have his mother looked after, and who can waive the claim and release Y from the obligation.

Y is, in other words, morally in a position to determine by his choice how X shall act and in this way to limit X's freedom of choice; and it is this fact, not the fact that he stands to benefit, that makes it appropriate to say that he has a right. Of course often the person to whom a promise has been made will be the only person who stands to benefit by its performance, but this does not justify the identification of 'having a right' with 'benefiting by the performance of a duty'. It is important for the whole logic of rights that, while the person who stands to benefit by the performance of a duty is discovered by considering what will happen if the duty is not performed, the person who has a right (to whom performance is owed or due) is discovered by examining the transaction or antecedent situation or relations of the parties out of which the 'duty' arises. These considerations should incline us not to extend to animals and babies whom it is wrong to ill-treat the notion of a right to proper treatment, for the moral situation can be simply and adequately described here by saying that it is wrong or that we ought not to ill-treat them or, in the philosopher's generalized sense of 'duty', that we have a duty not to ill-treat them. If common usage sanctions talk of the rights of animals or

babies it makes an idle use of the expression 'a right', which will confuse the situation with other different moral situations where the expression 'a right' has a specific force and cannot be replaced by the other moral expressions which I have mentioned. Perhaps some clarity on this matter is to be gained by considering the force of the preposition 'to' in the expression 'having a duty to Y' or 'being under an obligation to Y' (where 'Y' is the name of a person); for it is significantly different from the meaning of 'to' in 'doing something to Y' or 'doing harm to Y', where it indicates the person affected by some action. In the first pair of expressions, 'to' obviously does not have this force, but indicates the person to whom the person morally bound is bound. This is an intelligible development of the figure of a bond (*vinculum juris: obligare*); the precise figure is not that of two persons bound by a chain, but of one person bound, the other end of the chain lying in the hands of another to use if he chooses. So it appears absurd to speak of having duties or owing obligations to ourselves – of course we may have 'duties' not to do harm to ourselves, but what could be meant (once the distinction between these different meanings of 'to' has been grasped) by insisting that we have duties or obligations to ourselves not to do harm to ourselves?

(D) The essential connection between the notion of a right and the justified limitation of one person's freedom by another may be thrown into relief if we consider codes of behaviour which do not purport to confer rights but only to prescribe what shall be done. Most natural law thinkers down to Hooker conceived of natural law in this way: there were natural duties compliance with which would certainly benefit man – things to be done to achieve man's natural end – but not natural rights. And there are of course many types of codes of behaviour which only prescribe what is to be done, e.g. those regulating certain ceremonies. It would be absurd to regard these codes as conferring rights, but illuminating to contrast them with rules of games, which often create rights, though not, of course, moral rights. But even a code which is plainly a moral code need not establish rights; the Decalogue is perhaps the most important example. Of course, quite apart from heavenly rewards human beings stand to benefit by general obedience to the Ten Commandments: disobedience is wrong and will certainly harm individuals. But it would be a surprising interpretation of them that treated them as conferring rights. In such an interpretation obedience to the Ten Commandments would have to be conceived as due to or owed to individuals, not merely to God, and disobedience not merely as wrong but as a wrong to (as well as harm to) individuals. The Commandments would cease to read like penal statutes designed only to rule out certain types of behaviour and would have to be thought of as rules placed at the disposal of individuals and regulating the extent to which they may demand certain behaviour

from others. Rights are typically conceived of as possessed or owned by or belonging to individuals, and these expressions reflect the conception of moral rules as not only prescribing conduct but as forming a kind of moral property of individuals to which they are as individuals entitled; only when rules are conceived in this way can we speak of rights and wrongs as well as right and wrong actions.

So far I have sought to establish that to have a right entails having a moral justification for limiting the freedom of another person and for determining how he should act; it is now important to see that the moral justification must be of a special kind if it is to constitute a right, and this will emerge most clearly from an examination of the circumstances in which rights are asserted with the typical expression 'I have a right to...'. It is I think the case that this form of words is used in two main types of situations: (A) when the claimant has some special justification for interference with another's freedom which other persons do not have ('I have a right to be paid what you promised for my services'); (B) when the claimant is concerned to resist or object to some interference by another person as having no justification ('I have a right to say what I think').

(A) Special rights. When rights arise out of special transactions between individuals or out of some special relationship in which they stand to each other, both the persons who have the right and those who have the corresponding obligation are limited to the parties to the special transaction or relationship. I call such rights special rights to distinguish them from those moral rights which are thought of as rights against (i.e. as imposing obligations upon) everyone, such as those that are asserted when some unjustified interference is made or threatened as in (B) above.

(i) The most obvious cases of special rights are those that arise from promises. By promising to do or not to do something, we voluntarily incur obligations and create or confer rights on those to whom we promise; we alter the existing moral independence of the parties' freedom of choice in relation to some action and create a new moral relationship between them, so that it becomes morally legitimate for the person to whom the promise is given to determine how the promisor shall act. The promisee has a temporary authority or sovereignty in relation to some specific matter over the other's will which we express by saying that the promisor is under an obligation to the promisee to do what he has promised. To some philosophers the notion that moral phenomena – rights and duties or obligations – can be brought into existence by the voluntary action of individuals has appeared utterly mysterious; but this I think has been so because they have not clearly seen how special the moral notions of a right and an obligation are, nor how

peculiarly they are connected with the distribution of freedom of choice; it would indeed be mysterious if we could make actions morally good or bad by voluntary choice. The simplest case of promising illustrates two points characteristic of all special rights: (1) the right and obligation arise not because the promised action has itself any particular moral quality, but just because of the voluntary transaction between the parties; (2) the identity of the parties concerned is vital – only this person (the promisee) has the moral justification for determining how the promisor shall act. It is his right; only in relation to him is the promisor's freedom of choice diminished, so that if he chooses to release the promisor no one else can complain.

(ii) But a promise is not the only kind of transaction whereby rights are conferred. They may be accorded by a person consenting or authorizing another to interfere in matters which but for his consent or authorization he would be free to determine for himself. If I consent to your taking precautions for my health and happiness or authorize you to look after my interests, then you have a right which others have not, and I cannot complain of your interference if it is within the sphere of your authority. This is what is meant by a person surrendering his rights to another; and again the typical characteristics of a right are present in this situation: the person authorized has the right to interfere not because of its intrinsic character but because these persons have stood in this relationship. No one else (not similarly authorized) has any right to interfere in theory even if the person authorized does not exercise his right.

(iii) Special rights are not only those created by the deliberate choice of the party on whom the obligation falls, as they are when they are accorded or spring from promises, and not all obligations to other persons are deliberately incurred, though I think it is true of all special rights that they arise from previous voluntary actions. A third very important source of special rights and obligations which we recognize in many spheres of life is what may be termed mutuality of restrictions, and I think political obligation is intelligible only if we see what precisely this is and how it differs from other right – creating transactions (consent, promising) to which philosophers have assimilated it. In its bare schematic outline it is this: when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission. The rules may provide that officials should have authority to enforce obedience and make further rules, and this will create a structure of legal rights and duties, but the moral obligation to obey the rules in such circumstances is due to the co-operating members of the society, and they have the correlative moral right to obedience. In social situations of this sort (of which political society is the most complex example) the obligation to

obey the rules is something distinct from whatever other moral reasons there may be for obedience in terms of good consequences (e.g. the prevention of suffering); the obligation is due to the co-operating members of the society as such and not because they are human beings on whom it would be wrong to inflict suffering. The utilitarian explanation of political obligation fails to take account of this feature of the situation both in its simple version that the obligation exists because and only if the direct consequences of a particular act of disobedience are worse than obedience, and also in its more sophisticated version that the obligation exists even when this is not so, if disobedience increases the probability that the law in question or other laws will be disobeyed on other occasions when the direct consequences of obedience are better than those of disobedience.

Of course to say that there is such a moral obligation upon those who have benefited by the submission of other members of society to restrictive rules to obey these rules in their turn does not entail either that this is the only kind of moral reason for obedience or that there can be no cases where disobedience will be morally justified. There is no contradiction or other impropriety in saying 'I have an obligation to do X, someone has a right to ask me to, but I now see I ought not to do it'. It will in painful situations sometimes be the lesser of two moral evils to disregard what really are people's rights and not perform our obligations to them. This seems to me particularly obvious from the case of promises: I may promise to do something and thereby incur an obligation just because that is one way in which obligations (to be distinguished from other forms of moral reasons for acting) are created; reflection may show that it would in the circumstances be wrong to keep this promise because of the suffering it might cause, and we can express this by saying 'I ought not to do it though I have an obligation to him to do it' just because the italicized expressions are not synonyms but come from different dimensions of morality. The attempt to explain this situation by saying that our real obligation here is to avoid the suffering and that there is only a *prima-facie* obligation to keep the promise seems to me to confuse two quite different kinds of moral reason, and in practice such a terminology obscures the precise character of what is at stake when 'for some greater good' we infringe people's rights or do not perform our obligations to them.

The social-contract theorists rightly fastened on the fact that the obligation to obey the law is not merely a special case of benevolence (direct or indirect), but something which arises between members of a particular political society out of their mutual relationship. Their mistake was to identify this right-creating situation of mutual restrictions with the paradigm case of promising; there are of course important similarities, and these are just the points which all special rights have in common, viz. that they arise out of

special relationships between human beings and not out of the character of the action to be done or its effects.

(iv) There remains a type of situation which may be thought of as creating rights and obligations: where the parties have a special natural relationship, as in the case of parent and child. The parent's moral right to obedience from his child would I suppose now be thought to terminate when the child reaches the age 'of discretion', but the case is worth mentioning because some political philosophies have had recourse to analogies with this case as an explanation of political obligation, and also because even this case has some of the features we have distinguished in special rights, viz. the right arises out of the special relationship of the parties (though it is in this case a natural relationship) and not out of the character of the actions to the performance of which there is a right.

(v) To be distinguished from special rights, of course, are special liberties, where, exceptionally, one person is exempted from obligations to which most are subject but does not thereby acquire a right to which there is a correlative obligation. If you catch me reading your brother's diary, you say, 'You have no right to read it'. I say, 'I have a right to read it – your brother said I might unless he told me not to, and he has not told me not to.' Here I have been specially licensed by your brother who had a right to require me not to read his diary, so I am exempted from the moral obligation not to read it. Cases where rights, not liberties, are accorded to manage or interfere with another person's affairs are those where the licence is not revocable at will by the person according the right.

(B) General rights. In contrast with special rights, which constitute a justification peculiar to the holder of the right for interfering with another's freedom, are general rights, which are asserted defensively, when some unjustified interference is anticipated or threatened, in order to point out that the interference is unjustified. 'I have the right to say what I think.' 'I have the right to worship as I please.' Such rights share two important characteristics with special rights. (1) to have them is to have moral justification for determining how another shall act, viz. that he shall not interfere (2) The moral justification does not arise from the character of the particular action to the performance of which the claimant has a right; what justifies the claim is simply – there being no special relation between him and those who are threatening to interfere to justify that interference – that this is a particular exemplification of the equal right to be free. But there are of course striking differences between such defensive general rights and special rights. (1) General rights do not arise out of any special relationship or transaction between men. (2) They are not rights which are peculiar to those who have them but are rights which all men capable of choice have in the absence of those special conditions which give rise to special rights. (3) General rights

have as correlatives obligations not to interfere to which everyone else is subject and not merely the parties to some special relationship or transaction, though of course they will often be asserted when some particular persons threaten to interfere as a moral objection to the interference. To assert a general right is to claim in relation to some particular action the equal right of all men to be free in the absence of any of those special conditions which constitute a special right to limit another's freedom; to assert a special right is to assert in relation to some particular action a right constituted by such special conditions to limit another's freedom. The assertion of general rights directly invokes the principle that all men equally have the right to be free; the assertion of a special right invokes it indirectly.

It is, I hope, clear that unless it is recognized that interference with another's freedom requires a moral justification the notion of a right could have no place in morals; for to assert a right is to assert that there is such a justification. The characteristic function in moral discourse of those sentences in which the meaning of the expression 'a right' is to be found – 'I have a right to...', 'You have no right to...', 'What right have you to...?' – is to bring to bear on interferences with another's freedom, or on claims to interfere, a type of moral evaluation or criticism specially appropriate to interference with freedom and characteristically different from the moral criticism of actions made with the use of expressions like 'right', 'wrong', 'good', and 'bad'. And this is only one of many different types of moral ground for saying 'You ought ...' or 'You ought not...'. The use of the expression 'What right have you to...?' shows this more clearly, perhaps, than the others; for we use it, just at the point where interference is actual or threatened, to call for the moral title of the person addressed to interfere; and we do this often without any suggestion at all that what he proposes to do is otherwise wrong and sometimes with the implication that the same interference on the part of another person would be unobjectionable.

But though our use in moral discourse of 'a right' does presuppose the recognition that interference with another's freedom requires a moral justification, this would not itself suffice to establish, except in a sense easily trivialized, that in the recognition of moral rights there is implied the recognition that all men have a right to equal freedom; for unless there is some restriction inherent in the meaning of 'a right' on the type of moral justification for interference which can constitute a right, the principle could be made wholly vacuous. It would, for example, be possible to adopt the principle and then assert that some characteristic or behaviour of some human beings (that they are improvident, or atheists, or Jews, or Negroes) constitutes a moral justification for interfering with their freedom; any

differences between men could, so far as my argument has yet gone, be treated as a moral justification for interference and so constitute a right, so that the equal right of all men to be free would be compatible with gross inequality. It may well be that the expression 'moral' itself imports some restriction on what can constitute a moral justification for interference which would avoid this consequence, but I cannot myself yet show that this is so. It is, on the other hand, clear to me that the moral justification for interference which is to constitute a right to interfere (as distinct from merely making it morally good or desirable to interfere) is restricted to certain special conditions and that this is inherent in the meaning of 'a right' (unless this is used so loosely that it could be replaced by the other moral expressions mentioned). Claims to interfere with another's freedom based on the general character of the activities interfered with (e.g. the folly or cruelty of 'native' practices) or the general character of the parties ('We are Germans. They are Jews') even when well founded are not matters of moral right or obligation. Submission in such cases even where proper is not due to or owed to the individuals who interfere, it would be equally proper whoever of the same class of persons interfered. Hence other elements in our moral vocabulary suffice to describe this case, and it is confusing here to talk of rights. We saw in Section II that the types of justification for interference involved in special rights was independent of the character of the action to the performance of which there was a right but depended upon certain previous transactions and relations between individuals (such as promises, consent, authorization, submission to mutual restrictions). Two questions here suggest themselves: (1) On what intelligible principle could these bare forms of promising, consenting, submission to mutual restrictions, be either necessary or sufficient, irrespective of their content, to justify interference with another's freedom? (2) What characteristics have these types of transaction or relationship in common? The answer to both these questions is I think this: if we justify interference on such grounds as we give when we claim a moral right, we are in fact indirectly invoking as our justification the principle that all men have an equal right to be free. For we are in fact saying in the case of promises and consents or authorizations that this claim to interfere with another's freedom is justified because he has, in exercise of his equal right to be free, freely chosen to create this claim; and in the case of mutual restrictions we are in fact saying that this claim to interfere with another's freedom is justified because it is fair; and it is fair because only so will there be an equal distribution of restrictions and so of freedom among this group of men. So in the case of special rights as well as of general rights recognition of them implies the recognition of the equal right of all men to be free.

Alan Gewirth

ARE THERE ANY ABSOLUTE RIGHTS?

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It is a widely held opinion that there are no absolute rights. Consider what would be generally regarded as the most plausible candidate: the right to life. This right entails at least the negative duty to refrain from killing any human being. But it is contended that this duty may be overridden, that a person may be justifiably killed if this is the only way to prevent him from killing some other, innocent person, or if he is engaged in combat in the army of an unjust aggressor nation with which one's own country is at war. It is also maintained that even an innocent person may justifiably be killed if failure to do so will lead to the deaths of other such persons. Thus an innocent person's right to life is held to be overridden when a fat man stuck in the mouth of a cave prevents the exit of speleologists who will otherwise drown, or when a child or some other guiltless person is strapped onto the front of an aggressor's tank, or when an explorer's choice to kill one among a group of harmless natives about to be executed is the necessary and sufficient condition of the others' being spared, or when the driver of a runaway trolley can avoid killing five persons on one track only by killing one person on another track. And topping all such tragic examples is the catastrophic situation where a nuclear war or some other unmitigated disaster can be avoided only by infringing some innocent person's right to life. Despite such cases, I shall argue that certain rights can be shown to be absolute. But first the concept of an absolute right must be clarified.

1. I begin with the Hohfeldian point that the rights here in question are claim-rights (as against liberties, powers, and so forth) in that they are justified claims or entitlements to the carrying out of correlative duties, positive or negative. A duty is a requirement that some action be performed or not be performed; in the latter, negative case, the requirement constitutes a prohibition.

A right is fulfilled when the correlative duty is carried out, i.e., when the required action is performed or the prohibited action is not performed. A right is infringed when the correlative duty is not carried out, i.e., when the required action is not performed or the prohibited action is performed. Thus someone's right to life is infringed when the prohibited action of killing him is performed; someone's right to medical care is infringed when

the required action of providing him with medical care is not performed. A right is violated when it is unjustifiably infringed, i.e., when the required action is unjustifiably not performed or the prohibited action is unjustifiably performed. And a right is overridden when it is justifiably infringed, so that there is sufficient justification for not carrying out the correlative duty, and the required action is justifiably not performed or the prohibited action is justifiably performed.

A right is absolute when it cannot be overridden in any circumstances, so that it can never be justifiably infringed and it must be fulfilled without any exceptions.

The idea of an absolute right is thus doubly normative: it includes not only the idea, common to all claim-rights, of a justified claim or entitlement to the performance or non-performance of certain actions, but also the idea of the exceptionless justifiability of performing or not performing those actions as required. These components show that the question whether there are any absolute rights demands for its adequate answer an explicit concern with criteria of justification. I shall here assume what I have elsewhere argued for in some detail: that these criteria, insofar as they are valid, are ultimately based on a certain supreme principle of morality, the Principle of Generic Consistency (PGC). This principle requires of every agent that he act in accord with the generic rights of his recipients as well as of himself, i.e., that he fulfil these rights. The generic rights are rights to the necessary conditions of action, freedom and well-being, where the latter is defined in terms of the various substantive abilities and conditions needed for action and for successful action in general. The PGC provides the ultimate justificatory basis for the validity of these rights by showing that they are equally had by all prospective purposive agents, and it also provides in general for the ordering of the rights in cases of conflict. Thus if two moral rights are so related that each can be fulfilled only by infringing the other, that right takes precedence whose fulfilment is more necessary for action. This criterion of degrees of necessity for action explains, for example, why one person's right not to be lied to must give way to another person's right not to be killed when these two rights are in conflict. In some cases the application of this criterion requires a context of institutional rules.

2. The general formula of a right is as follows: "A has a right to X against B by virtue of Y". In addition to the right itself, there are four elements here: the subject of the right, the right-holder (A); the object of the right (X); the respondent of the right, the person who has the correlative duty (B); and the justificatory basis or ground of the right (Y). I shall refer to these elements jointly as the contents of the right. Each of the elements may vary in generality. Various rights may conflict with one another as to one or another of these elements, so that not all rights can be absolute.

One aspect, of these conflicts is especially important for understanding the question of absolute rights. Although, as noted above, the objects of moral rights are hierarchically ordered (according to the degree of their necessity for action), this is not true of the subjects of the rights. If one class or group of persons inherently had superior moral rights over another class or group (as was held to be the case throughout much of human history), any conflict between their respective rights would be readily resolvable: the rights of the former group would always take precedence, they would never be overridden (at least by the rights of members of other groups), and to this extent they would be absolute. It is because (as is shown by the PGC as well as by other moral principles) moral rights are equally distributed among all human persons as prospective purposive agents that some of the main conflicts of rights arise. This is most obviously the case where one person's right to life conflicts with another person's, since in the absence of guilt on either side, it is assumed that the two persons have equal rights. Thus the difficulty of supporting the thesis that there are absolute rights derives much of its force from its connection with the principle that all persons are equal in their moral rights.

3. The differentiation of the elements of rights serves to explicate the various levels at which rights may be held to be absolute. We may distinguish three such levels. The first is that of Principle Absolutism. According to this, what is absolute, and thus always valid and never overridden, is only some moral principle of a very high degree of generality which, referring to the subjects, the respondents, and especially the objects of rights in a relatively undifferentiated way, presents a general formula for all the diverse duties of all respondents or agents toward all subjects or recipients. The POO is such a principle; so too are the Golden Rule, the law of love, Kant's categorical imperative, and the principle of utility. Principle Absolutism, however, may leave open the question whether any specific rights are always absolute, and what is to be done in cases of conflict. Even act-utilitarianism might be an example of Principle Absolutism, for it may be interpreted as saying that those rights are absolute whose fulfilment would serve to maximize utility overall. These rights, whatever they may be, might of course vary in their specific contents from one situation to another.

At the opposite extreme is Individual Absolutism, according to which an individual person has an absolute right to some particular object at a particular time and place when all grounds for overriding the right in the particular case have been overcome. But this still leaves open the question of what are the general grounds or criteria for overriding any right, and what are the other specific relevant contents of such rights.

It is at the intermediate level, that of Rule Absolutism, that the question of absolute rights arises most directly. At this level, the rights whose

absoluteness is in question are characterized in terms of specific objects with possible specification also of subjects and respondents, so that a specific rule can be stated describing the content of the right and the correlative duty. The description will not use proper names and other individual referring expressions, as in the case of Individual Absolutism, nor will it consist only in a general formula applicable to many specifically different kinds of rights and duties and hence of objects, subjects, and respondents, as in the case of Principle Absolutism. It is at this level that one asks whether the right to life of all persons or of all innocent persons is absolute, whether the rights to freedom of speech and of religion are absolute, and so forth.

The rights whose absoluteness is considered at the level of Rule Absolutism may vary in degree of generality, in that their objects, their subjects, and their respondents may be given with greater or lesser specificity. Thus there is greater specificity as we move along the following scale: the right of all persons to life, the right of all innocent persons to life, the right of all innocent persons to an economically secure life, the right of children to receive an economically secure and emotionally satisfying life from their parents, and so forth.

This variability raises the following problem. For a right to be absolute, it must be conclusively valid without any exceptions. But, as we have seen, rights may vary in generality, and all the resulting specifications of their objects, subjects, or respondents may constitute exceptions to the more general rights in which such specifications are not present. For example, the right of innocent persons to life may incorporate an exception to the right of all persons to life, for the rule embodying the former right may be stated thus: All persons have a right not to be killed except when the persons are not innocent, or except when such killing is directly required in order to prevent them from killing somebody else. Similarly, when it is said that all persons have a right to life, the specification of 'persons' may suggest (although it does not strictly entail) the exception-making rule that all animals (or even all organisms) have a right to life except when they are not persons (or not human). Hence, since an absolute right is one that is valid without any exceptions, it may be concluded either that no rights are absolute because all involve some specification, or that all rights are equally absolute because once their specifications are admitted they are entirely valid without any further exceptions.

The solution to this problem consists in seeing that not all specifications of the subjects, objects, or respondents of moral rights constitute the kinds of exception whose applicability to a right debars it from being absolute. I shall indicate three criteria for permissible specifications. First, when it is asked concerning some moral right whether it is absolute, the kind of specification that may be incorporated in the right can only be such as results in a concept

that is recognizable to ordinary practical thinking. This excludes rights that are “overloaded with exceptions” as well as those whose application would require intricate utilitarian calculations.

Second, the specifications must be justifiable through a valid moral principle. Since, as we saw above, the idea of an absolute right is doubly normative, a right with its specification would not even begin to be a candidate for absoluteness unless the specification were morally justified and could hence be admitted as a condition of the justifiability of the moral right. There is, for example, a good moral justification for incorporating the restriction of innocence on the subjects of the right not to be killed; but there is not a similarly good moral justification for incorporating racial, religious, and other such particularist specifications. It must be emphasized, however, that this moral specification guarantees only that the right thus specified is an appropriate candidate for being absolute; it is, of itself, not decisive as to whether the right is absolute.

A third criterion is that the permissible specification of a right must exclude any reference to the possibly disastrous consequences of fulfilling the right. Since a chief difficulty posed against absolute rights is that for any right there can be cases in which its fulfilment may have disastrous consequences, to put this reference into the very description of the right would remove one of the main grounds for raising the question of absoluteness.

The relation between rights and disasters is complicated by the fact that the latter, when caused by the actions of persons, are themselves infringements of rights. This point casts a new light on the consequentialist’s thesis that there are no absolute rights. For when he says that every right may be overridden if this is required in order to avoid certain catastrophes – such as when torture alone will enable the authorities to ascertain where a terrorist has hidden a fused charge of dynamite – the consequentialist is appealing to basic rights. He is saying that in such a case one right – the right not to be tortured – is overridden by another right – the right to life of the many potential victims of the explosion. This raises the following question. Can the process of one right’s overriding another continue indefinitely or does the process come to a stop with absolute rights?

In order to deal with this question, two points must be kept in mind. First, even when catastrophes threatening the infringement of basic rights are invoked to override other rights, at least part of the problem created by such conflict depends, as was noted above, on the assumption that all the persons involved have equal moral rights. There would be no serious conflict of rights and no problem about absolute rights if, for example, the rights of the persons threatened by the catastrophe were deemed inferior to those of persons not so threatened.

Second, despite the close connection between rights in general and the rights threatened by disastrous consequences, it is important to distinguish them. For if the appeal to avoidance of disastrous consequences were to be construed simply as an appeal for the fulfilment or protection of certain basic rights, then, on the assumption that certain disasters must always be avoided when they are threatened, the consequentialist would himself be an absolutist. We can escape this untoward result and render more coherent the opposition between absolutism and consequentialism if we recognize a further important assumption of the question whether there are any absolute rights. Amid the various possible specifications of Rule Absolutism, the rights in question are the normative property of distinct individuals. In referring to some event as a “disaster” or a “catastrophe”, on the other hand, what is often meant is that a large mass of individuals taken collectively loses some basic good to which they have a right. It is their aggregate loss that constitutes the catastrophe. (This, of course, accounts for the close connection between the appeal to disastrous consequences and utilitarianism.) Thus the question whether there are any absolute rights is to be construed as asking whether distinct individuals, each of whom has equal moral rights (and who are to be characterized, according to the conditions of Rule Absolutism, by specifications that are morally justifiable and recognizable to ordinary practical thinking), have any rights that may never be overridden by any other considerations, including even their catastrophic consequences for collective rights.

4. We must now examine the merits of the prime consequentialist argument against the possibility of absolute moral rights: that circumstances can always be imagined in which the consequences of fulfilling the rights would be so disastrous that their requirements would be overridden. The formal structure of the argument is as follows: (1) If R, then D. (2) $O(\sim D)$. (3) Therefore, $O(\sim R)$. For example, (1) if some person’s right to life is fulfilled in certain circumstances, then some great disaster may or will occur. But (2) such disaster ought never to (be allowed to) occur. Hence, (3) in such circumstances the right ought not to be fulfilled, so that it is not absolute.

Proponents of this argument have usually failed to notice that a parallel argument can be given in the opposite direction. If exceptions to the fulfilment of any moral right can be justified by imagining the possible disastrous consequences of fulfilling it, why cannot exceptionless moral rights be justified by giving them such contents that their infringement would be unspeakably evil? The argument to this effect may be put formally as follows: (1) If $\sim R$, then E. (2) $O(\sim E)$. (3) Therefore, $O(R)$. For example, (1) if a mother’s right not to be tortured to death by her own son is not fulfilled, then there will be unspeakable evil. But (2) such evil ought never

to (be allowed to) occur. Hence, (3) the right ought to be fulfilled without any exceptions, so that it is absolute.

Two preliminary points must be made about these arguments. First, despite their formal parallelism, there is an important difference in the meaning of 'then' in their respective first premises. In the first argument, 'then' signifies a consequential causal connection: if someone's right to life is fulfilled, there may or will ensue as a result the quite distinct phenomenon of a certain great disaster. But in the second argument, 'then' signifies a moral conceptual relation: the unspeakable evil is not a causal consequence of a mother's being tortured to death by her own son; it is rather a central moral constituent of it. Thus the second argument is not consequentialist, as the first one is, despite the fact that each of their respective first premises has the logical form of antecedent and consequent.

A related point bears on the second argument's specification of the right in question as a mother's right not to be tortured to death by her own son. This specification does not transgress the third requirement given above for permissible specifications: that reference to disastrous consequences must not be included in the formulation of the right. For the torturing to death is not a disastrous causal consequence of infringing the right; it is directly an infringement of the right itself, just as not being tortured to death by her own son is not a consequence of fulfilling the right but is the right. This distinction can perhaps be seen more clearly in such a less extreme case as the right not to be lied to. Being told a lie is not a causal consequence of infringing this right; rather, it just is an infringement of the right. In each case, moreover, the first two requirements for permissible specifications of moral rights are also satisfied: their contents are recognizable to ordinary practical thinking and they are justified by a valid moral principle.

5. Let us now consider the right mentioned above: a mother's right not to be tortured to death by her own son. Assume (although these specifications are here quite dispensable) that she is innocent of any crime and has no knowledge of any. What justifiable exception could there be to such a right? I shall construct an example which, though fanciful, has sufficient analogues in past and present thought and action to make it relevant to the status of rights in the real world.

Suppose a clandestine group of political extremists have obtained an arsenal of nuclear weapons; to prove that they have the weapons and know how to use them, they have kidnapped a leading scientist, shown him the weapons, and then released him to make a public corroborative statement. The terrorists have now announced that they will use the weapons against a designated large distant city unless a certain prominent resident of the city, a young politically active lawyer named Abrams, tortures his mother to

death, this torturing to be carried out publicly in a certain way at a specified place and time in that city. Since the gang members have already murdered several other prominent residents of the city, their threat is quite credible. Their declared motive is to advance their cause by showing how powerful they are and by unmasking the moralistic pretensions of their political opponents.

Ought Abrams to torture his mother to death in order to prevent the threatened nuclear catastrophe? Might he not merely pretend to torture his mother, so that she could then be safely hidden while the hunt for the gang members continued? Entirely apart from the fact that the gang could easily pierce this deception, the main objection to the very raising of such questions is the moral one that they seem to hold open the possibility of acquiescing and participating in an unspeakably evil project. To inflict such extreme harm on one's mother would be an ultimate act of betrayal; in performing or even contemplating the performance of such an action the son would lose all self-respect and would regard his life as no longer worth living. A mother's right not to be tortured to death by her own son is beyond any compromise. It is absolute.

This absoluteness may be analysed in several different interrelated dimensions, all stemming from the supreme principle of morality. The principle requires respect for the rights of all persons to the necessary conditions of human action, and this includes respect for the persons themselves as having the rational capacity to reflect on their purposes and to control their behaviour in the light of such reflection. The principle hence prohibits using any person merely as a means to the well-being of other persons. For a son to torture his mother to death even to protect the lives of others would be an extreme violation of this principle and hence of these rights, as would any attempt by others to force such an action. For this reason, the concept appropriate to it is not merely 'wrong' but such others as 'despicable', 'dishonourable', 'base', 'monstrous'. In the scale of moral modalities, such concepts function as the contrary extremes of concepts like the supererogatory. What is supererogatory is not merely good or right but goes beyond these in various ways; it includes saintly and heroic actions whose moral merit surpasses what is strictly required of agents. In parallel fashion, what is base, dishonourable, or despicable is not merely bad or wrong but goes beyond these in moral demerit since it subverts even the minimal worth or dignity both of its agent and of its recipient and hence the basic presuppositions of morality itself. Just as the supererogatory is superlatively good, so the despicable is superlatively evil and diabolic, and its moral wrongness is so rotten that a morally decent person will not even consider doing it. This is but another way of saying that the rights it would violate must remain absolute.

6. There is, however, another side to this story. What of the thousands of innocent persons in the distant city whose lives are imperilled by the threatened nuclear explosion? Don't they too have rights to life which, because of their numbers, are far superior to the mother's right? May they not contend that while it is all very well for Abrams to preserve his moral purity by not killing his mother, he has no right to purchase this at the expense of their lives, thereby treating them as mere means to his ends and violating their own rights? Thus it may be argued that the morally correct description of the alternative confronting Abrams is not simply that it is one of not violating or violating an innocent person's right to life, but rather not violating one innocent person's right to life and thereby violating the right to life of thousands of other innocent persons through being partly responsible for their deaths, or violating one innocent person's right to life and thereby protecting or fulfilling the right to life of thousands of other innocent persons. We have here a tragic conflict of rights and an illustration of the heavy price exacted by moral absolutism. The aggregative consequentialist who holds that that action ought always to be performed which maximizes utility or minimizes disutility would maintain that in such a situation the lives of the thousands must be preferred.

An initial answer may be that terrorists who make such demands and issue such threats cannot be trusted to keep their word not to drop the bombs if the mother is tortured to death; and even if they now do keep their word, acceding in this case would only lead to further escalated demands and threats. It may also be argued that it is irrational to perpetrate a sure evil in order to forestall what is so far only a possible or threatened evil. Philippa Foot has sagely commented on cases of this sort that if it is the son's duty to kill his mother in order to save the lives of the many other innocent residents of the city, then "anyone who wants us to do something we think wrong has only to threaten that otherwise he himself will do something we think worse". Much depends, however, on the nature of the "wrong" and the "worse". If someone threatens to commit suicide or to kill innocent hostages if we do not break our promise to do some relatively unimportant action, breaking the promise would be the obviously right course, by the criterion of degrees of necessity for action. The special difficulty of the present case stems from the fact that the conflicting rights are of the same supreme degree of importance.

It may be contended, however, that this whole answer, focusing on the probable outcome of obeying the terrorists' demands, is a consequentialist argument and, as such, is not available to the absolutist who insists that Abrams must not torture his mother to death whatever the consequences. This contention imputes to the absolutist a kind of indifference or even callousness to the sufferings of others that is not warranted by a correct

understanding of his position. He can be concerned about consequences so long as he does not regard them as possibly superseding or diminishing the right and duty he regards as absolute. It is a matter of priorities. So long as the mother's right not to be tortured to death by her son is unqualifiedly respected, the absolutist can seek ways to mitigate the threatened disastrous consequences and possibly to avert them altogether. A parallel case is found in the theory of legal punishment: the retributivist, while asserting that punishment must be meted out only to the persons who deserve it because of the crimes they have committed, may also uphold punishment for its deterrent effect so long as the latter, consequentialist consideration is subordinated to and limited by the conditions of the former, antecedentist consideration. Thus the absolutist can accommodate at least part of the consequentialist's substantive concerns within the limits of his own principle.

Is any other answer available to the absolutist, one that reflects the core of his position? Various lines of argument may be used to show that in refusing to torture his mother to death Abrams is not violating the rights of the multitudes of other residents who may die as a result, because he is not morally responsible for their deaths. Thus the absolutist can maintain that even if these others die they still have an absolute right to life because the infringement of their right is not justified by the argument he upholds. At least three different distinctions may be adduced for this purpose. In the unqualified form in which they have hitherto been presented, however, they are not successful in establishing the envisaged conclusion.

One distinction is between direct and oblique intention. When Abrams refrains from torturing his mother to death, he does not directly intend the many ensuing deaths of the other inhabitants either as end or as means. These are only the foreseen but unintended side-effects of his action or, in this case, inaction. Hence, he is not morally responsible for those deaths.

Apart from other difficulties Avith the doctrine of double effect, this distinction as so far stated does not serve to exculpate Abrams. Consider some parallels. Industrialists who pollute the environment with poisonous chemicals and manufacturers who use carcinogenic food additives do not directly intend the resulting deaths; these are only the unintended but foreseen side-effects of what they do directly intend, namely, to provide profitable demand-fulfilling commodities. The entrepreneurs in question may even maintain that the enormous economic contributions they make to the gross national product outweigh in importance the relatively few deaths that regrettably occur. Still, since they have good reason to believe that deaths will occur from causes under their control, the fact that they do not directly intend the deaths does not remove their causal and moral responsibility for them. Isn't this also true of Abrams's relation to the deaths of the city's residents?

A second distinction drawn by some absolutists is between killing and letting die. This distinction is often merged with others with which it is not entirely identical, such as the distinctions between commission and omission, between harming and not helping, between strict duties and generosity or supererogation. For the present discussion, however, the subtle differences between these may be overlooked. The contention, then, is that in refraining from killing his mother, Abrams does not kill the many innocent persons who will die as a result; he only lets them die. But one does not have the same strict moral duty to help persons or to prevent their dying as one has not to kill them; one is responsible only for what one does, not for what one merely allows to happen. Hence, Abrams is not morally responsible for the deaths he fails to prevent by letting the many innocent persons die, so that he does not violate their rights to life.

The difficulty with this argument is that the duties bearing on the right to life include not only that one not kill innocent persons but also that one not let them die when one can prevent their dying at no comparable cost. If, for example, one can rescue a drowning man by throwing him a rope, one has a moral duty to throw him the rope. Failure to do so is morally culpable. Hence, to this extent the son who lets the many residents die when he can prevent this by means within his power is morally responsible for their deaths.

A third distinction is between respecting other persons and avoiding bad consequences. Respect for persons is an obligation so fundamental that it cannot be overridden even to prevent evil consequences from befalling some persons. If such prevention requires an action whereby respect is withheld from persons, then that action must not be performed, whatever the consequences.

One of the difficulties with this important distinction is that it is unclear. May not respect be withheld from a person by failing to avert from him some evil consequence? How can Abrams be held to respect the thousands of innocent persons or their rights if he lets them die when he could have prevented this? The distinction also fails to provide for degrees of moral urgency. One fails to respect a person if one lies to him or steals from him; but sometimes the only way to prevent the death of one innocent person may be by stealing from or telling a lie to some other innocent person. In such a case, respect for one person may lead to disrespect of a more serious kind for some other innocent person.

7. None of the above distinctions, then, serves its intended purpose of defending the absolutist against the consequentialist. They do not show that the son's refusal to torture his mother to death does not violate the other persons' rights to life and that he is not morally responsible for their deaths.

Nevertheless, the distinctions can be supplemented in a way that does serve to establish these conclusions.

The required supplement is provided by the principle of the intervening action. According to this principle, when there is a causal connection between some person A's performing some action (or inaction) X and some other person C's incurring a certain harm Z, A's moral responsibility for Z is removed if, between X and Z, there intervenes some other action Y of some person B who knows the relevant circumstances of his action and who intends to produce Z or who produces Z through recklessness. The reason for this removal is that B's intervening action Y is the more direct or proximate cause of Z and, unlike A's action (or inaction), Y is the sufficient condition of Z as it actually occurs.

An example of this principle may help to show its connection with the absolutist thesis. Martin Luther King Jr. was repeatedly told that because he led demonstrations in support of civil rights, he was morally responsible for the disorders, riots, and deaths that ensued and that were shaking the American Republic to its foundations. By the principle of the intervening action, however, it was King's opponents who were responsible because their intervention operated as the sufficient conditions of the riots and injuries. King might also have replied that the Republic would not be worth saving if the price that had to be paid was the violation of the civil rights of black Americans. As for the rights of the other Americans to peace and order, the reply would be that these rights cannot justifiably be secured at the price of the rights of blacks.

It follows from the principle of the intervening action that it is not the son but rather the terrorists who are morally as well as causally responsible for the many deaths that do or may ensue on his refusal to torture his mother to death. The important point is not that he lets these persons die rather than kills them, or that he does not harm them but only fails to help them, or that he intends their deaths only obliquely but not directly. The point is rather that it is only through the intervening lethal actions of the terrorists that his refusal eventuates in the many deaths. Since the moral responsibility is not the son's, it does not affect his moral duty not to torture his mother to death, so that her correlative right remains absolute.

This point also serves to answer some related questions about the rights of the many in relation to the mother's right. Since the son's refusal to torture his mother to death is justified, it may seem that the many deaths to which that refusal will lead are also justified, so that the rights to life of these many innocent persons are not absolute. But since they are innocent, why aren't their rights to life as absolute as the mother's? If, on the other hand, their deaths are unjustified, as seems obvious, then isn't the son's refusal to torture his mother to death also unjustified, since it leads to those deaths?

But from this it would follow that the mother's right not to be tortured to death by her son is not absolute, for if the son's not infringing her right is unjustified, then his infringing it would presumably be justified.

The solution to this difficulty is that it is a fallacy to infer, from the two premises (1) the son's refusal to kill his mother is justified and (2) many innocent persons die as a result of that refusal, to the conclusion (3) their deaths are justified. For, by the principle of the intervening action, the son's refusal is not causally or morally responsible for the deaths; rather, it is the terrorists who are responsible. Hence, the justification referred to in (1) does not carry through to (2). Since the terrorists' action in ordering the killings is unjustified, the resulting deaths are unjustified. Hence, the rights to life of the many innocent victims remain absolute even if they are killed as a result of the son's justified refusal, and it is not he who violates their rights. He may be said to intend the many deaths obliquely, in that they are a foreseen but unwanted side-effect of his refusal. But he is not responsible for that side-effect because of the terrorists' intervening action.

It would be unjustified to violate the mother's right to life in order to protect the rights to life of the many other residents of the city. For rights cannot be justifiably protected by violating another right which, according to the criterion of degrees of necessity for action, is at least equally important. Hence, the many other residents do not have a right that the mother's right to life be violated for their sakes. To be sure, the mother also does not have a right that their equally important rights be violated in order to protect hers. But here too it must be emphasized that in protecting his mother's right the son does not violate the rights of the others; for by the principle of the intervening action, it is not he who is causally or morally responsible for their deaths. Hence too he is not treating them as mere means to his or his mother's ends.

8. Where, then, does this leave us? From the absoluteness of the mother's right not to be tortured to death by her son, does it follow that in the described circumstances a nuclear explosion should be permitted to occur over the city so that countless thousands of innocent persons may be killed, possibly including Abrams and his mother?

Properly to deal with this question, it is vitally important to distinguish between abstract and concrete absolutism. The abstract absolutist at no point takes account of consequences or of empirical or causal connections that may affect the subsequent outcomes of the two alternatives he considers. He views the alternatives as being both mutually exclusive and exhaustive. His sole concern is for the moral guiltlessness of the agent, as against the effects of the agent's choices for human weal or woe.

In contrast, as I suggested earlier, the concrete absolutist is concerned with consequences and empirical connections, but always within the limits of the right he upholds as absolute. His consequentialism is thus limited rather than unlimited. Because of his concern with empirical connections, he takes account of a broader range of possible alternatives than the simple dualism to which the abstract absolutist confines himself. His primary focus is not on the moral guiltlessness of the agent but rather on the basic rights of persons not to be subjected to unspeakable evils. Within this focus, however, the concrete absolutist is also deeply concerned with the effects of the fulfilment of these rights on the basic well-being of other persons.

The significance of this distinction can be seen by applying it to the case of Abrams. If he is an abstract absolutist, he deals with only two alternatives which he regards as mutually exclusive as well as exhaustive: (1) he tortures his mother to death; (2) the terrorists drop a nuclear bomb killing thousands of innocent persons. For the reasons indicated above, he rejects (1). He is thereby open to the accusation that he chooses (2) or at least that he allows (2) to happen, although the principle of the intervening action exempts him from moral guilt or responsibility.

If, however, Abrams is a concrete absolutist, then he does not regard himself as being confronted only by these two terrible alternatives, nor does he regard them or their negations as mutually exclusive. His thought-processes include the following additional considerations. In accordance with a point suggested above, he recognizes that his doing (1) will not assure the non-occurrence of (2). On the contrary, his doing (1) will probably lead to further threats of the occurrence of (2) unless he or someone else performs further unspeakably evil actions (3), (4), and so forth. (A parallel example may be found in Hitler's demand for Czechoslovakia at Munich after his taking over of Austria, his further demand for Poland after the capitulation regarding Czechoslovakia, and the ensuing tragedies.) Moreover, (2) may occur even if Abrams does (1). For persons who are prepared to threaten that they will do (2) cannot be trusted to keep their word.

On the other hand, Abrams further reasons, his not doing (1) may well not lead to (2). This may be so for several reasons. He or the authorities or both must try to engage the terrorists in a dialogue in which their grievances are publicized and seriously considered. Whatever elements of rationality may exist among the terrorists will thereby be reinforced, so that other alternatives may be presented. At the same time, a vigorous search and preventive action must be pursued so as to avert the threatened bombing and to avoid any recurrences of the threat.

It is such concrete absolutism, taking due account of consequences and of possible alternatives, that constitutes the preferred pattern of ethical reasoning. It serves to protect the rights presupposed in the very possibility

of a moral community while at the same time it gives the greatest probability of averting the threatened catastrophe. In the remainder of this paper, I shall assume the background of concrete absolutism.

9. I have thus far argued that the right of a mother not to be tortured to death by her son is absolute. But the arguments would also ground an extension of the kind of right here at issue to many other subjects and respondents, including fathers, daughters, wives, husbands, grandparents, cousins, and friends. So there are many absolute rights, on the criterion of plurality supplied by Rule Absolutism.

It is sometimes held that moral obligations are “agent-relative” in that, at least in cases of conflict, one ought to give priority to the welfare of those persons with whom one has special ties of family or affection. Applied to the present question, this view would suggest that the subjects having the absolute right that must be respected by respondents are limited to the kinds of relations listed above. It may also be thought that as we move away from familial and affectional relations, the proposed subjects of rights come to resemble more closely the anonymous masses of other persons who would be killed by a nuclear explosion, so that a quantitative measure of numbers of lives lost would become a more cogent consideration in allocating rights.

These conclusions, however, do not follow. Most of the arguments I have given above for the mother’s absolute right not to be tortured to death apply to other possible human subjects without such specifications. My purpose in beginning with such an extreme case as the mother-son relation was to focus the issue as sharply as possible; but, this focus once gained, it may be widened in the ways just indicated. Although the mother has indeed a greater right to receive effective concern from her son than from other, unrelated persons, the unjustifiability of violating rights that are on the same level of necessity for action is not affected either by degrees of family relationship or by the numbers of persons affected. Abrams would not be justified in torturing to death some other innocent person in the described circumstances, and in failing to murder he would not be morally responsible for the deaths of other innocent persons who might be murdered by someone else as a consequence.

These considerations also apply to various progressively less extreme objects of rights than the not being tortured to death to which I have so far confined the discussion. The general content of these objects may be stated as follows: All innocent persons have an absolute right not to be made the intended victims of a homicidal project. This right, despite its increase in generality over the object, subject, and respondents of the previous right, still conforms to the requirements of Rule Absolutism. The word ‘intended’ here refers both to direct and to oblique intention, with the latter being

subject to the principle of the intervening action. The word 'project' is meant to indicate a definite, deliberate design; hence, it excludes the kind of unforeseeable immediate crisis where, for example, the unfortunate driver of a trolley whose brakes have failed must choose between killing one person or five. The absolute right imposes a prohibition on any form of active participation in a homicidal project against innocent persons, whether by the original designers or by those who would accept its conditions with a view to warding off what they would regard as worse consequences. The meaning of 'innocent' raises many questions of interpretation into which I have no space to enter here, but some of its main criteria may be gathered from the first paragraph of this paper. As for 'persons', this refers to all prospective purposive agents.

The right not to be made the intended victim of a homicidal project is not the only specific absolute right, but it is surely one of the most important. The general point underlying all absolute rights stems from the moral principle presented earlier. At the level of Principle Absolutism, it may be stated as follows: Agents and institutions are absolutely prohibited from degrading persons, treating them as if they had no rights or dignity. The benefit of this prohibition extends to all persons, innocent or guilty; for the latter, when they are justly punished, are still treated as responsible moral agents who are capable of understanding the principle of morality and acting accordingly, and the punishment must not be cruel or arbitrary. Other specific absolute rights may also be generated from this principle. Since the principle requires of every agent that he act in accord with the generic rights of his recipients as well as of himself, specific rights are absolute insofar as they serve to protect the basic presuppositions of the valid principle of morality in its equal application to all persons.

Lon L. Fuller

THE PROBLEM OF THE GRUDGE INFORMER

Source: "University of British Columbia":
<http://www.philosophy.ubc.ca/faculty/bittner/content/phil338A/grudge.doc>

By a narrow margin you have been elected Minister of Justice of your country, a nation of some twenty million inhabitants. At the outset of your term of office you are confronted by a serious problem that will be described below. But first the background of this problem must be presented.

For many decades your country enjoyed a peaceful, constitutional and democratic government. However, some time ago it came upon bad times. Normal relations were disrupted by a deepening economic depression and by an increasing antagonism among various factional groups, formed along economic, political, and religious lines. The proverbial man on horseback appeared in the form of the Headman of a political party or society that called itself the Purple Shirts.

In a national election attended by much disorder the Headman was elected President of the Republic and his party obtained a majority of the seats in the General Assembly. The success of the party at the polls was partly brought about by a campaign of reckless promises and ingenious falsifications, and partly by the physical intimidation of night-riding Purple Shirts who frightened many people away from the polls who would have voted against the party.

When the Purple Shirts arrived in power they took no steps to repeal the ancient Constitution or any of its provisions. They also left intact the Civil and Criminal Codes and the Code of Procedure. No official action was taken to dismiss any government official or to remove any judge from the bench. Elections continued to be held at intervals and ballots were counted with apparent honesty. Nevertheless, the country lived under a reign of terror.

Judges who rendered decisions contrary to the wishes of the party were beaten and murdered.

The accepted meaning of the Criminal Code was perverted to place political opponents in jail. Secret statutes were passed, the contents of which were known only to the upper levels of the party hierarchy. Retroactive statutes were enacted which made acts criminal that were legally innocent when committed. No attention was paid by the government to the restraints of the Constitution, of antecedent laws, or even of its own laws. All opposing political parties were disbanded. Thousands of political opponents were

put to death, either methodically in prisons or in sporadic night forays of terror. A general amnesty was declared in favor of persons under sentence for acts "committed in defending the fatherland against subversion." Under this amnesty a general liberation of all prisoners who were members of the Purple Shirt party was effected. No one not a member of the party was released under the amnesty.

The Purple Shirts as a matter of deliberate policy preserved an element of flexibility in their operations by acting at times through the party "in the streets", and by acting at other times through the apparatus of the state which they controlled. Choice between the two methods of proceeding was purely a matter of expediency. For example, when the inner circle of the party decided to ruin all the former Socialist-Republicans (whose party put up a last-ditch resistance to the new regime), a dispute arose as to the best way of confiscating their property. One faction, perhaps still influenced by pre-Revolutionary conceptions, wanted to accomplish this by a statute declaring their goods forfeited for criminal acts. Another wanted to do it by compelling the owners to deed their property over at the point of a bayonet. This group argued against the proposed statute on the ground that it would attract unfavorable comment abroad. The Headman decided in favor of direct action through the party to be followed by a secret statute ratifying the party's action and confirming the titles obtained by threats of physical violence.

The Purple Shirts have now been overthrown and a democratic and constitutional government restored. Some difficult problems have, however, been left behind by the deposed regime. These you and your associates in the new government must find some way of solving. One of these problems is that of the "grudge informer."

During the Purple Shirt regime a great many people worked off grudges by reporting their enemies to the party or to the government authorities. The activities reported were such things as the private expression of views critical of the government, listening to foreign radio broadcasts, associating with known wreckers and hooligans, hoarding more than the permitted amount of dried eggs, failing to report a loss of identification papers within five days, etcetera. As things then stood with the administration of justice, any of these acts, if proved, could lead to a sentence of death. In some cases this sentence was authorized by "emergency" statutes; in others it was imposed without statutory warrant, though by judges duly appointed to their offices.

After the overthrow of the Purple Shirts, a strong public demand grew up that these grudge informers be punished. The interim government, which preceded that with which you are associated, temporized on this matter. Meanwhile it has become a burning issue and a decision concerning it can no longer be postponed. Accordingly, your first act as Minister of Justice

has been to address yourself to it. You have asked your five Deputies to give thought to the matter and to bring their recommendations to conference. At the conference the five Deputies speak in turn as follows:

FIRST DEPUTY. "It is perfectly clear to me that we can do nothing about these so-called grudge informers. The acts they reported were unlawful according to the rules of the government then in actual control of the nation's affairs. The sentences imposed on their victims were rendered in accordance with principles of law then obtaining. These principles differed from those familiar to us in ways that we consider detestable. Nevertheless they were then the law of the land. One of the principal differences between that law and our own lies in the much wider discretion it accorded to the judge in criminal matters. This rule and its consequences are as much entitled to respect by us as the reform which the Purple Shirts introduced into the law of wills, whereby only two witnesses were required instead of three. It is immaterial that the rule granting the judge a more or less uncontrolled discretion in criminal cases was never formally enacted but was a matter of tacit acceptance. Exactly the same thing can be said of the opposite rule which we accept that restricts the judge's discretion narrowly. The difference between ourselves and the Purple Shirts is not that theirs was an unlawful government—a contradiction in terms—but lies rather in the field of ideology. No one has a greater abhorrence than I for Purple Shirtism. Yet the fundamental difference between our philosophy and theirs is that we permit and tolerate differences in viewpoint, while they attempted to impose their monolithic code on everyone. Our whole system of government assumes that law is a flexible thing, capable of expressing and effectuating many different aims. The cardinal point of our creed is that when an objective has been duly incorporated into a law or judicial decree it must be provisionally accepted even by those that hate it, who must await their chance at the polls, or in another litigation, to secure a legal recognition for their own aims. The Purple Shirts, on the other hand, simply disregarded laws that incorporated objectives of which they did not approve, not even considering it worth the effort involved to repeal them. If we now seek to unscramble the acts of the Purple Shirt regime, declaring this judgment invalid, that statute void, this sentence excessive, we shall be doing exactly the thing we most condemn in them. I recognize that it will take courage to carry through with the program I recommend and we shall have to resist strong pressures to public opinion. We shall also have to be prepared to prevent the people from taking the law into their own hands. In the long run, however, I believe the course I recommend is the only one that will insure the triumph of the conceptions of law and government in which we believe."

SECOND DEPUTY. "Curiously, I arrive at the same conclusion as my colleague, by an exactly opposite route. To me it seems absurd to call the

Purple Shirt regime a lawful government. A legal system does not exist simply because policemen continue to patrol the streets and wear uniforms or because a constitution and code are left on the shelf unrepealed. A legal system presupposes laws that are known, or can be known, by those subject to them. It presupposes some uniformity of action and that like cases will be given like treatment. It presupposes the absence of some lawless power, like the Purple Shirt Party, standing above the government and able at any time to interfere with the administration of justice whenever it does not function according to the whims of that power. All of these presuppositions enter into the very conception of an order of law and have nothing to do with political and economic ideologies. In my opinion law in any ordinary sense of the word ceased to exist when the Purple Shirts came to power. During their regime we had, in effect, an interregnum in the rule of law. Instead of a government of laws we had a war of all against all conducted behind barred doors, in dark alleyways, in palace intrigues, and prison yard conspiracies. The acts of these so-called grudge informers were just one phase of that war. For us to condemn these acts as criminal would involve as much incongruity as if we were to attempt to apply juristic conceptions to the struggle for existence that goes on in the jungle or beneath the surface of the sea. We must put this whole dark, lawless chapter of our history behind us like a bad dream. If we stir among its hatreds, we shall bring upon ourselves something of its evil spirit and risk infection from its miasmas. I therefore say with my colleague, let bygones be bygones. Let us do nothing about the so-called grudge informers. What they did do was neither lawful nor contrary to law, for they lived, not under a regime of law, but under one of anarchy and terror.”

THIRD DEPUTY. “I have a profound suspicion of any kind of reasoning that proceeds by an ‘either or’ alternative. I do not think we need to assume either, on the one hand, that in some manner the whole of the Purple Shirt regime was outside the realm of law, or, on the other, that all of its doings are entitled to full credence as the acts of a lawful government. My two colleagues have unwittingly delivered powerful arguments against these extreme assumptions by demonstrating that both of them lead to the same absurd conclusion, a conclusion that is ethically and politically impossible. If one reflects about the matter without emotion it becomes clear that we did not have during the Purple Shirt regime a ‘war of all against all.’ Under the surface much of what we call normal human life went on—marriages were contracted, goods were sold, wills were drafted and executed. This life was attended by the usual dislocations—automobile accidents, bankruptcies, unwitnessed wills, defamatory misprints in the newspapers. Much of this normal life and most of these equally normal dislocations of it were unaffected by the Purple Shirt ideology. The legal questions that arose in this area were

handled by the courts much as they had been formerly and much as they are being handled today. It would invite an intolerable chaos if we were to declare everything that happened under the Purple Shirts to be without legal basis. On the other hand, we certainly cannot say that the murders committed in the streets by members of the party acting under orders from the Headman were lawful simply because the party had achieved control of the government and its chief had become President of the Republic. If we must condemn the criminal acts of the party and its members, it would seem absurd to uphold every act which happened to be canalized through the apparatus of a government that had become, in effect, the alter ego of the Purple Shirt Party. We must therefore, in this situation, as in most human affairs, discriminate. Where the Purple Shirt philosophy intruded itself and perverted the administration of justice from its normal aims and uses, there we must interfere. Among these perversions of justice I would count, for example, the case of a man who was in love with another man's wife and brought about the death of the husband by informing against him for a wholly trivial offense, that is, for not reporting a loss of his identification papers within five days. This informer was a murderer under the Criminal Code which was in effect at the time of his act and which the Purple Shirts had not repealed. He encompassed the death of one who stood in the way of his illicit passions and utilized the courts for the realization of his murderous intent. He knew that the courts were themselves the pliant instruments of whatever policy the Purple Shirts might for the moment consider expedient. There are other cases that are equally clear. I admit that there are also some that are less clear. We shall be embarrassed, for example, by the cases of mere busybodies who reported to the authorities everything that looked suspect. Some of these persons acted not from desire to get rid of those they accused, but with a desire to curry favor with the party, to divert suspicions (perhaps ill-founded) raised against themselves, or through sheer officiousness. I don't know how these cases should be handled, and make no recommendation with regard to them. But the fact that these troublesome cases exist should not deter us from acting at once in the cases that are clear, of which there are far too many to permit us to disregard them."

FOURTH DEPUTY. "Like my colleague I too distrust 'either-or' reasoning, but I think we need to reflect more than he has about where we are headed. This proposal to pick and choose among the acts of this deposed regime is thoroughly objectionable. It is, in fact, Purple Shirtism itself, pure and simple. We like this law, so let us enforce it. We like this judgment, let it stand. This law we don't like, therefore it never was a law at all. This governmental act we disapprove, let it be deemed a nullity. If we proceed this way, we take toward the laws and acts of the Purple Shirt government precisely the unprincipled attitude they took toward the laws and acts of the government

they supplanted. We shall have chaos, with every judge and every prosecuting attorney a law unto himself. Instead of ending the abuses of the Purple Shirt regime, my colleague's proposal would perpetuate them. There is only one way of dealing with this problem that is compatible with our philosophy of law and government and that is to deal with it by duly enacted law, I mean, by a special statute directed toward it. Let us study this whole problem of the grudge informer, get all the relevant facts, and draft a comprehensive law dealing with it. We shall not then be twisting old laws to purposes for which they were never intended. We shall furthermore provide penalties appropriate to the offense and not treat every informer as a murderer simply because the one he informed against was ultimately executed. I admit that we shall encounter some difficult problems of draftsmanship. Among other things, we shall have to assign a definite legal meaning to 'grudge' and that will not be easy. We should not be deterred by these difficulties, however, from adopting the only course that will lead us out of a condition of lawless, personal rule."

FIFTH DEPUTY. "I find a considerable irony in the last proposal. It speaks of putting a definite end to the abuses of the Purple Shirtism, yet it proposes to do this by resorting to one of the most hated devices of the Purple Shirt regime, the *ex post facto* criminal statute. My colleague dreads the confusion that will result if we attempt without a statute to undo and redress 'wrong' acts of the departed order, while we uphold and enforce its 'right' acts. Yet he seems not to realize that his proposed statute is a wholly specious cure for this uncertainty. It is easy to make a plausible argument for an undrafted statute; we all agree it would be nice to have things down in black and white on paper. But just what would this statute provide? One of my colleagues speaks of someone who had failed for five days to report a loss of his identification papers. My colleague implies that the judicial sentence imposed for that offense, namely death, was so utterly disproportionate as to be clearly wrong. But we must remember that at that time the underground movement against the Purple Shirts was mounting in intensity and that the Purple Shirts were being harassed constantly by people with false identification papers. From their point of view they had a real problem, and the only objection we can make to their solution of it (other than the fact that we didn't want them to solve it) was that they acted with somewhat more rigor than the occasion seemed to demand. How will my colleague deal with this case in his statute, and with all of its cousins and second cousins? Will he deny the existence of any need for law and order under the Purple Shirt regime? I will not go further into the difficulties involved in drafting this proposed statute, since they are evident enough to anyone who reflects. I shall instead turn to my own solution. It has been said on very respectable authority that the main purpose of the criminal law is to give an outlet to

the human instinct for revenge. There are times, and I believe this is one of them, when we should allow that instinct to express itself directly without the intervention of forms of law. This matter of the grudge informers is already in process of straightening itself out. One reads almost every day that a former lackey of the Purple Shirt regime has met his just reward in some unguarded spot. The people are quietly handling this thing in their own way and if we leave them alone, and instruct our public prosecutors to do the same, there will soon be no problem left for us to solve. There will be some disorders, of course, and a few innocent heads will be broken. But our government and our legal system will not be involved in the affair and we shall not find ourselves hopelessly bogged down in an attempt to unscramble all the deeds and misdeeds of the Purple Shirts.”

As Minister of Justice, which of these recommendations would you adopt?

Pope John XXIII

PACEM IN TERRIES

Source: "IntraText Digital Library":
http://www.intratext.com/IXT/ENG0069/_IDX005.HTM

Any well-regulated and productive association of men in society demands the acceptance of one fundamental principle: that each individual man is truly a person. His is a nature, that is, endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable.

When, furthermore, we consider man's personal dignity from the standpoint of divine revelation, inevitably our estimate of it is incomparably increased. Men have been ransomed by the blood of Jesus Christ. Grace has made them sons and friends of God, and heirs to eternal glory.

Rights

But first We must speak of man's rights. Man has the right to live. He has the right to bodily integrity and to the means necessary for the proper development of life, particularly food, clothing, shelter, medical care, rest, and, finally, the necessary social services. In consequence, he has the right to be looked after in the event of illhealth; disability stemming from his work; widowhood; old age; enforced unemployment; or whenever through no fault of his own he is deprived of the means of livelihood.

Rights Pertaining to Moral and Cultural Values

Moreover, man has a natural right to be respected. He has a right to his good name. He has a right to freedom in investigating the truth, and – within the limits of the moral order and the common good – to freedom of speech and publication, and to freedom to pursue whatever profession he may choose. He has the right, also, to be accurately informed about public events.

He has the natural right to share in the benefits of culture, and hence to receive a good general education, and a technical or professional training consistent with the degree of educational development in his own country. Furthermore, a system must be devised for affording gifted members of society the opportunity of engaging in more advanced studies, with a view

to their occupying, as far as possible, positions of responsibility in society in keeping with their natural talent and acquired skill.

The Right to Worship God According to One's Conscience

Also among man's rights is that of being able to worship God in accordance with the right dictates of his own conscience, and to profess his religion both in private and in public. According to the clear teaching of Lactantius, "this is the very condition of our birth, that we render to the God who made us that just homage which is His due; that we acknowledge Him alone as God, and follow Him. It is from this ligature of piety, which binds us and joins us to God, that religion derives its name."

Hence, too, Pope Leo XIII declared that "true freedom, freedom worthy of the sons of God, is that freedom which most truly safeguards the dignity of the human person. It is stronger than any violence or injustice. Such is the freedom which has always been desired by the Church, and which she holds most dear. It is the sort of freedom which the Apostles resolutely claimed for themselves. The apologists defended it in their writings; thousands of martyrs consecrated it with their blood."

The Right to Choose Freely One's State in Life

Human beings have also the right to choose for themselves the kind of life which appeals to them: whether it is to found a family – in the founding of which both the man and the woman enjoy equal rights and duties – or to embrace the priesthood or the religious life.

The family, founded upon marriage freely contracted, one and indissoluble, must be regarded as the natural, primary cell of human society. The interests of the family, therefore, must be taken very specially into consideration in social and economic affairs, as well as in the spheres of faith and morals. For all of these have to do with strengthening the family and assisting it in the fulfilment of its mission.

Of course, the support and education of children is a right which belongs primarily to the parents.

Economic Rights

In the economic sphere, it is evident that a man has the inherent right not only to be given the opportunity to work, but also to be allowed the exercise of personal initiative in the work he does.

The conditions in which a man works form a necessary corollary to these rights. They must not be such as to weaken his physical or moral fibre, or militate against the proper development of adolescents to manhood. Women must be accorded such conditions of work as are consistent with their needs and responsibilities as wives and mothers.

A further consequence of man's personal dignity is his right to engage in economic activities suited to his degree of responsibility. The worker is likewise entitled to a wage that is determined in accordance with the precepts of justice. This needs stressing. The amount a worker receives must be sufficient, in proportion to available funds, to allow him and his family a standard of living consistent with human dignity. Pope Pius XII expressed it in these terms:

“Nature imposes work upon man as a duty, and man has the corresponding natural right to demand that the work he does shall provide him with the means of livelihood for himself and his children. Such is nature's categorical imperative for the preservation of man.”

As a further consequence of man's nature, he has the right to the private ownership of property, including that of productive goods. This, as We have said elsewhere, is “a right which constitutes so efficacious a means of asserting one's personality and exercising responsibility in every field, and an element of solidity and security for family life, and of greater peace and prosperity in the State.”

Finally, it is opportune to point out that the right to own private property entails a social obligation as well.

The Right of Meeting and Association

Men are by nature social, and consequently they have the right to meet together and to form associations with their fellows. They have the right to confer on such associations the type of organization which they consider best calculated to achieve their objectives. They have also the right to exercise their own initiative and act on their own responsibility within these associations for the attainment of the desired results.

As We insisted in Our encyclical *Mater et Magistra*, the founding of a great many such intermediate groups or societies for the pursuit of aims which it is not within the competence of the individual to achieve efficiently, is a matter of great urgency. Such groups and societies must be considered absolutely essential for the safeguarding of man's personal freedom and dignity, while leaving intact a sense of responsibility.

The Right to Emigrate and Immigrate

Again, every human being has the right to freedom of movement and of residence within the confines of his own State. When there are just reasons in favor of it, he must be permitted to emigrate to other countries and take up residence there. The fact that he is a citizen of a particular State does not deprive him of membership in the human family, nor of citizenship in that universal society, the common, world-wide fellowship of men.

Political Rights

Finally, man's personal dignity involves his right to take an active part in public life, and to make his own contribution to the common welfare of his fellow citizens. As Pope Pius XII said, "man as such, far from being an object or, as it were, an inert element in society, is rather its subject, its basis and its purpose; and so must he be esteemed."

As a human person he is entitled to the legal protection of his rights, and such protection must be effective, unbiased, and strictly just. To quote again Pope Pius XII: "In consequence of that juridical order willed by God, man has his own inalienable right to juridical security. To him is assigned a certain, well-defined sphere of law, immune from arbitrary attack."

Duties

The natural rights of which we have so far been speaking are inextricably bound up with as many duties, all applying to one and the same person. These rights and duties derive their origin, their sustenance, and their indestructibility from the natural law, which in conferring the one imposes the other.

Thus, for example, the right to live involves the duty to preserve one's life; the right to a decent standard of living, the duty to live in a becoming fashion; the right to be free to seek out the truth, the duty to devote oneself to an ever deeper and wider search for it.

Reciprocity of Rights and Duties Between Persons

Once this is admitted, it follows that in human society one man's natural right gives rise to a corresponding duty in other men; the duty, that is, of recognizing and respecting that right. Every basic human right draws its authoritative force from the natural law, which confers it and attaches to it its respective duty. Hence, to claim one's rights and ignore one's duties, or only half fulfill them, is like building a house with one hand and tearing it down with the other.

Mutual Collaboration

Since men are social by nature, they must live together and consult each other's interests. That men should recognize and perform their respective rights and duties is imperative to a well ordered society. But the result will be that each individual will make his whole-hearted contribution to the creation of a civic order in which rights and duties are ever more diligently and more effectively observed.

For example, it is useless to admit that a man has a right to the necessities of life, unless we also do all in our power to supply him with means sufficient for his livelihood.

Hence society must not only be well ordered, it must also provide men with abundant resources. This postulates not only the mutual recognition and fulfillment of rights and duties, but also the involvement and collaboration of all men in the many enterprises which our present civilization makes possible, encourages or indeed demands.

An Attitude of Responsibility

Man's personal dignity requires besides that he enjoy freedom and be able to make up his own mind when he acts. In his association with his fellows, therefore, there is every reason why his recognition of rights, observance of duties, and many-sided collaboration with other men, should be primarily a matter of his own personal decision. Each man should act on his own initiative, conviction, and sense of responsibility, not under the constant pressure of external coercion or enticement. There is nothing human about a society that is welded together by force. Far from encouraging, as it should, the attainment of man's progress and perfection, it is merely an obstacle to his freedom.

Social Life in Truth, Justice, Charity and Freedom

Hence, before a society can be considered well-ordered, creative, and consonant with human dignity, it must be based on truth. St. Paul expressed this as follows: "Putting away lying, speak ye the truth every man with his neighbor, for we are members one of another." And so will it be, if each man acknowledges sincerely his own rights and his own duties toward others.

Human society, as we here picture it, demands that men be guided by justice, respect the rights of others and do their duty. It demands, too, that they be animated by such love as will make them feel the needs of others as their own, and induce them to share their goods with others, and to strive in the world to make all men alike heirs to the noblest of intellectual and spiritual values. Nor is this enough; for human society thrives on freedom, namely, on the use of means which are consistent with the dignity of its individual members, who, being endowed with reason, assume responsibility for their own actions .

And so, dearest sons and brothers, we must think of human society as being primarily a spiritual reality. By its means enlightened men can share their knowledge of the truth, can claim their rights and fulfill their duties, receive encouragement in their aspirations for the goods of the spirit, share their enjoyment of all the wholesome pleasures of the world, and strive continually to pass on to others all that is best in themselves and to make their own the spiritual riches of others. It is these spiritual values which exert a guiding influence on culture, economics, social institutions, political

movements and forms, laws, and all the other components which go to make up the external community of men and its continual development.

God and the Moral Order

Now the order which prevails in human society is wholly incorporeal in nature. Its foundation is truth, and it must be brought into effect by justice. It needs to be animated and perfected by men's love for one another, and, while preserving freedom intact, it must make for an equilibrium in society which is increasingly more human in character.

But such an order – universal, absolute and immutable in its principles – finds its source in the true, personal and transcendent God. He is the first truth, the sovereign good, and as such the deepest source from which human society, if it is to be properly constituted, creative, and worthy of man's dignity, draws its genuine vitality. This is what St. Thomas means when he says: "Human reason is the standard which measures the degree of goodness of the human will, and as such it derives from the eternal law, which is divine reason... Hence it is clear that the goodness of the human will depends much more on the eternal law than on human reason."

Isaiah Berlin

TWO CONCEPTS OF LIBERTY

Source: Isaiah Berlin, *Two Concepts of Liberty*, An Annual Lecture Delivered Before the University of Oxford on 31 October 1958, Clarendon Press, Oxford 1958.

If men never disagreed about the ends of life, if our ancestors had remained undisturbed in the Garden of Eden, the studies to which the Chichele Chair of Social and Political Theory is dedicated could scarcely have been conceived. For these studies spring from, and thrive on, discord. Someone may question this on the ground that even in a society of saintly anarchists, where no conflicts about ultimate purpose can take place, political problems, for example constitutional or legislative issues, might still arise. But this objection rests on a mistake. Where ends are agreed, the only questions left are those of means, and these are not political but technical, that is to say, capable of being settled by experts or machines like arguments between engineers or doctors. That is why those who put their faith in some immense, world-transforming phenomenon, like the final triumph of reason or the proletarian revolution, must believe that all political and moral problems can thereby be turned into technological ones. That is the meaning of St. Simon's famous phrase about 'replacing the government of persons by the administration of things', and the Marxist prophecies about the withering away of the state and the beginning of the true history of humanity. This outlook is called utopian by those for whom speculation about this condition of perfect social harmony is the play of idle fancy. Nevertheless, a visitor from Mars to any British – or American – university today, might perhaps be forgiven if he sustained the impression that its members lived in something very like this innocent and idyllic state, for all the serious attention that is paid to fundamental problems of politics by professional philosophers.

Yet this is both surprising and dangerous. Surprising because there has, perhaps, been no time in modern history when so large a number of human beings, both in the East and West, have had their notions, and indeed their lives, so deeply altered, and in some cases violently upset, by fanatically held social and political doctrines. Dangerous, because when ideas are neglected by those who ought to attend to them – that is to say, those who have been trained to think critically about ideas – they sometimes acquire an unchecked momentum and an irresistible power over multitudes of men that may grow too violent to be affected by rational criticism. Over a hundred years ago, the

German poet Heine warned the French not to underestimate the power of ideas: philosophical concepts nurtured in the stillness of a professor's study could destroy a civilization. He spoke of Kant Critique of Pure Reason as the sword with which European deism had been decapitated, and described the works of Rousseau as the blood-stained weapon which, in the hands of Robespierre, had destroyed the old regime; and prophesied that the romantic faith of Fichte and Schelling would one day be turned, with terrible effect, by their fanatical German followers, against the liberal culture of the West. The facts have not wholly belied this prediction; but if professors can truly wield this fatal power, may it not be that other professors, and they alone, can disarm them?

Our philosophers seem oddly unaware of these devastating effects of their activities. It may be that, intoxicated by their magnificent achievements in more abstract realms, the best among them look with disdain upon a field in which radical discoveries are less likely to be made, and talent for minute analysis is less likely to be rewarded. Yet, despite every effort to separate them, conducted by a blind scholastic pedantry, politics has remained indissolubly intertwined with every other form of philosophical inquiry. To neglect the field of political thought, because its unstable subject matter, with its blurred edges, is not to be caught by the fixed concepts, abstract models and fine instruments suitable to logic or to linguistic analysis – to demand a unity of method in philosophy, and reject whatever the method cannot successfully manage – is merely to allow oneself to remain at the mercy of primitive and uncriticized political beliefs. It is only a very vulgar historical materialism that denies the power of ideas, and says that ideals are mere material interests in disguise. It may be that without the pressure of social forces, political ideas are stillborn: what is certain is that these forces, unless they clothe themselves in ideas, remain blind and undirected.

This truth has not escaped every Oxford teacher, even in our own day. It is because he has grasped the importance of political ideas in theory and practice, and has dedicated his life to their analysis and propagation, that the first holder of this Chair has made so great an impact upon the world in which he has lived. The name of Douglas Cole is known wherever men have political or social issues at heart. His fame extends far beyond the confines of this university and country. A political thinker of complete independence, honesty, and courage, a writer and speaker of extraordinary lucidity and eloquence, a poet and a novelist, a teacher and *animateur des idées* of genius, he is, in the first place, a man who has given his life to the fearless support of principles not always popular, and to the unswerving and passionate defence of justice and truth, often in circumstances of great difficulty and discouragement. These are the qualities for which this most generous and imaginative of English socialists is today chiefly known to the world. Not

the least remarkable, and perhaps the most characteristic, fact about him is that he has achieved this public position without sacrificing his natural humanity, his spontaneity of feeling, his inexhaustible personal goodness, and above all his deep and scrupulous devotion – a devotion reinforced by the most prodigious wealth of many-sided learning, and a fabulous memory – to his vocation as a teacher in Oxford and outside it. It is a source of deep pleasure and pride to me to attempt to put on record what I, and many others, feel about this great Oxford figure, whose moral and intellectual character is an asset to his country, and to the cause of justice and human equality every where.

It is from him, at least as much as from his writings, that many members of my generation at Oxford have learnt that political theory is a branch of moral philosophy, which starts from the discovery, or application, of moral notions in the sphere of political relations. I do not mean, as I think some idealist philosophers may have believed, that all historical movements or conflicts between human beings are reducible to movements or conflicts of ideas or spiritual forces, nor even that they are effects (or aspects) of them. But I do mean (and I do not think that Professor Cole would disagree) that to understand such movements or conflicts is, above all, to understand the ideas or attitudes to life involved in them, which alone make such movements a part of human history, and not mere natural events. Political words and notions and acts are not intelligible save in the context of the issues that divide the men who use them. Consequently our own attitudes and activities are likely to remain obscure to us, unless we understand the dominant issues of our own world. The greatest of these is the open war that is being fought between two civilizations and two systems of ideas which return different and conflicting answers to what has long been the central question of politics – the question of obedience and coercion. ‘Why should I (or anyone) obey anyone else?’ ‘Why should I not live as I like?’ ‘Must I obey?’ ‘If I disobey, may I be coerced? By whom, and to what degree, and in the name of what, and for the sake of what?’ Upon the answers to the question of the permissible limits of coercion, opposed views are held in the world today, each claiming the allegiance of very large numbers of men. It seems to me, therefore, that any aspect of this issue is worthy of examination.

I

To coerce a man is to deprive him of freedom – freedom from what? Almost every moralist in human history has praised freedom. Like happiness and goodness, like nature and reality, the meaning of this term is so porous that there is little interpretation that it seems able to resist. I do not propose to discuss either the history, or the more than two hundred senses, of this protean word recorded by historians of ideas. I propose to examine no

more than two of these senses – but those central ones, with a great deal of human history behind them, and, I dare say, still to come. The first of these political senses of freedom or liberty (I shall use both words to mean the same), which I shall call the ‘negative’ sense, is involved in the answer to the question ‘What is the area within which the subject – a person or group of persons – is or should be left to do or be what he wants to do or be, without interference by other persons? The second, which I shall call the positive sense, is involved in the answer to the question ‘What, or who, is the source of control or interference, that can determine some one to do, or be, one thing rather than another?’ The two questions are clearly different, even though the answers to them may overlap.

The notion of ‘negative’ freedom

I am normally said to be free to the degree to which no human being interferes with my activity. Political liberty in this sense is simply the area within which a man can do what he wants. If I am prevented by other persons from doing what I want I am to that degree unfree; and if the area within which I can do what I want is contracted by other men beyond a certain minimum, I can be described as being coerced, or, it may be, enslaved. Coercion is not, however, a term that covers every form of inability. If I say that I am unable to jump more than 10 feet in the air, or cannot read because I am blind, or cannot understand the darker pages of Hegel, it would be eccentric to say that I am to that degree enslaved or coerced. Coercion implies the deliberate interference of other human beings within the area in which I wish to act. You lack political liberty or freedom only if you are prevented from attaining your goal by human beings. Mere incapacity to attain your goal is not lack of political freedom. This is brought out by the use of such modern expressions as ‘economic freedom’ and its counterpart, ‘economic slavery’. It is argued, very plausibly, that if a man is too poor to afford something on which there is no legal ban – a loaf of bread, a journey round the world, recourse to the law courts – he is as little free to have it as he would be if it were forbidden him by law. If my poverty were a kind of disease, which prevented me from buying bread or paying for the journey round the world, or getting my case heard, as lameness prevents me from running, this inability would not naturally be described as a lack of freedom at all, least of all political freedom. It is only because I believe that my inability to get what I want is due to the fact that other human beings have made arrangements where by I am, whereas others are not, prevented from having enough money with which to pay for it, that I think myself a victim of coercion or slavery. In other words, this use of the term depends on a particular social and economic theory about the causes of my poverty or weakness. If my lack of means is due to my lack of mental or physical capacity, then I begin to speak of being deprived of freedom (and

not simply of poverty) only if I accept the theory. If, in addition, I believe that I am being kept in want by a definite arrangement which I consider unjust or unfair, I speak of economic slavery or oppression. 'The nature of things does not madden us, only ill will does', said Rousseau. The criterion of oppression is the part that I believe to be played by other human beings, directly or indirectly, in frustrating my wishes. By being free in this sense I mean not being interfered with by others. The wider the area of non-interference the wider my freedom.

This is certainly what the classical English political philosophers meant when they used this word. They disagreed about how wide the area could or should be. They supposed that it could not, as things were, be unlimited, because if it were, it would entail a state in which all men could boundlessly interfere with all other men; and this kind of 'natural' freedom would lead to social chaos in which men's minimum needs would not be satisfied; or else the liberties of the weak would be suppressed by the strong. Because they perceived that human purposes and activities do not automatically harmonize with one another; and, because (whatever their official doctrines) they put high value on other goals, such as justice, or happiness, or security, or varying degrees of equality, they were prepared to curtail freedom in the interests of other values and, indeed, of freedom itself. For, without this, it was impossible to create the kind of association that they thought desirable. Consequently, it is assumed by these thinkers that the area of men's free action must be limited by law. But equally it is assumed, especially by such libertarians as Locke and Mill in England, and Constant and Tocqueville in France, that there ought to exist a certain minimum area of personal freedom which must on no account be violated, for if it is overstepped, the individual will find himself in an area too narrow for even that minimum development of his natural faculties which alone makes it possible to pursue, and even to conceive, the various ends which men hold good or right or sacred. It follows that a frontier must be drawn between the area of private life and that of public authority. Where it is to be drawn is a matter of argument, indeed of haggling. Men are largely interdependent, and no man's activity is so completely private as never to obstruct the lives of others in any way. 'Freedom for the pike is death for the minnows'; the liberty of some must depend on the restraint of others. Still, a practical compromise has to be found.

Philosophers with an optimistic view of human nature, and a belief in the possibility of harmonizing human interests, such as Locke or Adam Smith and, in some moods, Mill, believed that social harmony and progress were compatible with reserving a large area for private life over which neither the state nor any other authority must be allowed to trespass. Hobbes, and those who agreed with him, especially conservative or reactionary thinkers, argued

that if men were to be prevented from destroying one another, and making social life a jungle or a wilderness, greater safeguards must be instituted to keep them in their places, and wished correspondingly to increase the area of centralized control, and decrease that of the individual. But both sides agreed that some portion of human existence must remain independent of the sphere of social control. To invade that preserve, however small, would be despotism. The most eloquent of all defenders of freedom and privacy, Benjamin Constant, who had not forgotten the Jacobin dictatorship, declared that at the very least the liberty of religion, opinion, expression, property, must be guaranteed against arbitrary invasion. Jefferson, Burke, Paine, Mill, compiled different catalogues of individual liberties, but the argument for keeping authority at bay is always substantially the same. We must preserve a minimum area of personal freedom if we are not to 'degrade or deny our nature'. We cannot remain absolutely free, and must give up some of our liberty to preserve the rest. But total self-surrender is self-defeating. What then must the minimum be? That which a man cannot give up without offending against the essence of his human nature. What is this essence? What are the standards which it entails? This has been, and perhaps always will be, a matter of infinite debate. But whatever the principle in terms of which the area of non-interference is to be drawn, whether it is that of natural law or natural rights, or of utility or the pronouncements of a categorical imperative, or the sanctity of the social contract, or any other concept with which men have sought to clarify and justify their convictions, liberty in this sense means liberty from; absence of interference beyond the shifting, but always recognizable, frontier. 'The only freedom which deserves the name is that of pursuing our own good in our own way', said the most celebrated of its champions. If this is so, is compulsion ever justified? Mill had no doubt that it was. Since justice demands that all individuals be entitled to a minimum of freedom, all other individuals were of necessity to be restrained, if need be by force, from depriving anyone of it. Indeed, the whole function of law was the prevention of just such collisions: the state was reduced to what Lassalle contemptuously described as the functions of a night watchman or traffic policeman.

What made the protection of individual liberty so sacred to Mill? (...) No one would argue that truth or freedom of self-expression could flourish where dogma crushes all thought. But the evidence of history tends to show (as, indeed, was argued by James Stephen in his formidable attack on Mill in his *Liberty, Equality, Fraternity*) that integrity, love of truth and fiery individualism grow at least as often in severely disciplined communities among, for example, the puritan Calvinists of Scotland or New England, or under military discipline, as in more tolerant or indifferent societies; and if this is so accepted, Mill's argument for liberty as a necessary condition

for the growth of human genius falls to the ground. If his two goals proved incompatible, Mill would be faced with a cruel dilemma, quite apart from the further difficulties created by the inconsistency of his doctrines with strict utilitarianism, even in his own humane version of it.

In the second place, the doctrine is comparatively modern. There seems to be scarcely any consciousness of individual liberty as a political ideal in the ancient world. Condorcet has already remarked that the notion of individual rights is absent from the legal conceptions of the Romans and Greeks; this seems to hold equally of the Jewish, Chinese, and all other ancient civilizations that have since come to light. The domination of this ideal has been the exception rather than the rule, even in the recent history of the West. Nor has liberty, in this sense often formed a rallying cry for the great masses of mankind. The desire not to be impinged upon, to be left to oneself, has been a mark of high civilization both on the part of individuals and communities. The sense of privacy itself, of the area of personal relationships as something sacred in its own right, derives from a conception of freedom which, for all its religious roots, is scarcely older, in its developed state, than the Renaissance or the Reformation. Yet its decline would mark the death of a civilization, of an entire moral outlook.

The third characteristic of this notion of liberty is of greater importance. It is that liberty in this sense is not incompatible with some kinds of autocracy, or at any rate with the absence of self government. Liberty in this sense is principally concerned with the area of control, not with its source. Just as a democracy may, in fact, deprive the individual citizen of a great many liberties which he might have in some other form of society, so it is perfectly conceivable that a liberal-minded despot would allow his subjects a large measure of personal freedom. The despot who leaves his subjects a wide area of liberty may be unjust, or encourage the wildest inequalities, care little for order, or virtue, or knowledge; but provided he does not curb their liberty, or at least curbs it less than many other régimes, he meets with Mill's specification. Freedom in this sense is not, at any rate logically, connected with democracy or self-government. Self-government may, on the whole, provide a better guarantee of the preservation of civil liberties than other régimes, and has been defended as such by libertarians. But there is no necessary connexion between individual liberty and democratic rule. The answer to the question 'Who governs me?' is logically distinct from the question 'How far does government interfere with me?' It is in this difference that the great contrast between the two concepts of negative and positive liberty, in the end, consists. For the 'positive' sense of liberty comes to light if we try to answer the question, not 'What am I free to do or be?', but 'By whom am I ruled?' or 'Who is to say what I am, and what I am not, to be or do? The connexion between democracy and individual liberty is a good deal

more tenuous than it seemed to many advocates of both. The desire to be governed by myself, or at any rate to participate in the process by which my life is to be controlled, may be as deep a wish as that of a free area for action, and perhaps historically older. But it is not a desire for the same thing. So different is it, indeed, as to have led in the end to the great clash of ideologies that dominates our world. For it is this – the ‘positive’ conception of liberty: not freedom from, but freedom to – which the adherents of the ‘negative’ notion represent as being, at times, no better than a specious disguise for brutal tyranny.

II

The notion of positive freedom

The ‘positive’ sense of the word ‘liberty’ derives from the wish on the part of the individual to be his own master. I wish my life and decisions to depend on myself, not on external forces of whatever kind. I wish to be the instrument of my own, not of other men’s, acts of will. I wish to be a subject, not an object; to be moved by reasons, by conscious purposes which are my own, not by causes which affect me, as it were, from outside. I wish to be somebody, not nobody; a doer – deciding, not being decided for, self-directed and not acted upon by external nature or by other men as if I were a thing, or an animal, or a slave incapable of playing a human role, that is, of conceiving goals and policies of my own and realizing them. This is at least part of what I mean when I say that I am rational, and that it is my reason that distinguishes me as a human being from the rest of the world. I wish, above all, to be conscious of myself as a thinking, willing, active being, bearing responsibility for his choices and able to explain them by reference to his own ideas and purposes. I feel free to the degree that I believe this to be true, and enslaved to the degree that I am made to realize that it is not.

The freedom which consists in being one’s own master, and the freedom which consists in not being prevented from choosing as I do by other men, may, on the face of it, seem concepts at no great logical distance from each other – no more than negative and positive ways of saying the same thing. Yet the ‘positive’ and ‘negative’ notions of freedom developed in divergent directions until, in the end, they came into direct conflict with each other. One way of making this clear is in terms of the independent momentum which the metaphor of self-mastery acquired. ‘I am my own master’; ‘I am slave to no man’; but may I not (as, for instance, T. H. Green is always saying) be a slave to nature? Or to my own ‘unbridled’ passions? Are these not so many species of the identical genus ‘slave’ – some political or legal, others moral or spiritual? Have not men had the experience of liberating themselves from spiritual slavery, or slavery to nature, and do they not in the course of it become aware, on the one hand, of a self which dominates, and, on the

other, of something in them which is brought to heel? This dominant self is then variously identified with reason, with my 'higher nature', with the self which calculates and aims at what will satisfy it in the long run, with my 'real', or 'ideal', or 'autonomous' self, or with my self 'at its best'; which is then contrasted with irrational impulse, uncontrolled desires, my 'lower' nature, the pursuit of immediate pleasures, my 'empirical' or 'heteronomous' self, swept by every gust of desire and passion, needing to be rigidly disciplined if it is ever to rise to the full height of its 'real' nature. Presently the two selves may be represented as divided by an even larger gap: the real self may be conceived as something wider than the individual (as the term is normally understood), as a social 'whole' of which the individual is an element or aspect: a tribe, a race, a church, a state, the great society of the living and the dead and the yet unborn. This entity is then identified as being the 'true' self which, by imposing its collective, or 'organic', single will upon its recalcitrant 'members', achieves its own, and, therefore, their, 'higher' freedom. The perils of using organic metaphors to justify the coercion of some men by others in order to raise them to a 'higher' level of freedom have often been pointed out. But what gives such plausibility as it has to this kind of language is that we recognize that it is possible, and at times justifiable, to coerce men in the name of some goal (let us say, justice or public health) which they would, if they were more enlightened, themselves pursue, but do not, because they are blind or ignorant or corrupt. This renders it easy for me to conceive of myself as coercing others for their own sake, in their, not my, interest. I am then claiming that I know what they truly need better than they know it themselves. What, at most, this entails is that they would not resist me if they were rational, and as wise as I, and understood their interests as I do. But I may go on to claim a good deal more than this. I may declare that they are actually aiming at what in their benighted state they consciously resist, because there exists within them an occult entity – their latent rational will, or their 'true' purpose – and that this entity, although it is belied by all that they overtly feel and do and say, is their 'real' self, of which the poor empirical self in space and time may know nothing or little; and that this inner spirit is the only self that deserves to have its wishes taken into account. Once I take this view, I am in a position to ignore the actual wishes of men or societies, to bully, oppress, torture them in the name, and on behalf, of their 'real' selves, in the secure knowledge that whatever is the true goal of man (happiness, fulfilment of duty, wisdom, a just society, self-fulfilment) must be identical with his freedom – the free choice of his 'true', albeit submerged and inarticulate, self.

This paradox has been often exposed. It is one thing to say that I know what is good for X, while he himself does not; and even to ignore his wishes for its – and his – sake; and a very different one to say that he has *eo ipso*

chosen it, not indeed consciously, not as he seems in everyday life, but in his role as a rational self which his empirical self may not know – the ‘real’ self which discerns the good, and cannot help choosing it once it is revealed. This monstrous impersonation, which consists in equating what X would choose if he were something he is not, or at least not yet, with what X actually seeks and chooses, is at the heart of all political theories of self-realization. It is one thing to say that I may be coerced for my own good which I am too blind to see: and another that if it is my good, I am not being coerced, for I have willed it, whether I know this or not, and am free even while my poor earthly body and foolish mind bitterly reject it, and struggle against those who seek to impose it, with the greatest desperation. This magical transformation, or sleight of hand (for which William James so justly mocked the Hegelians), can no doubt be perpetrated just as easily with the ‘negative’ concept of freedom, where the self that should not be interfered with is no longer the individual with his actual wishes and needs as they are normally conceived, but the ‘real’ man within, identified with the pursuit of some ideal purpose not dreamed of by his empirical self. And, as in the case of the ‘positively’ free self, this entity may be inflated into some super-personal entity – a state, a class, a nation, or the march of history itself, regarded as a more ‘real’ subject of attributes than the empirical self. But the ‘positive’ conception of freedom as self-mastery, with its suggestion of a man divided against himself, lends itself more easily to this splitting of personality into two: the transcendent, dominant controller, and the empirical bundle of desires and passions to be disciplined and brought to heel. This demonstrates (if demonstration of so obvious a truth is needed) that the conception of freedom directly derives from the view that is taken of what constitutes a self, a person, a man. Enough manipulation with the definitions of man, and freedom can be made to mean whatever the manipulator wishes. Recent history has made it only too clear that the issue is not merely academic.

The consequences of distinguishing between two selves will become even clearer if one considers the two major forms which the desire to be self-directed – directed by one’s ‘true’ self – has historically taken: the first, that of self-abnegation in order to attain independence; the second, that of self-realization, or total self-identification with a specific principle or ideal in order to attain the selfsame end.

Friedrich August von Hayek

THE SAFEGUARDS OF INDIVIDUAL LIBERTY

Source: Friedrich August von Hayek, *The Constitutional Liberty*, Routledge, London and New York 2006, pp. 11-20.

It is time to try to pull together the various historical strands and to state systematically the essential conditions of liberty under the law. Mankind has learned from long and painful experience that the law of liberty must possess certain attributes. What are they?

The first point that must be stressed is that, because the rule of law means that government must never coerce an individual except in the enforcement of a known rule, it constitutes a limitation on the powers of all government, including the powers of the legislature. It is a doctrine concerning what the law ought to be, concerning the general attributes that particular laws should possess. This is important because today the conception of the rule of law is sometimes confused with the requirement of mere legality in all government action. The rule of law, of course, presupposes complete legality, but this is not enough: if a law gave the government unlimited power to act as it pleased, all its actions would be legal, but it would certainly not be under the rule of law. The rule of law, therefore, is also more than constitutionalism: it requires that all laws conform to certain principles.

From the fact that the rule of law is a limitation upon all legislation, it follows that it cannot itself be a law in the same sense as the laws passed by the legislator. Constitutional provisions may make infringements of the rule of law more difficult. They may help to prevent inadvertent infringements by routine legislation. But the ultimate legislator can never limit his own powers by law, because he can always abrogate any law he has made. The rule of law is therefore not a rule of the law, but a rule concerning what the law ought to be, a meta-legal doctrine or a political ideal. It will be effective only in so far as the legislator feels bound by it. In a democracy this means that it will not prevail unless it forms part of the moral tradition of the community, a common ideal shared and unquestioningly accepted by the majority.

It is this fact that makes so very ominous the persistent attacks on the principle of the rule of law. The danger is all the greater because many of the applications of the rule of law are also ideals which we can hope to approach very closely but can never fully realize. If the ideal of the rule of law is a firm element of public opinion, legislation and jurisdiction will tend to approach it more and more closely. But if it is represented as an impracticable and even

undesirable ideal and people cease to strive for its realization, it will rapidly disappear. Such a society will quickly relapse into a state of arbitrary tyranny. This is what has been threatening during the last two or three generations throughout the Western world.

It is equally important to remember that the rule of law restricts government only in its coercive activities. These will never be the only functions of government. Even in order to enforce the law, the government requires an apparatus of personal and material resources which it must administer. And there are whole fields of governmental activity, such as foreign policy, where the problem of coercion of the citizens does not normally arise. We shall have to return to this distinction between the coercive and the non-coercive activities of government. For the moment, all that is important is that the rule of law is concerned only with the former.

The chief means of coercion at the disposal of government is punishment. Under the rule of law, government can infringe a person's protected private sphere only as punishment for breaking an announced general rule. The principle "*nullum crimen, nulla poena sine lege*" is therefore the most important consequence of the ideal. But clear and definite as this statement may at first seem, it raises a host of difficulties if we ask what precisely is meant by "law." Certainly the principle would not be satisfied if the law merely said that whoever disobeys the orders of some official will be punished in a specified manner. Yet even in the freest countries the law often seems to provide for such acts of coercion. There probably exists no country where a person will not on certain occasions, such as when he disobeys a policeman, become liable to punishment for "an act done to the public mischief or for "disturbing the public order" or for "obstructing the police." We shall therefore not fully understand even this crucial part of the doctrine without examining the whole complex of principles which together make possible the rule of law.

We have seen earlier that the ideal of the rule of law presupposes a very definite conception of what is meant by law and that not every enactment of the legislative authority is a law in this sense. In current practice, everything is called "law" which has been resolved in the appropriate manner by a legislative authority. But of these laws in the formal sense of the word, only some – today usually only a very small proportion – are substantive (or "material") laws regulating the relations between private persons or between such persons and the state. The great majority of the so-called laws are rather instructions issued by the state to its servants concerning the manner in which they are to direct the apparatus of government and the means which are at their disposal. Today it is everywhere the task of the same legislature to direct the use of these means and to lay down the rules which the ordinary citizen must observe. This, though the established

practice, is not a necessary state of affairs. I cannot help wondering whether it might not be desirable to prevent the two types of decisions from being confused by entrusting the task of laying down general rules and the task of issuing orders to the administration to distinct representative bodies and by subjecting their decisions to independent judicial review so that neither will overstep its bounds. Though we may wish both kinds of decisions to be controlled democratically, this need not mean that they should be in the hands of the same assembly.

The present arrangements help to obscure the fact that, though government has to administer means which have been put at its disposal (including the services of all those whom it has hired to carry out its instructions), this does not mean that it should similarly administer the efforts of private citizens. What distinguishes a free from an unfree society is that in the former each individual has a recognized private sphere clearly distinct from the public sphere, and the private individual cannot be ordered about but is expected to obey only the rules which are equally applicable to all. It used to be the boast of free men that, so long as they kept within the bounds of the known law, there was no need to ask anybody's permission or to obey anybody's orders. It is doubtful whether any of us can make this claim today.

The general, abstract rules, which are laws in the substantive sense, are, as we have seen, essentially long-term measures, referring to yet unknown cases and containing no references to particular persons, places, or objects. Such laws must always be prospective, never retrospective, in their effect. That this should be so is a principle, almost universally accepted but not always put into legal form; it is a good example of those meta-legal rules which must be observed if the rule of law is to remain effective.

The second chief attribute which must be required of true laws is that they be known and certain. The importance which the certainty of the law has for the smooth and efficient running of a free society can hardly be exaggerated. There is probably no single factor which has contributed more to the prosperity of the West than the relative certainty of the law which has prevailed here. This is not altered by the fact that complete certainty of the law is an ideal which we must try to approach but which we can never perfectly attain. It has become the fashion to belittle the extent to which such certainty has in fact been achieved, and there are understandable reasons why lawyers, concerned mainly with litigation, are apt to do so. They have normally to deal with cases in which the outcome is uncertain. But the degree of the certainty of the law must be judged by the disputes which do not lead to litigation because the outcome is practically certain as soon as the legal position is examined. It is the cases that never come before the courts, not those that do, that are the measure of the certainty of the law.

The modern tendency to exaggerate this uncertainty is part of the campaign against the rule of law, which we shall examine later.

The essential point is that the decisions of the courts can be predicted, not that all the rules which determine them can be stated in words. To insist that the actions of the courts be in accordance with pre-existing rules is not to insist that all these rules be explicit, that they be written down beforehand in so many words. To insist on the latter would, indeed, be to strive for an unattainable ideal. There are "rules" which can never be put into explicit form. Many of these will be recognizable only because they lead to consistent and predictable decisions and will be known to those whom they guide as, at most, manifestations of a "sense of justice." Psychologically, legal reasoning does not, of course, consist of explicit syllogisms, and the major premises will often not be explicit. Many of the general principles on which the conclusions depend will be only implicit in the body of formulated law and will have to be discovered by the courts. This, however, is not a peculiarity of legal reasoning. Probably all generalizations that we can formulate depend on still higher generalizations which we do not explicitly know but which nevertheless govern the working of our minds. Though we will always try to discover those more general principles on which our decisions rest, this is probably by its nature an unending process that can never be completed.

The third requirement of true law is equality. It is as important, but much more difficult, to define than the others. That any law should apply equally to all means more than that it should be general in the sense we have defined. A law may be perfectly general in referring only to formal characteristics of the persons involved and yet make different provisions for different classes of people. Some such classification, even within the group of fully responsible citizens, is clearly inevitable. But classification in abstract terms can ways be carried to the point at which, in fact, the class singled out consists only of particular known persons or even a single individual. It must be admitted that, in spite of many ingenious attempts to solve this problem, no entirely satisfactory criterion has been found that would always tell us what kind of classification is compatible with equality before the law. To say, as has so often been said, that the law must not make irrelevant distinctions or that it must not discriminate between persons for reasons which have no connection with the purpose of the law is little more than evading the issue.

Yet, though equality before the law may thus be one of the ideals that indicate the direction without fully determining the goal and may therefore always remain beyond our reach, it is not meaningless. We have already mentioned one important requirement that must be satisfied, namely, that those inside any group singled out acknowledge the legitimacy of the distinction as well as those outside it. As important in practice is that we ask

whether we can or cannot foresee how a law will affect particular people. The ideal of equality of the law is aimed at equally improving the chances of yet unknown people but incompatible with benefiting or harming known persons in a predictable manner.

It is sometimes said that, in addition to being general and equal, the law of the rule of law must also be just. But though there can be no doubt that, in order to be effective, it must be accepted as just by most people, it is doubtful whether we possess any other formal criteria of justice than generality and equality – unless, that is, we can test the law for conformity with more general rules which, though perhaps unwritten, are generally accepted, once they have been formulated. But, so far as its compatibility with a reign of freedom is concerned, we have no test for a law that confines itself to regulating the relations between different persons and does not interfere with the purely private concerns of an individual, other than its generality and equality. It is true that such “a law may be bad and unjust; but its general and abstract formulation reduces this danger to a minimum. The protective character of the law, its very *raison d’être*, are to be found in its generality.”

If it is often not recognized that general and equal laws provide the most effective protection against infringement of individual liberty, this is due mainly to the habit of tacitly exempting the state and its agents from them and of assuming that the government has the power to grant exemptions to individuals. The ideal of the rule of law requires that the state either enforce the law upon others – and that this be its only monopoly – or act under the same law and therefore be limited in the same manner as any private person. It is this fact that all rules apply equally to all, including those who govern, which makes it improbable that any oppressive rules will be adopted.

It would be humanly impossible to separate effectively the laying-down of new general rules and their application to particular cases unless these functions were performed by different persons or bodies. This part at least of the doctrine of the separation of powers must therefore be regarded as an integral part of the rule of law. Rules must not be made with particular cases in mind, nor must particular cases be decided in the light of anything but the general rule – though this rule may not yet have been explicitly formulated and therefore have to be discovered. This requires independent judges who are not concerned with any temporary ends of government. The main point is that the two functions must be performed separately by two co-ordinated bodies before it can be determined whether coercion is to be used in a particular case.

A much more difficult question is whether, under a strict application of the rule of law, the executive (or the administration) should be regarded as a distinct and separate power in this sense, co-ordinated on equal terms with the other two. There are, of course, areas where the administration

must be free to act as it sees fit. Under the rule of law, however, this does not apply to coercive powers over the citizen. The principle of the separation of powers must not be interpreted to mean that in its dealing with the private citizen the administration is not always subject to the rules laid down by the legislature and applied by independent courts. The assertion of such a power is the very antithesis of the rule of law. Though under any workable system the administration must undoubtedly have powers which cannot be controlled by independent courts, "Administrative Powers over Person and Property" cannot be among them. The rule of law requires that the executive in its coercive action be bound by rules which prescribe not only when and where it may use coercion but also in what manner it may do so. The only way in which this can be ensured is to make all its actions of this kind subject to judicial review.

Whether the rules by which the administration is bound should be laid down by the general legislature or whether this function may be delegated to another body is, however, a matter of political expediency. This does not bear directly on the principle of the rule of law, but rather on the question of the democratic control of government. So far as the principle of the rule of law is concerned, there is no objection to delegation of legislation as such. Clearly, the delegation of the power of making rules to local legislative bodies, such as provincial assemblies or municipal councils, is unobjectionable from every point of view. Even the delegation of this power to some non-elective authority need not be contrary to the rule of law, so long as such authority is bound to announce these rules prior to their application and then can be made to adhere to them. The trouble with the widespread use of delegation in modern times is not that the power of making general rules is delegated but that administrative authorities are, in effect, given power to wield coercion without rule, as no general rules can be formulated which will unambiguously guide the exercise of such power. What is often called "delegation of lawmaking power" is often not delegation of the power to make rules – which might be undemocratic or politically unwise – but delegation of the authority to give to any decision the force of law, so that, like an act of the legislature, it must be unquestioningly accepted by the courts.

This brings us to what in modern times has become the crucial issue, namely the legal limits of administrative discretion. Here is "the little gap at which in time every man's liberty may go out."

The discussion of this problem has been obscured by a confusion over the meaning of the term "discretion." We use the word first with regard to the power of the judge to interpret the law. But authority to interpret a rule is not discretion in the sense relevant to us. The task of the judge is to discover the implications contained in the spirit of the whole system of valid rules of law or to express as a general rule, when necessary, what was

not explicitly stated previously in a court of law or by the legislator. That this task of interpretation is not one in which the judge has discretion in the sense of authority to follow his own will to pursue particular concrete aims appears from the fact that his interpretation of the law can be, and as a rule is, made subject to review by a higher court. Whether or not the substance of a decision is subject to review by another such body that needs to know only the existing rules and the facts of the case is probably the best test as to whether a decision is bound by rule or left to the discretion of the judge's authority. A particular interpretation of the law may be subject to dispute, and it may sometimes be impossible to arrive at a fully convincing conclusion; but this does not alter the fact that the dispute must be settled by an appeal to the rules and not by a simple act of will.

Discretion in a different and for our purposes equally irrelevant sense is a problem which concerns the relation between principal and agent throughout the whole hierarchy of government. At every level, from the relation between the sovereign legislature and the heads of the administrative departments down the successive steps in the bureaucratic organization, the problem arises as to what part of the authority of government as a whole should be delegated to a specific office or official. Since this assignment of particular tasks to particular authorities is decided by law, the question of what an individual agency is entitled to do, what parts of the powers of government it is allowed to exercise, is often also referred to as a problem of discretion. It is evident that not all the acts of government can be bound by fixed rules and that at every stage of the governmental hierarchy considerable discretion must be granted to the subordinate agencies. So long as the government administers its own resources, there are strong arguments for giving it as much discretion as any business management would require in similar circumstances. As Dicey has pointed out, "in the management of its own business, properly so called, the government will be found to need that freedom of action, necessarily possessed by every private person in the management of his own personal concerns." It may well be that legislative bodies are often overzealous in limiting the discretion of the administrative agencies and unnecessarily hamper their efficiency. This may be unavoidable to some degree; and it is probably necessary that bureaucratic organizations should be bound by rule to a greater extent than business concerns, as they lack that test of efficiency which profits provide in commercial affairs.

The problem of discretionary powers as it directly affects the rule of law is not a problem of the limitation of the powers of particular agents of government but of the limitation of the powers of the government as a whole. It is a problem of the scope of administration in general. Nobody disputes the fact that, in order to make efficient use of the means at its disposal, the government must exercise a great deal of discretion. But, to

repeat, under the rule of law the private citizen and his property are not an object of administration by the government, not a means to be used for its purposes. It is only when the administration interferes with the private sphere of the citizen that the problem of discretion becomes relevant to us; and the principle of the rule of law, in effect, means that the administrative authorities should have no discretionary powers in this respect.

In acting under the rule of law the administrative agencies will often have to exercise discretion as the judge exercises discretion in interpreting the law. This, however, is a discretionary power which can and must be controlled by the possibility of a review of the substance of the decision by an independent court. This means that the decision must be deducible from the rules of law and from those circumstances to which the law refers and which can be known to the parties concerned. The decision must not be affected by any special knowledge possessed by the government or by its momentary purposes and the particular values it attaches to different concrete aims, including the preferences it may have concerning the effects on different people.

At this point the reader who wants to understand how liberty in the modern world may be preserved must be prepared to consider a seemingly fine point of law, the crucial importance of which is often not appreciated. While in all civilized countries there exists some provision for an appeal to courts against administrative decisions, this often refers only to the question as to whether an authority had a right to do what it did. We have already seen, however, that if the law said that everything a certain authority did was legal, it could not be restrained by a court from doing anything. What is required under the rule of law is that a court should have the power to decide whether the law provided for a particular action that an authority has taken. In other words, in all instances where administrative action interferes with the private sphere of the individual, the courts must have the power to decide not only whether a particular action was *infra vires* or *ultra vires* but whether the substance of the administrative decision was such as the law demanded. It is only if this is the case that administrative discretion is precluded.

This requirement clearly does not apply to the administrative authority which tries to achieve particular results with the means at its disposal. It is, however, of the essence of the rule of law that the private citizen and his property should not in this sense be means at the disposal of government. Where coercion is to be used only in accordance – with general rules, the justification of every particular act of coercion must derive from such a rule. To ensure this, there must be some authority which is concerned only with the rules and not with any temporary aims of government and which has the right to say not only whether another authority had the right to act as it did but whether what it did was required by the law.

The distinction with which we are now concerned is sometimes discussed in terms of the contrast between legislation and policy. If the latter term is appropriately defined, we will indeed be able to express our main point by saying that coercion is admissible only when it conforms to general laws and not when it is a means of achieving particular objects of current policy. This manner of stating it is, however, somewhat misleading, because the term “policy” is also used in a wider sense, in which all legislation falls under it. In this sense legislation is the chief instrument of long-term policy, and all that is done in applying the law is to carry out a policy that has been determined in advance.

A further source of confusion is the fact that within law itself the expression “public policy” is commonly used to describe certain pervading general principles which are often not laid down as written rules but are understood to qualify the validity of more specific rules. When it is said that it is the policy of the law to protect good faith, to preserve public order, or not to recognize contracts for immoral purposes, this refers to rules, but rules which are stated in terms of some permanent end of government rather than in terms of rules of conduct. It means that, within the limits of the powers given to it, the government must so act that that end will be achieved. The reason why the term “policy” is used in such instances appears to be that it is felt that to specify the end to be achieved is in conflict with the conception of law as an abstract rule. Though such reasoning may explain the practice, it is clearly one which is not without danger.

Policy is rightly contrasted with legislation when it means the pursuit by government of the concrete, ever changing aims of the day. It is with the execution of policy in this sense that administration proper is largely concerned. Its task is the direction and allocation of resources put at the disposal of government in the service of the constantly changing needs of the community. All the services which the government provides for the citizen, from national defense to upkeep of roads, from sanitary safeguards to the policing of the streets, are necessarily of this kind. For these tasks it is allowed definite means and its own paid servants, and it will constantly have to decide on the next urgent task and the means to be used. The tendency of the professional administrators concerned with these tasks is inevitably to draw everything they can into the service of the public aims they are pursuing. It is largely as a protection of the private citizen against this tendency of an ever growing administrative machinery to engulf the private sphere that the rule of law is so important today. It means in the last resort that the agencies entrusted with such special tasks cannot wield for their purpose any sovereign powers (no *Hoheitsrechte*, as the Germans call it) but must confine themselves to the means specially granted to them.

Under a reign of freedom the free sphere of the individual includes all action not explicitly restricted by a general law. We have seen that it was found especially necessary to protect against infringement by authority some of the more important private rights, and also how apprehension was felt that such an explicit enumeration of some might be interpreted to mean that only they enjoyed the special protection of the constitution. These fears have proved to be only too well founded. On the whole, however, experience seems to confirm the argument that, in spite of the inevitable incompleteness of any bill of rights, such a bill affords an important protection for certain rights known to be easily endangered. Today we must be particularly aware that, as a result of technological change, which constantly creates new potential threats to individual liberty, no list of protected rights can be regarded as exhaustive. In an age of radio and television, the problem of free access to information is no longer a problem of the freedom of the press. In an age when drugs or psychological techniques can be used to control a person's actions, the problem of free control over one's body is no longer a matter of protection against physical restraint. The problem of the freedom of movement takes on a new significance when foreign travel has become impossible for those to whom the authorities of their own country are not willing to issue a passport.

The problem assumes the greatest importance when we consider that we are probably only at the threshold of an age in which the technological possibilities of mind control are likely to grow rapidly and what may appear at first as innocuous or beneficial powers over the personality of the individual will be at the disposal of government. The greatest threats to human freedom probably still lie in the future. The day may not be far off when authority, by adding appropriate drugs to our water supply or by some other similar device, will be able to elate or depress, stimulate or paralyze, the minds of whole populations for its own purposes. If bills of rights are to remain in any way meaningful, it must be recognized early that their intention was certainly to protect the individual against all vital infringements of his liberty and that therefore they must be presumed to contain a general clause protecting against government's interference those immunities which individuals in fact have enjoyed in the past.

In the last resort these legal guaranties of certain fundamental rights are no more than part of the safeguards of individual liberty which constitutionalism provides, and they cannot give greater security against legislative infringements of liberty than the constitutions themselves. As we have seen, they can do no more than give protection against hasty and improvident action of current legislation and cannot prevent any suppression of rights by the deliberate action of the ultimate legislator. The only safeguard against this is clear awareness of the dangers on the part of public opinion.

Such provisions are important mainly because they impress upon the public mind the value of these individual rights and make them part of a political creed which the people will defend even when they do not fully understand its significance.

We have up to this point represented those guaranties of individual freedom as if they were absolute rights which could never be infringed. In actual fact they cannot mean more than that the normal running of society is based on them and that any departure from them requires special justification. Even the most fundamental principles of a free society, however, may have to be temporarily sacrificed when, but only when, it is a question of preserving liberty in the long run, as in the case of war. Concerning the need of such emergency powers of government in such instances (and of safeguards against their abuse) there exists widespread agreement.

It is not the occasional necessity of withdrawing some of the civil liberties by a suspension of habeas corpus or the proclamation of a state of siege that we need to consider further, but the conditions under which the particular rights of individual or groups may occasionally be infringed in the public interest. That even such fundamental rights as freedom of speech may have to be curtailed in situations of "clear and present danger", or that the government may have to exercise the right of eminent domain for the compulsory purchase of land, can hardly be disputed. But if the rule of law is to be preserved, it is necessary that such actions be confined to exceptional cases defined by rule, so that their justification does not rest on the arbitrary decision of any authority but can be reviewed by an independent court; and, second, it is necessary that the individuals affected be not harmed by the disappointment of their legitimate expectations but be fully indemnified for any damage they suffer as a result of such action.

The principle of "no expropriation without just compensation" has always been recognized wherever the rule of law has prevailed. It is, however, not always recognized that this is an integral and indispensable element of the principle of the supremacy of the law. Justice requires it; but what is more important is that it is our chief assurance that those necessary infringements of the private sphere will be allowed only in instances where the public gain is clearly greater than the harm done by the disappointment of normal individual expectations. The chief purpose of the requirement of full compensation is indeed to act as a curb on such infringements of the private sphere and to provide a means of ascertaining whether the particular purpose is important enough to justify an exception to the principle on which the normal working of society rests. In view of the difficulty of estimating the often intangible advantages of public action and of the notorious tendency of the expert administrator to overestimate the importance of the particular goal of the moment, it would even seem desirable that the private owner

should always have the benefit of the doubt and that compensation should be fixed as high as possible without opening the door to outright abuse. This means, after all, no more than that the public gain must clearly and substantially exceed the loss if an exception to the normal rule is to be allowed.

We have now concluded the enumeration of the essential factors which together make up the rule of law, without considering those procedural safeguards such as habeas corpus, trial by jury, and so on, which, in the Anglo-Saxon countries, appear to most people as the chief foundations of their liberty. English and American readers will probably feel that I have put the cart before the horse and concentrated on minor features while leaving out what is fundamental. This has been quite deliberate.

I do not wish in any way to disparage the importance of these procedural safeguards. Their value for the preservation of liberty can hardly be overstated. But while their importance is generally recognized, it is not understood that they presuppose for their effectiveness the acceptance of the rule of law as here defined and that, without it, all procedural safeguards would be valueless. True, it is probably the reverence for these procedural safeguards that has enabled the English-speaking world to preserve the medieval conception of the rule of law over men. Yet this is no proof that liberty will be preserved if the basic belief in the existence of abstract rules of law which bind all authority in their action is shaken. Judicial forms are intended to insure that decisions will be made according to rules and not according to the relative desirability of particular ends or values. All the rules of judicial procedure, all the principles intended to protect the individual and to secure impartiality of justice, presuppose that every dispute between individuals or between individuals and the state can be decided by the application of general law. They are designed to make the law prevail, but they are powerless to protect justice where the law deliberately leaves the decision to the discretion of authority. It is only where the law decides – and this means only where independent courts have the last word – that the procedural safeguards are safeguards of liberty.

I have here concentrated on the fundamental conception of law which the traditional institutions presuppose because the belief that adherence to the external forms of judicial procedure will preserve the rule of law seems to me the greatest threat to its preservation. I do not question, but rather wish to emphasize, that the belief in the rule of law and the reverence for the forms of justice belong together and that neither will be effective without the other. But it is the first which is chiefly threatened today; and it is the illusion that it will be preserved by scrupulous observation of the forms of justice that is one of the chief causes of this threat. “Society is not going to be saved by importing the forms and rules of judicial procedure into places

where they do not naturally belong.” To use the trappings of judicial form where the essential conditions for a judicial decision are absent, or to give judges power to decide issues which cannot be decided by the application of rules, can have no effect but to destroy the respect for them even where they deserve it.

John F. Kennedy

I AM A BERLINER!

Source: "The History Place":

<http://www.historyplace.com/speeches/berliner.htm>

I am proud to come to this city as the guest of your distinguished Mayor, who has symbolized throughout the world the fighting spirit of West Berlin. And I am proud to visit the Federal Republic with your distinguished Chancellor who for so many years has committed Germany to democracy and freedom and progress, and to come here in the company of my fellow American, General Clay, who has been in this city during its great moments of crisis and will come again if ever needed.

Two thousand years ago the proudest boast was *civis Romanus sum*. Today, in the world of freedom, the proudest boast is "Ich bin ein Berliner."

I appreciate my interpreter translating my German!

There are many people in the world who really don't understand, or say they don't, what is the great issue between the free world and the Communist world. Let them come to Berlin. There are some who say that communism is the wave of the future. Let them come to Berlin. And there are some who say in Europe and elsewhere we can work with the Communists. Let them come to Berlin. And there are even a few who say that it is true that communism is an evil system, but it permits us to make economic progress. *Lass' sie nach Berlin kommen*. Let them come to Berlin.

Freedom has many difficulties and democracy is not perfect, but we have never had to put a wall up to keep our people in, to prevent them from leaving us. I want to say, on behalf of my countrymen, who live many miles away on the other side of the Atlantic, who are far distant from you, that they take the greatest pride that they have been able to share with you, even from a distance, the story of the last 18 years. I know of no town, no city, that has been besieged for 18 years that still lives with the vitality and the force, and the hope and the determination of the city of West Berlin. While the wall is the most obvious and vivid demonstration of the failures of the Communist system, for all the world to see, we take no satisfaction in it, for it is, as your Mayor has said, an offense not only against history but an offense against humanity, separating families, dividing husbands and wives and brothers and sisters, and dividing a people who wish to be joined together.

What is true of this city is true of Germany – real, lasting peace in Europe can never be assured as long as one German out of four is denied

the elementary right of free men, and that is to make a free choice. In 18 years of peace and good faith, this generation of Germans has earned the right to be free, including the right to unite their families and their nation in lasting peace, with good will to all people. You live in a defended island of freedom, but your life is part of the main. So let me ask you as I close, to lift your eyes beyond the dangers of today, to the hopes of tomorrow, beyond the freedom merely of this city of Berlin, or your country of Germany, to the advance of freedom everywhere, beyond the wall to the day of peace with justice, beyond yourselves and ourselves to all mankind.

Freedom is indivisible, and when one man is enslaved, all are not free. When all are free, then we can look forward to that day when this city will be joined as one and this country and this great Continent of Europe in a peaceful and hopeful globe. When that day finally comes, as it will, the people of West Berlin can take sober satisfaction in the fact that they were in the front lines for almost two decades.

All free men, wherever they may live, are citizens of Berlin, and, therefore, as a free man, I take pride in the words "Ich bin ein Berliner."

Martin Luther King, Jr.

I HAVE A DREAM

Source: "American Rhetoric":

<http://www.americanrhetoric.com/speeches/mlkihavedream.htm>

I am happy to join with you today in what will go down in history as the greatest demonstration for freedom in the history of our nation.

Five score years ago, a great American, in whose symbolic shadow we stand today, signed the Emancipation Proclamation. This momentous decree came as a great beacon light of hope to millions of Negro slaves who had been seared in the flames of withering injustice. It came as a joyous daybreak to end the long night of their captivity.

But one hundred years later, the Negro still is not free. One hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination. One hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro is still languished in the corners of American society and finds himself an exile in his own land. And so we've come here today to dramatize a shameful condition.

In a sense we've come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men, yes, black men as well as white men, would be guaranteed the "unalienable Rights" of "Life, Liberty and the pursuit of Happiness." It is obvious today that America has defaulted on this promissory note, insofar as her citizens of color are concerned. Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check which has come back marked "insufficient funds."

But we refuse to believe that the bank of justice is bankrupt. We refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. And so, we've come to cash this check, a check that will give us upon demand the riches of freedom and the security of justice.

We have also come to this hallowed spot to remind America of the fierce urgency of Now. This is no time to engage in the luxury of cooling off or to take the tranquilizing drug of gradualism. Now is the time to make real the promises of democracy. Now is the time to rise from the dark and desolate valley of segregation to the sunlit path of racial justice. Now is the time

to lift our nation from the quicksands of racial injustice to the solid rock of brotherhood. Now is the time to make justice a reality for all of God's children.

It would be fatal for the nation to overlook the urgency of the moment. This sweltering summer of the Negro's legitimate discontent will not pass until there is an invigorating autumn of freedom and equality. Nineteen sixty-three is not an end, but a beginning. And those who hope that the Negro needed to blow off steam and will now be content will have a rude awakening if the nation returns to business as usual. And there will be neither rest nor tranquility in America until the Negro is granted his citizenship rights. The whirlwinds of revolt will continue to shake the foundations of our nation until the bright day of justice emerges.

But there is something that I must say to my people, who stand on the warm threshold which leads into the palace of justice: In the process of gaining our rightful place, we must not be guilty of wrongful deeds. Let us not seek to satisfy our thirst for freedom by drinking from the cup of bitterness and hatred. We must forever conduct our struggle on the high plane of dignity and discipline. We must not allow our creative protest to degenerate into physical violence. Again and again, we must rise to the majestic heights of meeting physical force with soul force.

The marvelous new militancy which has engulfed the Negro community must not lead us to a distrust of all white people, for many of our white brothers, as evidenced by their presence here today, have come to realize that their destiny is tied up with our destiny. And they have come to realize that their freedom is inextricably bound to our freedom.

We cannot walk alone.

And as we walk, we must make the pledge that we shall always march ahead.

We cannot turn back.

There are those who are asking the devotees of civil rights, "When will you be satisfied?" We can never be satisfied as long as the Negro is the victim of the unspeakable horrors of police brutality. We can never be satisfied as long as our bodies, heavy with the fatigue of travel, cannot gain lodging in the motels of the highways and the hotels of the cities. We cannot be satisfied as long as the negro's basic mobility is from a smaller ghetto to a larger one. We can never be satisfied as long as our children are stripped of their selfhood and robbed of their dignity by a sign stating: "For Whites Only." We cannot be satisfied as long as a Negro in Mississippi cannot vote and a Negro in New York believes he has nothing for which to vote. No, no, we are not satisfied, and we will not be satisfied until "justice rolls down like waters, and righteousness like a mighty stream."

I am not unmindful that some of you have come here out of great trials and tribulations. Some of you have come fresh from narrow jail cells. And some of you have come from areas where your quest – quest for freedom left you battered by the storms of persecution and staggered by the winds of police brutality. You have been the veterans of creative suffering. Continue to work with the faith that unearned suffering is redemptive. Go back to Mississippi, go back to Alabama, go back to South Carolina, go back to Georgia, go back to Louisiana, go back to the slums and ghettos of our northern cities, knowing that somehow this situation can and will be changed.

Let us not wallow in the valley of despair, I say to you today, my friends.

And so even though we face the difficulties of today and tomorrow, I still have a dream. It is a dream deeply rooted in the American dream.

I have a dream that one day this nation will rise up and live out the true meaning of its creed: “We hold these truths to be self-evident, that all men are created equal.”

I have a dream that one day on the red hills of Georgia, the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood.

I have a dream that one day even the state of Mississippi, a state sweltering with the heat of injustice, sweltering with the heat of oppression, will be transformed into an oasis of freedom and justice.

I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.

I have a dream today!

I have a dream that one day, down in Alabama, with its vicious racists, with its governor having his lips dripping with the words of “interposition” and “nullification” – one day right there in Alabama little black boys and black girls will be able to join hands with little white boys and white girls as sisters and brothers.

I have a dream today!

I have a dream that one day every valley shall be exalted, and every hill and mountain shall be made low, the rough places will be made plain, and the crooked places will be made straight; “and the glory of the Lord shall be revealed and all flesh shall see it together.”

This is our hope, and this is the faith that I go back to the South with.

With this faith, we will be able to hew out of the mountain of despair a stone of hope. With this faith, we will be able to transform the jangling discords of our nation into a beautiful symphony of brotherhood. With this faith, we will be able to work together, to pray together, to struggle together, to go to jail together, to stand up for freedom together, knowing that we will be free one day.

And this will be the day – this will be the day when all of God’s children will be able to sing with new meaning:

My country ‘tis of thee, sweet land of liberty, of thee I sing.

Land where my fathers died, land of the Pilgrim’s pride,

From every mountainside, let freedom ring!

And if America is to be a great nation, this must become true.

And so let freedom ring from the prodigious hilltops of New Hampshire.

Let freedom ring from the mighty mountains of New York.

Let freedom ring from the heightening Alleghenies of Pennsylvania.

Let freedom ring from the snow-capped Rockies of Colorado.

Let freedom ring from the curvaceous slopes of California.

But not only that:

Let freedom ring from Stone Mountain of Georgia.

Let freedom ring from Lookout Mountain of Tennessee.

Let freedom ring from every hill and molehill of Mississippi.

From every mountainside, let freedom ring.

And when this happens, when we allow freedom ring, when we let it ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all of God’s children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual:

Free at last! Free at last!

Thank God Almighty, we are free at last!

Lech Wałęsa

WE, THE PEOPLE!

We, the people! These are the words with which I wish to begin my speech. I do not need to remind anyone in this room from where they come and neither do I need to remind anyone that I, an electrician from Gdańsk, also have the right to use them.

We, the people! I stand before you as the third foreigner in history not holding any great state office who has been invited to address the joint meeting of the Congress of the United States of America. This Congress, which, for many people around the world who are oppressed or deprived of their rights, appears as the light of freedom and the mainstay of human rights. I stand before you in order to speak on behalf of my nation to America, to the citizens of this state and this continent, at whose gates stands the famous Statue of Liberty. This is such a great honour for me, a moment so elevated, that it is difficult to compare it with anything else. The idea of the United States is associated by people in Poland with freedom and democracy, with magnanimity and dedication, with human friendship and friendly humanity. I know that America is not perceived in this way everywhere. I am talking about the image that exists in Poland, an image that has been consolidated by numerous good historical experiences, and it is well known that Poles repay heart with heart. The world remembers the wonderful principle of American democracy: government of the people, by the people, for the people. I also remember it as a worker from a Gdańsk shipyard, who has devoted, along with other members of the “Solidarity” movement, his whole life for this very principle of government of the people, by the people, for the people. Against privileges and monopolies, against violations of the law, against trampling on human dignity, against contempt and injustice. These are the principles and values, therefore, reminiscent of Abraham Lincoln and the Founding Fathers of the American Republic and reminiscent of the foundations and ideals of the American Declaration of Independence and the American Constitution, which guide the great Polish movement called “Solidarity”, an effective movement. I know that Americans are people who are at the same time idealistic and practical, people of common sense and logical action. They combine these features with faith in the final victory of good, but they prefer effective work to the making of speeches. I understand them very well. I too do not like making speeches, I prefer facts and work, I value effectiveness.

Ladies and gentlemen!

Here is a fundamental fact and the most important one. I would like to say here that the social movement which was brought to life by the Polish nation and which bears the beautiful name of “Solidarity” is an effective movement. Its struggle has borne fruit after many years and this can be seen by everyone as clearly as is possible. It showed the direction and the method of action and this today influences millions of people speaking various languages. It disturbed monopolies and broke some of them down and it opened completely new horizons. It must also be emphasised with the greatest force that this was a struggle that took place with the complete rejection of violence. Many of us were thrown into prison, dismissed from work, some were even killed and yet we never struck anyone ourselves, we did not destroy anything, we did not break a single window but we were stubborn, very stubborn, ready to go without, to make sacrifices, we knew what we wanted and our strength turned out to be superior. The movement called “Solidarity” gained mass support and that is why we achieved success, because always and in every matter we stood for better solutions, more humane and more dignified, and against brutality and hatred. It was at the same time an unwavering movement, stubborn, never giving up. And that is why today, after so many heavy years in which there were many tragic moments, we are achieving success and showing the way to millions of people in Poland and other countries.

Ladies and gentlemen!

Ten years ago, in August 1980, there began the famous strike in Gdańsk Shipyard, which led to the creation of the first independent trade union in a Communist country, which in turn soon became a great social movement supported by the Polish nation. I was then ten years younger and I was not known by anyone apart from my colleagues at the shipyard and I was also a little slimmer. I must admit that this did have some significance. When I was thrown out of work for an earlier attempt at organising the workers to fight for their rights, I jumped over the fence and returned to the shipyard. That is how it began. When I think about the road that we travelled, I often recall how I jumped over that fence. Now others are jumping over fences and tearing down walls, and they are doing it because freedom is a human right. There is a second thought that keeps haunting me when I look at the road that is already behind us. Then, at the beginning, we heard voices from various corners of the world warning us, dictating to us, even condemning us. They said, “What do these Poles want? They are mad and are endangering world peace and European stability. They should keep quiet and not irritate anyone.” It ensued from these words that all other nations have the right to live in prosperity and propitiousness, the right to democracy and freedom,

only Poles should waive these rights so as not to disturb the peace of others. Before the Second World War, there were numerous people in the West who asked why they should die for Gdańsk, would it not be better to stay at home. Well, the war paid them all a visit. It was worth dying for Paris, London, Hawaii but now again many were saying, "Once again Gdańsk wants to disturb our peace." But that which began in Gdańsk has a different meaning, this is the beginning of a better, new, democratic world. Now it is not about dying for Gdańsk but about living for it. Today, looking at what is happening around us, we can state with total certainty that the Polish way of fighting for human rights, a fight without the use of violence, and Polish determination and consistency on the road to pluralism and democracy are today indicating to many people and even whole nations how to avoid the greatest dangers. If today something is endangering European stability, it is not Poland. The road adopted by Poland to very profound but peaceful and evolutionary changes, negotiated by all sides, allows for an avoidance of the greatest dangers and can be a model for many other regions. It is well known that changes do not proceed in an equally peaceful manner everywhere.

Peacefully and in a considered way, taking account of the dangers but not giving up that which is right and necessary. Poles are slowly paving the way to historic changes. On this way there are also others, although at various stages of advancement: the Hungarians, the Russians, the Ukrainians and the inhabitants of the Baltic states, the Armenians and the Georgians, and most recently also the East Germans. Undoubtedly, the remaining nations will also set off on this path, because there is no alternative. Today, every thinking person understands what is happening around the world but he could still say that it would be better for the Poles to sit quietly because they are endangering world peace. But is it not true that the Poles are doing more to maintain and strengthen peace than many of these blinkered advisors. Is it not true that stabilisation and peace are more often threatened by states which have not yet managed to conduct far-reaching and comprehensive reforms and which are trying at all costs, in opposition to their own societies, to save the old and compromised way of governing.

In Poland it is different; it must be seen that today we find ourselves in this position as a result of the understanding of our Eastern neighbour and its leader, Mikhail Gorbachov. The understanding we find there forms the basis for a new and much better arrangement of relations between Poland and the USSR. Such a better arrangement of mutual relations will also work for the benefit of the stabilisation of peace in Europe and will remove long unwanted and unnecessary tensions. We Poles have behind us a long and difficult history and no-one is as interested as we are in peaceful co-existence and friendship with all nations and states and, in particular, with the Soviet Union. We consider that it is only now that there are being created appropriate

and beneficial conditions for such good co-existence and friendship. Poland today is making an important contribution to a better future for Europe, to European reconciliation, including also to the extremely important Polish-German reconciliation, to overcoming old divisions and to strengthening human rights on our continent. All of this, however, is not coming easily. During the Second World War, Poland was the first country to fall victim to aggression and it suffered the greatest losses of people and national wealth; it fought for the longest time and throughout the whole period was a dedicated member of the coalition. Its soldiers participated in battles on all the fronts that existed. In 1945, we theoretically found ourselves among the victors, but the theory had very little in common with the practice. In reality, with the tacit consent of the allies, Poland was subjected to a foreign system of government, unknown to Polish traditions and unaccepted by the nation: a foreign system of managing the economy, foreign laws, a foreign philosophy of social relations. The legal Polish government, which was accepted by the nation and which had throughout the war conducted the struggles of the whole of society, was condemned and its faithful supporters were subjected to the most severe repressions. Many were murdered, thousands perished somewhere in the East or the North. The same repressions were inflicted on those soldiers of the underground army fighting against Nazism. Their remains are only today being discovered in unnamed graves scattered around our forests. Then there began the persecution of all those who had retained the capacity for independent thinking. All the undertakings solemnly made at Yalta concerning free and fair elections in Poland were broken. After 1939, this was Poland's second national catastrophe. While other nations were joyfully celebrating victory, Poland was once again forced into mourning. The awareness of this tragedy was particularly bitter since the Poles knew that they had been abandoned by their allies. Among many people, the memory of this has survived to this day. Despite this, Poles set about rebuilding the devastated country and in the first years achieved great successes in this field. But soon there came the introduction of an economic system in which individual enterprise ceased to exist and in which the whole of the economy found itself in the hands of the state, governed by people whom society had not elected. Stalin forbade Poland to benefit from the Marshall Plan, from which benefits accrued to the whole of Western Europe, including countries which had lost the war. It is worth recalling this great American plan, which helped Western Europe in the defence of freedom and peaceful order. Now the time has finally come for Eastern Europe to expect a similar investment in freedom, democracy and peace, commensurate with the greatness of the American nation.

We Poles have travelled a long way. It would be worthwhile if all those who expressed their opinions about Poland and who often criticised us

could remember that what Poland has achieved has been done by our own efforts, our own determination, our own unwaveringness. All of this has been achieved thanks to the indomitable faith of our nation in the dignity of human beings and in what is described as the values of the culture and civilisation of the West. Our nation knows only too well what the price of this is.

Ladies and gentlemen!

For the last fifty years, the Polish nation has waged a difficult and exhausting battle: first of all, in order to defend its biological existence; later, in order to save its national identity. In both cases, Polish determination was crowned with success. Today, Poland is returning to the family of democratic and pluralistic countries, to the circle of religious and European values. Poland today has the first non-Communist government in half a century, an independent government supported by our society. The long duration of the foreign political system and the method of managing the economy, so alien to reason and common sense, connected with the destruction of independent thinking and the trivialising of national interests, or even acting against them, led the Polish economy to ruin and to the very edge of terminal catastrophe. The first government for fifty years to be elected by the nation and serving the nation received the legacy after the previous authorities of enormous debts incurred and wasted by them and an economy organised in such a way that it could not satisfy even the most basic of needs. The economy inherited by us after five decades of Communist rule has to be completely reconstructed. This demands patience and great sacrifices, time and means. The situation of the Polish economy is not an accident and it is not a specifically Polish ailment. All the countries of the Eastern bloc are today in a state of bankruptcy. The Communist way of managing the economy did not pass the test in any part of the world. The result is a mass escape from these countries by sea and land, by ship and aeroplane, swimming and on foot. This is a mass phenomenon known in Europe, Asia and Central America but Poland has now irreversibly started on a new road. It can be heard sometimes that people in Poland do not want to work well but even those who say this know that Poles work well and effectively everywhere they see the sense and benefits ensuing from this work. Workers in Poland can also count very well and they know that today in our country they are working in much worse conditions and in effect much harder and also for much lower wages than people abroad. The economic system which surrounds them is absurd and, what is worse, since a long time ago every few years there would appear yet another crisis, another recession, after which it turned out that the efforts made until that time had been wasted. Show me people who could work well for decades in such a system – would they too not

submit to doubts in the end. This system must be changed and it is the Poles who have taken this burden onto their own shoulders.

We are not asking for any handouts or philanthropy; we would, however, like our country to be treated as a partner and a friend. We want cooperation on good and beneficial conditions. We want Americans to come to us with proposals of cooperation that are beneficial for both sides. We think that you will help democracy and freedom in Poland and in the whole of Eastern Europe. This is the best investment in the future and in peace, better than tanks, ships and aeroplanes. Poland has done a great deal already to break down the existing divisions in Europe, to create new and more optimistic perspectives. Poland is working with the benevolent interest of the West, for which we thank you. We expect that the co-participation of the West in these changes will now begin to grow. We have already heard many beautiful words of encouragement. That is good but, as a worker and a man of concrete work, I will say that the supply of words is great but the demand for them is decreasing.

The decision of the Congress of the United States of America to grant economic aid to my country is opening a new road. We thank you most sincerely for your excellent decision. I promise you that this aid will not be wasted and that we will never forget about it.

We turn with our words of gratitude to ordinary citizens – it was they who helped us in the difficult period of martial law and persecutions, it was they who sent us aid and they who protested against the violence. Today, when from this exceptional place I can speak freely to the whole world, it is to them that I offer my heartfelt thanks. It is thanks to them that the name of “Solidarity” was able to cross borders and to be embraced by the world and that the people of “Solidarity” were never alone. Among those who created the inter-personal chain of solidarity, there were many Americans from institutions and foundations which worked for freedom and democracy and also all those who supported us in our most difficult moments. They live in all states, in great cities and small towns, in your great country. I thank all those who, through the printed word, propagated the truth. I would also like to thank those Americans of Polish descent who maintain contacts with their old homeland. From the bottom of my heart I thank the President of the United States of America and his government for their commitment to the matters of my country. I will never forget Vice-President George Bush speaking in Warsaw before the grave of the martyr to the Polish cause, Father Jerzy Popiełuszko. I will never forget President George Bush speaking in Gdańsk before the Monument to the Fallen Shipyard Workers. It was from there that the President of the United States sent his message to Poland, Europe and the world. Pope John Paul II said, “Freedom cannot only be possessed and used, it must also be achieved and from it must be built life,

both personal and social.” I think that this is an important lesson both in Poland and in America. I would like everyone to know and to remember that the ideals which lay at the foundations of this wonderful American Republic and which have survived to this day live on today in distant Poland.

For many years, attempts were made to drag Poland away from its ideals but Poland never agreed to this and today it is reaching for the freedom which in all justice it deserves. Apart from Poland, this road is being travelled today by other nations of Eastern Europe. I hope that the nations of the world will never again permit the construction of such walls.

Robert Nozick

THE STATE

Source: Robert Nozick, *Anarchy, State and Utopia*,
Blackwell Publishing 1974, pp. 88-118.

An independent might be prohibited from privately exacting justice because his procedure is known to be too risky and dangerous – that is, it involves a higher risk (than another procedure) of punishing an innocent person or overpunishing a guilty one – or because his procedure isn't known not to be risky. (His procedure would exhibit another mode of unreliability if its chances were much greater of not punishing a guilty person, but this would not be a reason for prohibiting his private enforcement.)

Let us consider these in turn. If the independent's procedure is very unreliable and imposes high risk on others (perhaps he consults tea leaves), then if he does it frequently, he may make all fearful, even those not his victims. Anyone, acting in self-defense, may stop him from engaging in his high-risk activity. But surely the independent may be stopped from using a very unreliable procedure, even if he is not a constant menace. If it is known that the independent will enforce his own rights by his very unreliable procedure only once every ten years, this will not create general fear and apprehension in the society. The ground for prohibiting his widely intermittent use of his procedure is not, therefore, to avoid any widespread uncompensated apprehension and fear which otherwise would exist.

If there were many independents who were all liable to punish wrongly, the probabilities would add up to create a dangerous situation for all. Then, others would be entitled to group together and prohibit the totality of such activities. But how would this prohibition work? Would they prohibit each of the individually non-fear-creating activities? Within a state of nature by what procedure can they pick and choose which of the totality is to continue, and what would give them the right to do this? No protective association, however dominant, would have this right. For the legitimate powers of a protective association are merely the sum of the individual rights that its members or clients transfer to the association. No new rights and powers arise; each right of the association is decomposable without residue into those individual rights held by distinct individuals acting alone in a state of nature. A combination of individuals may have the right to do some action C, which no individual alone had the right to do, if C is identical to D and E, and persons who individually have the right to do D and the right to do E

combine. If some rights of individuals were of the form “You have the right to do A provided 51 percent or 85 percent or whatever of the others agree you may”, then a combination of individuals would have the right to do A, even though none separately had this right. But no individual’s rights are of this form. No person or group is entitled to pick who in the totality will be allowed to continue. All the independents might group together and decide this. They might, for example, use some random procedure to allocate a number of (sellable?) rights to continue private enforcement so as to reduce the total danger to a point below the threshold. The difficulty is that, if a large number of independents do this, it will be in the interests of an individual to abstain from this arrangement. It will be in his interests to continue his risky activities as he chooses, while the others mutually limit theirs so as to bring the totality of acts including his to below the danger level. For the others probably would limit themselves some distance away from the danger boundary, leaving him room to squeeze in. Even were the others to rest adjacent to the line of danger so that his activities would bring the totality across it, on which grounds could his activities be picked out as the ones to prohibit? Similarly, it will be in the interests of any individual to refrain from otherwise unanimous agreements in the state of nature: for example, the agreement to set up a state. Anything an individual can gain by such a unanimous agreement he can gain through separate bilateral agreements. Any contract which really needs almost unanimity, any contract which is essentially joint, will serve its purpose whether or not a given individual participates; so it will be in his interests not to bind himself to participate.

A principle suggested by Herbert Hart, which (following John Rawls) we shall call the principle of fairness, would be of service here if it were adequate. This principle holds that when a number of persons engage in a just, mutually advantageous, cooperative venture according to rules and thus restrain their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to similar acquiescence on the part of those who have benefited from their submission. Acceptance of benefits (even when this is not a giving of express or tacit undertaking to cooperate) is enough, according to this principle, to bind one. If one adds to the principle of fairness the claim that the others to whom the obligations are owed or their agents may enforce the obligations arising under this principle (including the obligation to limit one’s actions), then groups of people in a state of nature who agree to a procedure to pick those to engage in certain acts will have legitimate rights to prohibit “free riders.” Such a right may be crucial to the viability of such agreements. We should scrutinize such a powerful right very carefully, especially as it seems to make unanimous consent to coercive government in a state of nature unnecessary! Yet a further reason to examine it is its plausibility as a counterexample to my claim that

no new rights “emerge” at the group level, that individuals in combination cannot create new rights which are not the sum of preexisting ones. A right to enforce others’ obligation to limit their conduct in specified ways might stem from some special feature of the obligation or might be thought to follow from some general principle that all obligations owed to others may be enforced. In the absence of argument for the special enforcement-justifying nature of the obligation supposedly arising under the principle of fairness, I shall consider first the principle of the enforceability of all obligations and then turn to the adequacy of the principle of fairness itself. If either of these principles is rejected, the right to enforce the cooperation of others in these situations totters. I shall argue that both of these principles must be rejected.

Herbert Hart’s argument for the existence of a natural right depends upon particularizing the principle of the enforceability of all obligations: someone’s being under a special obligation to you to do A (which might have arisen, for example, by their promising to you that they would do A) gives you, not only the right that they do A, but also the right to force them to do A. Only against a background in which people may not force you to do A or other actions you may promise to do can we understand, says Hart, the point and purpose of special obligations. Since special obligations do have a point and purpose, Hart continues, there is a natural right not to be forced to do something unless certain specified conditions pertain; this natural right is built into the background against which special obligations exist.

This well-known argument of Hart’s is puzzling. I may release someone from an obligation not to force me to do A. (“I now release you from the obligation not to force me to do A. You now are free to force me to do A.”) Yet so releasing them does not create in me an obligation to them to do A. Since Hart supposes that my being under an obligation to someone to do A gives him (entails that he has) the right to force me to do A, and since we have seen the converse does not hold, we may consider that component of being under an obligation to someone to do something over and above his having the right to force you to do it. (May we suppose there is this distinguishable component without facing the charge of “logical atomism”?) An alternative view which rejects Hart’s inclusion of the right to force in the notion of being owed an obligation might hold that this additional component is the whole of the content of being obligated to someone to do something. If I don’t do it, then (all things being equal) I’m doing something wrong; control over the situation is in his hands; he has the power to release me from the obligation unless he’s promised to someone else that he won’t, and so on. Perhaps all this looks too ephemeral without the additional presence of rights of enforcement. Yet rights of enforcement are themselves merely rights; that is, permissions to do something and obligations on others not to interfere.

True, one has the right to enforce these further obligations, but it is not clear that including rights of enforcing really shores up the whole structure if one assumes it to be insubstantial to begin with. Perhaps one must merely take the moral realm seriously and think one component amounts to something even without a connection to enforcement. (Of course, this is not to say that this component never is connected with enforcement!) On this view, we can explain the point of obligations without bringing in rights of enforcement and hence without supposing a general background of obligation not to force from which this stands out. (Of course, even though Hart's argument does not demonstrate the existence of such an obligation not to force, it may exist nevertheless.)

Apart from these general considerations against the principle of the enforceability of all special obligations, puzzle cases can be produced. For example, if I promise to you that I will not murder someone, this does not give you the right to force me not to, for you already have this right, though it does create a particular obligation to you. Or, if I cautiously insist that you first promise to me that you won't force me to do A before I will make my promise to you to do A, and I do receive this promise from you first, it would be implausible to say that in promising I give you the right to force me to do A. (Though consider the situation which results if I am so foolish as to release you unilaterally from your promise to me.)

If there were cogency to Hart's claim that only against a background of required nonforcing can we understand the point of special rights, then there would seem to be equal cogency to the claim that only against a background of permitted forcing can we understand the point of general rights. For according to Hart, a person has a general right to do A if and only if for all persons P and Q, Q may not interfere with P's doing A or force him not to do A, unless P has acted to give Q a special right to do this. But not every act can be substituted for "A"; people have general rights to do only particular types of action. So, one might argue, if there is to be a point to having general rights, to having rights to do a particular type of act A, to other's being under an obligation not to force you not to do A, then it must be against a contrasting background, in which there is no obligation on people to refrain from forcing you to do, or not to do, things, that is, against a background in which, for actions generally, people do not have a general right to do them. If Hart can argue to a presumption against forcing from there being a point to particular rights; then it seems he can equally well argue to the absence of such a presumption from there being a point to general rights.

An argument for an enforceable obligation has two stages: the first leads to the existence of the obligation, and the second, to its enforceability. Having disposed of the second stage (at least insofar as it is supposed generally to follow from the first), let us turn to the supposed obligation to cooperate in

the joint decisions of others to limit their activities. The principle of fairness, as we stated it following Hart and Rawls, is objectionable and unacceptable. Suppose some of the people in your neighborhood (there are 364 other adults) have found a public address system and decide to institute a system of public entertainment. They post a list of names, one for each day, yours among them. On his assigned day (one can easily switch days) a person is to run the public address system, play records over it, give news bulletins, tell amusing stories he has heard, and so on. After 138 days on which each person has done his part, your day arrives. Are you obligated to take your turn? You have benefited from it, occasionally opening your window to listen, enjoying some music or chuckling at someone's funny story. The other people have put themselves out. But must you answer the call when it is your turn to do so? As it stands, surely not. Though you benefit from the arrangement, you may know all along that 364 days of entertainment supplied by others will not be worth your giving up one day. You would rather not have any of it and not give up a day than have it all and spend one of your days at it. Given these preferences, how can it be that you are required to participate when your scheduled time comes? It would be nice to have philosophy readings on the radio to which one could tune in at any time, perhaps late at night when tired. But it may not be nice enough for you to want to give up one whole day of your own as a reader on the program. Whatever you want, can others create an obligation for you to do so by going ahead and starting the program themselves? In this case you can choose to forgo the benefit by not turning on the radio; in other cases the benefits may be unavoidable. If each day a different person on your street sweeps the entire street, must you do so when your time comes? Even if you don't care that much about a clean street? Must you imagine dirt as you traverse the street, so as not to benefit as a free rider? Must you refrain from turning on the radio to hear the philosophy readings? Must you mow your front lawn as often as your neighbors mow theirs?

At the very least one wants to build into the principle of fairness the condition that the benefits to a person from the actions of the others are greater than the costs to him of doing his share. How are we to imagine this? Is the condition satisfied if you do enjoy the daily broadcasts over the PA system in your neighborhood but would prefer a day off hiking, rather than hearing these broadcasts all year? For you to be obligated to give up your day to broadcast mustn't it be true, at least, that there is nothing you could do with a day (with that day, with the increment in any other day by shifting some activities to that day) which you would prefer to hearing broadcasts for the year? If the only way to get the broadcasts was to spend the day participating in the arrangement, in order for the condition that the benefits outweigh the costs to be satisfied, you would have to be willing to spend it on the broadcasts rather than to gain any other available thing.

If the principle of fairness were modified so as to contain this very strong condition, it still would be objectionable. The benefits might only barely be worth the costs to you of doing your share, yet others might benefit from this institution much more than you do; they all treasure listening to the public broadcasts. As the person least benefited by the practice, are you obligated to do an equal amount for it? Or perhaps you would prefer that all cooperated in another venture, limiting their conduct and making sacrifices for it. It is true, given that they are not following your plan (and thus limiting what other options are available to you), that the benefits of their venture are worth to you the costs of your cooperation. However, you do not wish to cooperate, as part of your plan to focus their attention on your alternative proposal which they have ignored or not given, in your view at least, its proper due. (You want them, for example, to read the Talmud on the radio instead of the philosophy they are reading.) By lending the institution (their institution) the support of your cooperating in it, you will only make it harder to change or alter.

On the face of it, enforcing the principle of fairness is objectionable. You may not decide to give me something, for example a book, and then grab money from me to pay for it, even if I have nothing better to spend the money on. You have, if anything, even less reason to demand payment if your activity that gives me the book also benefits you; suppose that your best way of getting exercise is by throwing books into people's houses, or that some other activity of yours thrusts books into people's houses as an unavoidable side effect. Nor are things changed if your inability to collect money or payments for the books which unavoidably spill over into others' houses makes it inadvisable or too expensive for you to carry on the activity with this side effect. One cannot, whatever one's purposes, just act so as to give people benefits and then demand (or seize) payment. Nor can a group of persons do this. If you may not charge and collect for benefits you bestow without prior agreement, you certainly may not do so for benefits whose bestowal costs you nothing, and most certainly people need not repay you for cost less-to-provide benefits which yet others provided them. So the fact that we partially are "social products" in that we benefit from current patterns and forms created by the multitudinous actions of a long string of long-forgotten people, forms which include institutions, ways of doing things, and language (whose social nature may involve our current use depending upon Wittgensteinian matching of the speech of others), does not create in us a general floating debt which the current society can collect and use as it will.

Perhaps a modified principle of fairness can be stated which would be free from these and similar difficulties. What seems certain is that any such principle, if possible, would be so complex and involuted that one could not

combine it with a special principle legitimating enforcement within a state of nature of the obligations that have arisen under it. Hence, even if the principle could be formulated so that it was no longer open to objection, it would not serve to obviate the need for other persons' consenting to cooperate and limit their own activities.

Let us return to our independent. Apart from other nonindependents' fear (perhaps they will not be so worried), may not the person about to be punished defend himself? Must he allow the punishment to take place, collecting compensation afterwards if he can show that it was unjust? But show to whom? If he knows he's innocent, may he demand compensation immediately and enforce his rights to collect it? And so on. The notions of procedural rights, public demonstration of guilt, and the like, have a very unclear status within state-of-nature theory.

It might be said that each person has a right to have his guilt determined by the least dangerous of the known procedures for ascertaining guilt, that is, by the one having the lowest probability of finding an innocent person guilty. There are well-known maxims of the following form: better m guilty persons go free than m innocent persons be punished. For each n , each maxim will countenance an upper limit to the ratio m/n . It will say: better m , but not better $m + 1$. (A system may pick differing upper limits for different crimes.) On the greatly implausible assumption that we know each system of procedures' precise probability of finding an innocent person guilty, and a guilty person innocent, we will opt for those procedures whose long-run ratio of the two kinds of errors comes closest, from below, to the highest ratio we find acceptable. It is far from obvious where to set the ratio. To say it is better that any number of guilty go free rather than that one innocent person be punished presumably would require not having any system of punishment at all. For any system we can devise which sometimes does actually punish someone will involve some appreciable risk of punishing an innocent person, and it almost certainly will do so as it operates on large numbers of people. And any system S can be transformed into one having a lower probability of punishing an innocent person, for example, by conjoining to it a roulette procedure whereby the probability is only $.1$ that anyone found guilty by S actually gets punished. (This procedure is iterative.)

If a person objects that the independent's procedure yields too high a probability of an innocent person's being punished, how can it be determined what probabilities are too high? We can imagine that each individual goes through the following reasoning: The greater the procedural safeguards, the less my chances of getting unjustly convicted, and also the greater the chances that a guilty person goes free; hence the less effectively the system deters crime and so the greater my chances of being a victim of a crime. That system is most effective which minimizes the expected value of unearned

harm to me, either through my being unjustly punished or through my being a victim of a crime. If we simplify greatly by assuming that penalties and victimization costs balance out, one would want the safeguards at that most stringent point where any lowering of them would increase one's probability of being unjustly punished more than it would lower (through added deterrence) one's vulnerability to being victimized by a crime; and where any increasing of the safeguards would increase one's probability of being victimized by a crime (through lessened deterrence) more than it would lessen one's probability of being punished though innocent. Since utilities differ among persons, there is no reason to expect individuals who make such an expected value calculation to converge upon the identical set of procedures. Furthermore, some persons may think it important in itself that guilty people be punished and may be willing to run some increased risks of being punished themselves in order to accomplish this. These people will consider it more of a drawback, the greater the probability a procedure gives guilty people of going unpunished, and they will incorporate this in their calculations, apart from its effects on deterrence. It is, to say the least, very doubtful that any provision of the law of nature will (and will be known to) settle the question of how much weight is to be given to such considerations, or will reconcile people's different assessments of the seriousness of being punished when innocent as compared to being victimized by a crime (even if both involve the same physical thing happening to them). With the best will in the world, individuals will favor differing procedures yielding differing probabilities of an innocent person's being punished.

One could not, it seems, permissibly prohibit someone from using a procedure solely because it yields a marginally higher probability of punishing an innocent person than does the procedure you deem optimal. After all, your favorite procedure also will stand in this relation to that of someone else. Nor are matters changed by the fact that many other persons use your procedure. It seems that persons in a state of nature must tolerate (that is, not forbid) the use of procedures in the "neighborhood" of their own; but it seems they may forbid the use of far more risky procedures. An acute problem is presented if two groups each believe their own procedures to be reliable while believing that of the other group to be very dangerous. No procedure to resolve their disagreement seems likely to work; and presenting the nonprocedural principle that the group which is right should triumph (and the other should give in to it) seems unlikely to produce peace when each group, firmly believing itself to be the one that is right, acts on the principle.

When sincere and good persons differ, we are prone to think they must accept some procedure to decide their differences, some procedure they both agree to be reliable or fair. Here we see the possibility that this

disagreement may extend all the way up the ladder of procedures. Also, one sometimes will refuse to let issues stay settled by the adverse decision of such a procedure, specifically when the wrong decision is worse even than the disruption and costs (including fighting) of refusing to accept it, when the wrong decision is worse than conflict with those on the other side. It is dismaying to contemplate situations where both of the opposed parties feel that conflict is preferable to an adverse decision by any procedure. Each views the situation as one in which he who is right must act, and the other should give in. It will be of little avail for a neutral party to say to both, "Look, you both think you're right, so on that principle, as you will apply it, you'll fight. Therefore you must agree to some procedure to decide the matter." For they each believe that conflict is better than losing the issue. And one of them may be right in this. Shouldn't he engage in the conflict? Shouldn't he engage in the conflict? (True, both of them will think the one is themselves.) One might try to avoid these painful issues by a commitment to procedures, come what may. (May one possible result of applying the procedures be that they themselves are rejected?) Some view the state as such a device for shifting the ultimate burden of moral decision, so that there never comes to be that sort of conflict among individuals. But what sort of individual could so abdicate? Who could turn every decision over to an external procedure, accepting whatever results come? The possibility of such conflict is part of the human condition. Though this problem in the state of nature is an unavoidable one, given suitable institutional elaboration it need be no more pressing in the state of nature than under a state, where it also exists.

The issue of which decisions can be left to an external binding procedure connects with the interesting question of what moral obligations someone is under who is being punished for a crime of which he knows himself to be innocent. The judicial system (containing no procedural unfairness, let us suppose) has sentenced him to life imprisonment, or death. May he escape? May he harm another in order to escape?

These questions differ from the one of whether someone wrongfully attacking (or participating in the attack of) another may claim self-defense as justifying his killing the other when the other, in self-defense, acts so as to endanger his own attacker's life. Here the answer is, "No." The attacker should not be attacking in the first place, nor does someone else's threatening him with death unless he does attack make it permissible for him to do so. His job is to get out of that situation; if he fails to do so he is at a moral disadvantage. Soldiers who know their country is waging an aggressive war and who are manning anti-aircraft guns in defense of a military emplacement may not in self-defense fire upon the planes of the attacked nation which is acting in self-defense, even though the planes are over their heads and are about to bomb them. It is a soldier's responsibility to determine if his side's cause is

just; if he finds the issue tangled, unclear, or confusing, he may not shift the responsibility to his leaders, who will certainly tell him their cause is just. The selective conscientious objector may be right in his claim that he has a moral duty not to fight; and if he is, may not another acquiescent soldier be punished for doing what it was his moral duty not to do? Thus we return to the point that some bucks stop with each of us; and we reject the morally elitist view that some soldiers cannot be expected to think for themselves. (They are certainly not encouraged to think for themselves by the practice of absolving them of all responsibility for their actions within the rules of war.) Nor do we see why the political realm is special. Why, precisely, is one specially absolved of responsibility for actions when these are performed jointly with others from political motives under the direction or orders of political leaders?

We thus far have supposed that you know that another's procedure of justice differs from your own for the worse. Suppose now that you have no reliable knowledge about another's procedure of justice. May you stop him in self-defense and may your protective agency act for you, solely because you or it does not know whether his procedure is reliable? Do you have the right to have your guilt or innocence, and punishment, determined by a system known to be reliable and fair? Known to whom? Those wielding it may know it to be reliable and fair. Do you have a right to have your guilt or innocence, and punishment, determined by a system you know to be reliable and fair? Are someone's rights violated if he thinks that only the use of tea leaves is reliable or if he is incapable of concentrating on the description of the system others use so that he doesn't know whether it's reliable, and so on? One may think of the state as the authoritative settler of doubts about reliability and fairness. But of course there is no guarantee that it will settle them (the president of Yale didn't think Black Panthers could get a fair trial), and there is no reason to suppose it will manage to do so more effectively than another scheme. The natural-rights tradition offers little guidance on precisely what one's procedural rights are in a state of nature, on how principles specifying how one is to act have knowledge built into their various clauses, and so on. Yet persons within this tradition do not hold that there are no procedural rights; that is, that one may not defend oneself against being handled by unreliable or unfair procedures.

What then may a dominant protective association forbid other individuals to do? The dominant protective association may reserve for itself the right to judge any procedure of justice to be applied to its clients. It may announce, and act on the announcement, that it will punish anyone who uses on one of its clients a procedure that it finds to be unreliable or unfair. It will punish anyone who uses on one of its clients a procedure that it already knows to be unreliable or unfair, and it will defend its clients against the application

of such a procedure. May it announce that it will punish anyone who uses on one of its clients a procedure that it has not, at the time of punishment, already approved as reliable and fair? May it set itself up as having to pass, in advance, on any procedure to be used on one of its clients, so that anyone using on one of its clients any procedure that has not already received the protective association's seal of approval will be punished? Clearly, individuals themselves do not have this right. To say that an individual may punish anyone who applies to him a procedure of justice that has not met his approval would be to say that a criminal who refuses to approve anyone's procedure of justice could legitimately punish anyone who attempted to punish him. It might be thought that a protective association legitimately can do this, for it would not be partial to its clients in this manner. But there is no guarantee of this impartiality. Nor have we seen any way that such a new right might arise from the combining of individuals' preexisting rights. We must conclude that protective associations do not have this right, including the sole dominant one.

Every individual does have the right that information sufficient to show that a procedure of justice about to be applied to him is reliable and fair (or no less so than other procedures in use) be made publicly available or made available to him. He has the right to be shown that he is being handled by some reliable and fair system. In the absence of such a showing he may defend himself and resist the imposition of the relatively unknown system. When the information is made publicly available or made available to him, he is in a position to know about the reliability and fairness of the procedure. He examines this information, and if he finds the system within the bounds of reliability and fairness he must submit to it; finding it unreliable and unfair he may resist. His submission means that he refrains from punishing another for using this system. He may resist the imposition of its particular decision though, on the grounds that he is innocent. If he chooses not to, he need not participate in the process whereby the system determines his guilt or innocence. Since it has not yet been established that he is guilty, he may not be aggressed against and forced to participate. However, prudence might suggest to him that his chances of being found innocent are increased if he cooperates in the offering of some defense.

The principle is that a person may resist, in self-defense, if others cry to apply to him an unreliable or unfair procedure of justice. In applying this principle, an individual will resist those systems which after all conscientious consideration he finds to be unfair or unreliable. An individual may empower his protective agency to exercise for him his rights to resist the imposition of any procedure which has not made its reliability and fairness known, and to resist any procedure that is unfair or unreliable. In Chapter 2 we described briefly the processes that would lead to the dominance of one protective

association in a given area, or to a dominant federation of protective associations using rules to peacefully adjudicate disputes among themselves. This dominant protective association will prohibit anyone from applying to its members any procedure about which insufficient information is available as to its reliability and fairness. It also will prohibit anyone from applying to its members an unreliable or unfair procedure; which means, since they are applying the principle and have the muscle to do so, that others are prohibited from applying to the protective association's members any procedure the protective association deems unfair or unreliable. Leaving aside the chances of evading the system's operation, anyone violating this prohibition will be punished. The protective association will publish a list of those procedures it deems fair and reliable (and perhaps of those it deems otherwise); and it would take a brave soul indeed to proceed to apply a known procedure not yet on its approved list. Since an association's clients will expect it to do all it can to discourage unreliable procedures, the protective association will keep its list up-to-date, covering all publicly known procedures.

It might be claimed that our assumption that procedural rights exist makes our argument too easy. Does a person who did violate another's rights himself have a right that this fact be determined by a fair and reliable procedure? It is true that an unreliable procedure will too often find an innocent person guilty. But does applying such an unreliable procedure to a guilty person violate any right of his? May he, in self-defense, resist the imposition of such a procedure upon himself? But what would he be defending himself against? Too high a probability of a punishment he deserves? These questions are important ones for our argument. If a guilty person may not defend himself against such procedures and also may not punish someone else for using them upon him, then may his protective agency defend him against the procedures or punish someone afterwards for having used them upon him, independently of whether or not (and therefore even if) he turns out to be guilty? One would have thought the agency's only rights of action are those its clients transfer to it. But if a guilty client has no such right, he cannot transfer it to the agency.

The agency does not, of course, know that its client is guilty, whereas the client himself does know (let us suppose) of his own guilt. But does this difference in knowledge make the requisite difference? Isn't the ignorant agency required to investigate the question of its client's guilt, instead of proceeding on the assumption of his innocence? The difference in epistemic situation between agency and client can make the following difference. The agency may under some circumstances defend its client against the imposition of a penalty while promptly proceeding to investigate the question of his guilt. If the agency knows that the punishing party has used a reliable procedure, it accepts its verdict of guilty, and it cannot intervene

on the assumption that its client is, or well might be, innocent. If the agency deems the procedure unreliable or doesn't know how reliable it is, it need not presume its client guilty, and it may investigate the matter itself. If upon investigation it determines that its client is guilty, it allows him to be punished. This protection of its client against the actual imposition of the penalty is relatively straightforward, except for the question of whether the agency must compensate the prospective punishers for any costs imposed upon them by having to delay while the protective agency determines to its satisfaction its own client's guilt. It would seem that the protective agency does have to pay compensation to users of relatively unreliable procedures for any disadvantages caused by the enforced delay; and to the users of procedures of unknown reliability it must pay full compensation if the procedures are reliable, otherwise compensation for disadvantages. (Who bears the burden of proof in the question of the reliability of the procedures?) Since the agency may recover this amount (forcibly) from its client who asserted his innocence, this will be something of a deterrent to false pleas of innocence.

The agency's temporary protection and defense against the infliction of the penalty is relatively straightforward. Less straightforward is the protective agency's appropriate action after a penalty has been inflicted. If the punisher's procedure was a reliable one, the agency does not act against the punisher. But may the agency punish someone who punishes its client, acting on the basis of an unreliable procedure? May it punish that person independently of whether or not its client is guilty? Or must it investigate, using its own reliable procedure, to determine his guilt or innocence, punishing his punishers only if it determines its client innocent? (Or is it: if it fails to find him guilty?) By what right could the protective agency announce that it will punish anyone using an unreliable procedure who punishes its clients, independently of the guilt or innocence of the clients?

The person who uses an unreliable procedure, acting upon its result, imposes risks upon others, whether or not his procedure misfires in a particular case. Someone playing Russian roulette upon another does the same thing if when he pulls the trigger the gun does not fire. The protective agency may treat the unreliable enforcer of justice, as it treats any performer of a risky action. We distinguished in Chapter 4 a range of possible responses to a risky action, which were appropriate in different sorts of circumstances: prohibition, compensation to those whose boundaries are crossed, and compensation to all those who undergo a risk of a boundary crossing. The unreliable enforcer of justice might either perform actions others are fearful of, or not; and either might be done to obtain compensation for some previous wrong, or to exact retribution. A person who uses an unreliable procedure of enforcing justice and is led to perform some unfeared action will not be punished afterwards. If it turns out that the person on whom he acted was

guilty and that the compensation taken was appropriate, the situation will be left as is. If the person on whom he acted turns out to be innocent, the unreliable enforcer of justice may be forced fully to compensate him for the action.

On the other hand, the unreliable enforcer of justice may be forbidden to impose those consequences that would be feared if expected. Why? If done frequently enough so as to create general fear, such unreliable enforcement may be forbidden in order to avoid the general uncompensated-for fear. Even if done rarely, the unreliable enforcer may be punished for imposing this feared consequence upon an innocent person. But if the unreliable enforcer acts rarely and creates no general fear, why may he be punished for imposing a feared consequence upon a person who is guilty? A system of punishing unreliable punishers for their punishment of guilty persons would help deter them from using their unreliable system upon anyone and therefore from using it upon innocent people. But not everything that would aid in such deterrence may be inflicted. The question is whether it would be legitimate in this case to punish after the fact the unreliable punisher of someone who turned out to be guilty.

No one has a right to use a relatively unreliable procedure in order to decide whether to punish another. Using such a system, he is in no position to know that the other deserves punishment; hence he has no right to punish him. But how can we say this? If the other has committed a crime, doesn't everyone in a state of nature have a right to punish him? And therefore doesn't someone who doesn't know that this other person has committed the crime? Here, it seems to me, we face a terminological issue about how to merge epistemic considerations with rights. Shall we say that someone doesn't have a right to do certain things unless he knows certain facts, or shall we say that he does have a right but he does wrong in exercising it unless he knows certain facts? It may be neater to decide it one way, but we can still say all we wish in the other mode; there is a simple translation between the two modes of discourse. We shall pick the latter mode of speech; if anything, this makes our argument look less compelling. If we assume that anyone has a right to take something that a thief has stolen, then under this latter terminology someone who takes a stolen object from a thief, without knowing it had been stolen, had a right to take the object; but since he didn't know he had this right, his taking the object was wrong and impermissible. Even though no right of the first thief is violated, the second didn't know this and so acted wrongly and impermissibly.

Having taken this terminological fork, we might propose an epistemic principle of border crossing: If doing act A would violate Q's rights unless condition C obtained, then someone who does not know that C obtains may not do A. Since we may assume that all know that inflicting a punishment

upon someone violates his rights unless he is guilty of an offense, we may make do with the weaker principle: If someone knows that doing act A would violate Q's rights unless condition C obtained, he may not do A if he does not know that C obtains. Weaker still, but sufficient for our purposes, is: If someone knows that doing act A would violate Q's rights unless condition C obtained, he may not do A if he has not ascertained that C obtains through being in the best feasible position for ascertaining this. (This weakening of the consequent also avoids various problems connected with epistemological skepticism.) Anyone may punish a violator of this prohibition. More precisely, anyone has the right so to punish a violator; people may do so only if they themselves don't run afoul of the prohibition, that is, only if they themselves have ascertained that another violated the prohibition, being in the best position to have ascertained this.

On this view, what a person may do is not limited only by the rights of others. An unreliable punisher violates no right of the guilty person; but still he may not punish him. This extra space is created by epistemic considerations. (It would be a fertile area for investigation, if one could avoid drowning in the morass of considerations about "subjective-ought" and "objective-ought.") Note that on this construal, a person does not have a right that he be punished only by use of a relatively reliable procedure. (Even though he may, if he so chooses, give another permission to use a less reliable procedure on him.) On this view, many procedural rights stem not from rights of the person acted upon, but rather from moral considerations about the person or persons doing the acting.

It is not clear to me that this is the proper focus. Perhaps the person acted upon does have such procedural rights against the user of an unreliable procedure. (But what is a guilty person's complaint against an unreliable procedure. That it is too likely to mispunish him? Would we have the user of an unreliable procedure compensate the guilty person he punished, for violating his right?) We have seen that our argument for a protective agency's punishing the wielder of the unreliable procedure for inflicting a penalty upon its client would go much more smoothly were this so. The client merely would authorize his agency to act to enforce his procedural right. For the purposes of our subargument here, we have shown that our conclusion stands, even without the facilitating assumption of procedural rights. (We do not mean to imply that there aren't such rights.) In either case, a protective agency may punish a wielder of an unreliable or unfair procedure who (against the client's will) has punished one of its clients, independently of whether or not its client actually is guilty and therefore even if its client is guilty.

The tradition of theorizing about the state we discussed briefly in Chapter 2 has a state claiming a monopoly on the use of force. Has any

monopoly element yet entered our account of the dominant protective agency? Everyone may defend himself against unknown or unreliable procedures and may punish those who use or attempt to use such procedures against him. As its client's agent, the protective association has the right to do this for its clients. It grants that every individual, including those not affiliated with the association, has this right. So far, no monopoly is claimed. To be sure, there is a universal element in the content of the claim: the right to pass on anyone's procedure. But it does not claim to be the sole possessor of this right; everyone has it. Since no claim is made that there is some right which it and only it has, no monopoly is claimed. With regard to its own clients, however, it applies and enforces these rights which it grants that everyone has. It deems its own procedures reliable and fair. There will be a strong tendency for it to deem all other procedures, or even the "same" procedures run by others, either unreliable or unfair. But we need not suppose it excludes every other procedure. Everyone has the right to defend against procedures that are in fact not, or not known to be, both reliable and fair. Since the dominant protective association judges its own procedures to be both reliable and fair, and believes this to be generally known, it will not allow anyone to defend against them; that is, it will punish anyone who does so. The dominant protective association will act freely on its own understanding of the situation, whereas no one else will be able to do so with impunity. Although no monopoly is claimed, the dominant agency does occupy a unique position by virtue of its power. It, and it alone, enforces prohibitions on others' procedures of justice, as it sees fit. It does not claim the right to prohibit others arbitrarily; it claims only the right to prohibit anyone's using actually defective procedures on its clients. But when it sees itself as acting against actually defective procedures, others may see it as acting against what it thinks are defective procedures. It alone will act freely against what it thinks are defective procedures, whatever anyone else thinks. As the most powerful applier of principles which it grants everyone the right to apply correctly, it enforces its will, which, from the inside, it thinks is correct. From its strength stems its actual position as the ultimate enforcer and the ultimate judge with regard to its own clients. Claiming only the universal right to act correctly, it acts correctly by its own lights. It alone is in a position to act solely by its own lights.

Does this unique position constitute a monopoly? There is no right the dominant protective association claims uniquely to possess. But its strength leads it to be the unique agent acting across the board to enforce a particular right. It is not merely that it happens to be the only exerciser of a right it grants that all possess; the nature of the right is such that once a dominant power emerges, it alone will actually exercise that right. For the right includes the right to stop others from wrongfully exercising the right,

and only the dominant power will be able to exercise this right against all others. Here, if anywhere, is the place for applying some notion of a *de facto* monopoly: a monopoly that is not *de jure* because it is not the result of some unique grant of exclusive right while others are excluded from exercising a similar privilege. Other protective agencies, to be sure, can enter the market and attempt to wean customers away from the dominant protective agency. They can attempt to replace it as the dominant one. But being the already dominant protective agency gives an agency a significant market advantage in the competition for clients. The dominant agency can offer its customers a guarantee that no other agencies can match: "Only those procedures we deem appropriate will be used on our customers."

The dominant protective agency's domain does not extend to quarrels of nonclients among themselves. If one independent is about to use his procedure of justice upon another independent, then presumably the protective association would have no right to intervene. It would have the right we all do to intervene to aid an unwilling victim whose rights are threatened. But since it may not intervene on paternalistic grounds, the protective association would have no proper business interfering if both independents were satisfied with their procedure of justice. This does not show that the dominant protective association is not a state. A state, too, could abstain from disputes where all concerned parties chose to opt out of the state's apparatus. (Though it is more difficult for people to opt out of the state in a limited way, by choosing some other procedure for settling a particular quarrel of theirs. For that procedure's settlement, and their reactions to it, might involve areas that not all parties concerned have removed voluntarily from the state's concern.) And shouldn't (and mustn't) each state allow that option to its citizens?

If the protective agency deems the independents' procedures for enforcing their own rights insufficiently reliable or fair when applied to its clients, it will prohibit the independents from such self-help enforcement. The grounds for this prohibition are that the self-help enforcement imposes risks of danger on its clients. Since the prohibition makes it impossible for the independents credibly to threaten to punish clients who violate their rights, it makes them unable to protect themselves from harm and seriously disadvantages the independents in their daily activities and life. Yet it is perfectly possible that the independents' activities including self-help enforcement could proceed without anyone's rights being violated (leaving aside the question of procedural rights). According to our principle of compensation given in Chapter 4, in these circumstances those persons promulgating and benefiting from the prohibition must compensate those disadvantaged by it. The clients of the protective agency, then, must compensate the independents for the disadvantages imposed upon them

by being prohibited self-help enforcement of their own rights against the agency's clients. Undoubtedly, the least expensive way to compensate the independents would be to supply them with protective services to cover those situations of conflict with the paying customers of the protective agency. This will be less expensive than leaving them unprotected against violations of their rights (by not punishing any client who does so) and then attempting to pay them afterwards to cover their losses through having (and being in a position in which they were exposed to having) their rights violated. If it were not less expensive, then instead of buying protective services, people would save their money and use it to cover their losses, perhaps by jointly pooling their money in an insurance scheme.

Must the members of the protective agency pay for protective services (vis-a-vis clients) for the independents? Can they insist that the independents purchase the services themselves? After all, using self-help procedures would not have been without costs for the independent. The principle of compensation does not require those who prohibit an epileptic from driving to pay his full cost of taxis, chauffeurs, and so on. If the epileptic were allowed to run his own automobile, this too would have its costs: money for the car, insurance, gasoline, repair bills, and aggravation. In compensating for disadvantages imposed, the prohibitors need pay only an amount sufficient to compensate for the disadvantages of the prohibition minus an amount representing the costs the prohibited party would have borne were it not for the prohibition. The prohibitors needn't pay the complete costs of taxis; they must pay only the amount which when combined with the costs to the prohibited party of running his own private automobile is sufficient for taxis. They may find it less expensive to compensate in kind for the disadvantages they impose than to supply monetary compensation; they may engage in some activity that removes or partially lessens the disadvantages, compensating in money only for the net disadvantages remaining.

If the prohibitor pays to the person prohibited monetary compensation equal to an amount that covers the disadvantages imposed minus the costs of the activity where it permitted, this amount may be insufficient to enable the prohibited party to overcome the disadvantages. If his costs in performing the prohibited action would have been monetary, he can combine the compensation payment with this money unspent and purchase the equivalent service. But if his costs would not have been directly monetary but involve energy, time, and the like, as in the case of the independent's self-help enforcement of rights, then this monetary payment of the difference will not by itself enable the prohibited party to overcome the disadvantage by purchasing the equivalent of what he is prohibited. If the independent has other financial resources he can use without disadvantaging himself, then this payment of the difference will suffice to leave the prohibited

party undisadvantaged. But if the independent has no such other financial resources, a protective agency may not pay him an amount less than the cost of its least expensive protective policy, and so leave him only the alternatives of being defenseless against the wrongs of its clients or having to work in the cash market to earn sufficient funds to total the premium on a policy. For this financially pressed prohibited individual, the agency must make up the difference between the monetary costs to him of the unprohibited activity and the amount necessary to purchase an overcoming or counterbalancing of the disadvantage imposed. The prohibitor must completely supply enough, in money or in kind, to overcome the disadvantages. No compensation need be provided to someone who would not be disadvantaged by buying protection for himself. For those of scantier resources, to whom the unprohibited activity had no monetary costs, the agency must provide the difference between the resources they can spare without disadvantage and the cost of protection. For someone for whom it had some monetary costs, the prohibitor must supply the additional monetary amount (over and above what they can spare without disadvantage) necessary to overcome the disadvantages. If the prohibitors compensate in kind, they may charge the financially pressed prohibited party for this, up to the monetary costs to him of his unprohibited activity provided this amount is not greater than the price of the good. As the only effective supplier, the dominant protective agency must offer in compensation the difference between its own fee and monetary costs to this prohibited party of self-help enforcement. It almost always will receive this amount back in partial payment for the purchase of a protection policy. It goes without saying that these dealings and prohibitions apply only to those using unreliable or unfair enforcement procedures.

Thus the dominant protective agency must supply the independents – that is, everyone it prohibits from self-help enforcement against its clients on the grounds that their procedures of enforcement are unreliable or unfair – with protective services against its clients; it may have to provide some persons services for a fee that is less than the price of these services. These persons may, of course, choose to refuse to pay the fee and so do without these compensatory services. If the dominant protective agency provides protective services in this way for independents, won't this lead people to leave the agency in order to receive its services without paying? Not to any great extent, since compensation is paid only to those who would be disadvantaged by purchasing protection for themselves, and only in the amount that will equal the cost of an unfancy policy when added to the sum of the monetary costs of self-help protection plus whatever amount the person comfortably could pay. Furthermore, the agency protects these independents it compensates only against its own paying clients on whom the independents are forbidden to use self-help enforcement. The more free

riders there are, the more desirable it is to be a client always protected by the agency. This factor, along with the others, acts to reduce the number of free riders and to move the equilibrium toward almost universal participation.

(...)

Ronald Dworkin

TAKING RIGHTS SERIOUSLY

Source: Ronald Dworkin, *Taking Rights Seriously*, Harvard University Press, Cambridge Massachusetts 1978, pp. 184-205.

The language of rights now dominates political debate in the United States. Does the Government respect the moral and political rights of its citizens? Or does the Government's foreign policy, or its race policy, fly in the face of these rights? Do the minorities whose rights have been violated have the right to violate the law in return? Or does the silent majority itself have rights, including the right that those who break the law be punished? It is not surprising that these questions are now prominent. The concept of rights, and particularly the concept of rights against the Government, has its most natural use when a political society is divided, and appeals to co-operation or a common goal are pointless.

The debate does not include the issue of whether citizens have some moral rights against their Government. It seems accepted on all sides that they do. Conventional lawyers and politicians take it as a point of pride that our legal system recognizes, for example, individual rights of free speech, equality, and due process. They base their claim that our law deserves respect, at least in part, on that fact, for they would not claim that totalitarian systems deserve the same loyalty.

Some philosophers, of course, reject the idea that citizens have rights apart from what the law happens to give them. Bentham thought that the idea of moral rights was 'nonsense on stilts'. But that view has never been part of our orthodox political theory, and politicians of both parties appeal to the rights of the people to justify a great part of what they want to do. I shall not be concerned, in this essay, to defend the thesis that citizens have moral rights against their governments; I want instead to explore the implications of that thesis for those, including the present United States Government, who profess to accept it.

It is much in dispute, of course, what particular rights citizens have. Does the acknowledged right to free speech, for example, include the right to participate in nuisance demonstrations? In practice the Government will have the last word on what an individual's rights are, because its police will do what its officials and courts say. But that does not mean that the Government's view is necessarily the correct view; anyone who thinks it does must believe

that men and women have only such moral rights as Government chooses to grant, which means that they have no moral rights at all.

All this is sometimes obscured in the United States by the constitutional system. The American Constitution provides a set of individual legal rights in the First Amendment, and in the due process, equal protection, and similar clauses. Under present legal practice the Supreme Court has the power to declare an act of Congress or of a state legislature void if the Court finds that the act offends these provisions. This practice has led some commentators to suppose that individual moral rights are fully protected by this system, but that is hardly so, nor could it be so.

The Constitution fuses legal and moral issues, by making the validity of a law depend on the answer to complex moral problems, like the problem of whether a particular statute respects the inherent equality of all men. This fusion has important consequences for the debates about civil disobedience; I have described these elsewhere and I shall refer to them later. But it leaves open two prominent questions. It does not tell us whether the Constitution, even properly interpreted, recognizes all the moral rights that citizens have, and it does not tell us whether, as many suppose, citizens would have a duty to obey the law even if it did invade their moral rights.

Both questions become crucial when some minority claims moral rights which the law denies, like the right to run its local school system, and which lawyers agree are not protected by the Constitution. The second question becomes crucial when, as now, the majority is sufficiently aroused so that Constitutional amendments to eliminate rights, like the right against self-incrimination, are seriously proposed. It is also crucial in nations, like the United Kingdom, that have no constitution of a comparable nature.

Even if the Constitution were perfect, of course, and the majority left it alone, it would not follow that the Supreme Court could guarantee the individual rights of citizens. A Supreme Court decision is still a legal decision, and it must take into account precedent and institutional considerations like relations between the Court and Congress, as well as morality. And no judicial decision is necessarily the right decision. Judges stand for different positions on controversial issues of law and morals and, as the fights over Nixon's Supreme Court nominations showed, a President is entitled to appoint judges of his own persuasion, provided that they are honest and capable. So, though the constitutional system adds something to the protection of moral rights against the Government, it falls far short of guaranteeing these rights, or even establishing what they are. It means that, on some occasions, a department other than the legislature has the last word on these issues, which can hardly satisfy someone who thinks such a department profoundly wrong.

It is of course inevitable that some department of government will have the final say on what law will be enforced. When men disagree about moral

rights, there will be no way for either side to prove its case, and some decision must stand if there is not to be anarchy. But that piece of orthodox wisdom must be the beginning and not the end of a philosophy of legislation and enforcement. If we cannot insist that the Government reach the right answers about the rights of its citizens, we can insist at least that it try. We can insist that it take rights seriously, follow a coherent theory of what these rights are, and act consistently with its own professions. I shall try to show what that means, and how it bears on the present political debates.

I shall start with the most violently argued issue. Does an American ever have the moral right to break a law? Suppose someone admits a law is valid; does he therefore have a duty to obey it? Those who try to give an answer seem to fall into two camps. The conservatives, as I shall call them, seem to disapprove of any act of disobedience; they appear satisfied when such acts are prosecuted, and disappointed when convictions are reversed. The other group, the liberals, are much more sympathetic to at least some cases of disobedience; they sometimes disapprove of prosecutions and celebrate acquittals. If we look beyond these emotional reactions, however, and pay attention to the arguments the two parties use, we discover an astounding fact. Both groups give essentially the same answer to the question of principle that supposedly divides them.

The answer that both parties give is this. In a democracy, or at least a democracy that in principle respects individual rights, each citizen has a general moral duty to obey all the laws, even though he would like some of them changed. He owes that duty to his fellow citizens, who obey laws that they do not like, to his benefit. But this general duty cannot be an absolute duty, because even a society that is in principle just may produce unjust laws and policies, and a man has duties other than his duties to the State. A man must honour his duties to his God and to his conscience, and if these conflict with his duty to the State, then he is entitled, in the end, to do what he judges to be right. If he decides that he must break the law, however, then he must submit to the judgment and punishment that the State imposes, in recognition of the fact that his duty to his fellow citizens was overwhelmed but not extinguished by his religious or moral obligation.

Of course this common answer can be elaborated in very different ways. Some would describe the duty to the State as fundamental, and picture the dissenter as a religious or moral fanatic. Others would describe the duty to the State in grudging terms, and picture those who oppose it as moral heroes. But these are differences in tone, and the position I described represents, I think, the view of most of those who find themselves arguing either for or against civil disobedience in particular cases.

I do not claim that it is everyone's view. There must be some who put the duty to the State so high that they do not grant that it can ever be overcome.

There are certainly some who would deny that a man ever has a moral duty to obey the law, at least in the United States today. But these two extreme positions are the slender tails of a bell curve, and all those who fall in between hold the orthodox position I described – that men have a duty to obey the law but have the right to follow their consciences when it conflicts with that duty.

But if that is so, then we have a paradox in the fact that men who give the same answer to a question of principle should seem to disagree so much, and to divide so fiercely, in particular cases. The paradox goes even deeper, for each party, in at least some cases, takes a position that seems flatly inconsistent with the theoretical position they both accept. This position was tested, for example, when someone evaded the draft on grounds of conscience, or encouraged others to commit this crime. Conservatives argued that such men must be prosecuted, even though they are sincere. Why must they be prosecuted? Because society cannot tolerate the decline in respect for the law that their act constitutes and encourages. They must be prosecuted, in short, to discourage them and others like them from doing what they have done.

But there seems to be a monstrous contradiction here. If a man has a right to do what his conscience tells him he must, then how can the State be justified in discouraging him from doing it? Is it not wicked for a state to forbid and punish what it acknowledges that men have a right to do?

Moreover, it is not just conservatives who argue that those who break the law out of moral conviction should be prosecuted. The liberal is notoriously opposed to allowing racist school officials to go slow on desegregation, even though he acknowledges that these school officials think they have a moral right to do what the law forbids. The liberal does not of ten argue, it is true, that desegregation laws must be enforced to encourage general respect for law. He argues instead that the desegregation laws must be enforced because they are right. But his position also seems inconsistent: can it be right to prosecute men for doing what their conscience requires, when we acknowledge their right to follow their conscience?

We are therefore left with two puzzles. How can two parties to an issue of principle, each of which thinks it is in profound disagreement with the other, embrace the same position on that issue? How can it be that each side urges solutions to particular problems which seem flatly to contradict the position of principle that both accept? One possible answer is that some or all of those who accept the common position are hypocrites, paying lip service to rights of conscience which in fact they do not grant.

There is some plausibility in this charge. A sort of hypocrisy must have been involved when public officials who claim to respect conscience denied

Muhammad Ali the right to box in their states. If Ali, in spite of his religious scruples, had joined the Army, he would have been allowed to box even though, on the principles these officials say they honour, he would have been a worse human being for having done so. But there are few cases that seem so straightforward as this one, and even here the officials did not seem to recognize the contradiction between their acts and their principles. So we must search for some explanation beyond the truth that men often do not mean what they say.

The deeper explanation lies in a set of confusions that often embarrass arguments about rights. These confusions have clouded all the issues I mentioned at the outset and have crippled attempts to develop a coherent theory of how a government that respects rights must behave.

In order to explain this, I must call attention to the fact, familiar to philosophers, but often ignored in political debate, that the word 'right' has different force in different contexts. In most cases when we say that someone has 'right' to do something, we imply that it would be wrong to interfere with his doing it, or at least that some special grounds are needed for justifying any interference. I use this strong sense of right when I say that you have the right to spend your money gambling, if you wish, though you ought to spend it in a more worthwhile way. I mean that it would be wrong for anyone to interfere with you even though you propose to spend your money in a way that I think is wrong.

There is a clear difference between saying that someone has a right to do something in this sense and saying that it is the 'right' thing for him to do, or that he does no 'wrong' in doing it. Someone may have the right to do something that is the wrong thing for him to do, as might be the case with gambling. Conversely, something may be the right thing for him to do and yet he may have no right to do it, in the sense that it would not be wrong for someone to interfere with his trying. If our army captures an enemy soldier, we might say that the right thing for him to do is to try to escape, but it would not follow that it is wrong for us to try to stop him. We might admire him for trying to escape, and perhaps even think less of him if he did not. But there is no suggestion here that it is wrong of us to stand in his way; on the contrary, if we think our cause is just, we think it right for us to do all we can to stop him.

Ordinarily this distinction, between the issues of whether a man has a right to do something and whether it is the right thing for him to do, causes no trouble. But sometimes it does, because sometimes we say that a man has a right to do something when we mean only to deny that it is the wrong thing for him to do. Thus we say that the captured soldier has a 'right' to try to escape when we mean, not that we do wrong to stop him, but that he has no duty not to make the attempt. We use 'right' this way when we speak

of someone having the 'right' to act on his own principles, or the 'right' to follow his own conscience. We mean that he does no wrong to proceed on his honest convictions, even though we disagree with these convictions, and even though, for policy or other reasons, we must force him to act contrary to them.

Suppose a man believes that welfare payments to the poor are profoundly wrong, because they sap enterprise, and so declares his full income-tax each year but declines to pay half of it. We might say that he has a right to refuse to pay, if he wishes, but that the Government has a right to proceed against him for the full tax, and to fine or jail him for late payment if that is necessary to keep the collection system working efficiently. We do not take this line in most cases; we do not say that the ordinary thief has a right to steal, if he wishes, so long as he pays the penalty. We say a man has the right to break the law, even though the State has a right to punish him, only when we think that, because of his convictions, he does no wrong in doing so.

These distinctions enable us to see an ambiguity in the orthodox question: Does a man ever have a right to break the law? Does that question mean to ask whether he ever has a right to break the law in the strong sense, so that the Government would do wrong to stop him, by arresting and prosecuting him? Or does it mean to ask whether he ever does the right thing to break the law, so that we should all respect him even though the Government should jail him?

If we take the orthodox position to be an answer to the first; and most important; question, then the paradoxes I described arise. But if we take it as an answer to the second, they do not. Conservatives and liberals do agree that sometimes a man does not do the wrong thing to break a law, when his conscience so requires. They disagree, when they do, over the different issue of what the State's response should be. Both parties do think that sometimes the State should prosecute. But this is not inconsistent with the proposition that the man prosecuted did the right thing in breaking the law.

The paradoxes seem genuine because the two questions are not usually distinguished, and the orthodox position is presented as a general solution to the problem of civil disobedience. But once the distinction is made, it is apparent that the position has been so widely accepted only because, when it is applied, it is treated as an answer to the second question but not the first. The crucial distinction is obscured by the troublesome idea of a right to conscience; this idea has been at the centre of most recent discussions of political obligation, but it is a red herring drawing us away from the crucial political questions. The state of a man's conscience may be decisive, or central, when the issue is whether he does something morally wrong in breaking the law; but it need not be decisive or even central when the issue is whether he has a right, in the strong sense of that term, to do so. A man does

not have the right, in that sense, to do whatever his conscience demands, but he may have the right, in that sense, to do something even though his conscience does not demand it.

If that is true, then there has been almost no serious attempt to answer the questions that almost everyone means to ask. We can make a fresh start by stating these questions more clearly. Does an American ever have the right, in a strong sense, to do something which is against the law? If so, when? In order to answer these questions put in that way, we must try to become clearer about the implications of the idea, mentioned earlier, that citizens have at least some rights against their government.

I said that in the United States citizens are supposed to have certain fundamental rights against their Government, certain moral rights made into legal rights by the Constitution. If this idea is significant, and worth bragging about, then these rights must be rights in the strong sense I just described. The claim that citizens have a right to free speech must imply that it would be wrong for the Government to stop them from speaking, even when the Government believes that what they will say will cause more harm than good. The claim cannot mean, on the prisoner-of-war analogy, only that citizens do no wrong in speaking their minds, though the Government reserves the right to prevent them from doing so.

This is a crucial point, and I want to labour it. Of course a responsible government must be ready to justify anything it does, particularly when it limits the liberty of its citizens. But normally it is a sufficient justification, even for an act that limits liberty, that the act is calculated to increase what the philosophers call general utility – that it is calculated to produce more over-all benefit than harm. So, though the New York City government needs a justification for forbidding motorists to drive up Lexington Avenue, it is sufficient justification if the proper officials believe, on sound evidence, that the gain to the many will outweigh the inconvenience to the few. When individual citizens are said to have rights against the Government, however, like the right of free speech, that must mean that this sort of justification is not enough. Otherwise the claim would not argue that individuals have special protection against the law when their rights are in play, and that is just the point of the claim.

Not all legal rights, or even Constitutional rights, represent moral rights against the Government. I now have the legal right to drive either way on Fifty-seventh Street, but the Government would do no wrong to make that street one-way if it thought it in the general interest to do so. I have a Constitutional right to vote for a congressman every two years, but the national and state governments would do no wrong if, following the amendment procedure, they made a congressman's term four years instead of two, again on the basis of a judgment that this would be for the general good.

But those Constitutional rights that we call fundamental like the right of free speech, are supposed to represent rights against the Government in the strong sense; that is the point of the boast that our legal system respects the fundamental rights of the citizen. If citizens have a moral right of free speech, then governments would do wrong to repeal the First Amendment that guarantees it, even if they were persuaded that the majority would be better off if speech were curtailed.

I must not overstate the point. Someone who claims that citizens have a right against the Government need not go so far as to say that the State is never justified in overriding that right. He might say, for example, that although citizens have a right to free speech, the Government may override that right when necessary to protect the rights of others, or to prevent a catastrophe, or even to obtain a clear and major public benefit (though if he acknowledged this last as a possible justification he would be treating the right in question as not among the most important or fundamental). What he cannot do is to say that the Government is justified in overriding a right on the minimal grounds that would be sufficient if no such right existed. He cannot say that the Government is entitled to act on no more than a judgment that its act is likely to produce, overall, a benefit to the community. That admission would make his claim of a right pointless, and would show him to be using some sense of 'right' other than the strong sense necessary to give his claim the political importance it is normally taken to have.

But then the answers to our two questions about disobedience seem plain, if unorthodox. In our society a man does sometimes have the right, in the strong sense, to disobey a law. He has that right whenever that law wrongly invades his rights against the Government. If he has a moral right to free speech, that is, then he has a moral right to break any law that the Government, by virtue of his right, had no right to adopt. The right to disobey the law is not a separate right, having something to do with conscience, additional to other rights against the Government. It is simply a feature of these rights against the Government, and it cannot be denied in principle without denying that any such rights exist.

These answers seem obvious once we take rights against the Government to be rights in the strong sense I described. If I have a right to speak my mind on political issues, then the Government does wrong to make it illegal for me to do so, even if it thinks this is in the general interest. If, nevertheless, the Government does make my act illegal, then it does a further wrong to enforce that law against me. My right against the Government means that it is wrong for the Government to stop me from speaking; the Government cannot make it right to stop me just by taking the first step.

This does not, of course, tell us exactly what rights men do have against the Government. It does not tell us whether the right of free speech includes

the right of demonstration. But it does mean that passing a law cannot affect such rights as men do have, and that is of crucial importance, because it dictates the attitude that an individual is entitled to take toward his personal decision when civil disobedience is in question.

Both conservatives and liberals suppose that in a society which is generally decent everyone has a duty to obey the law, whatever it is. That is the source of the 'general duty' clause in the orthodox position, and though liberals believe that this duty can sometimes be 'overridden', even they suppose, as the orthodox position maintains, that the duty of obedience remains in some submerged form, so that a man does well to accept punishment in recognition of that duty. But this general duty is almost incoherent in a society that recognizes rights. If a man believes he has a right to demonstrate, then he must believe that it would be wrong for the Government to stop him, with or without benefit of a law.

If he is entitled to believe that, then it is silly to speak of a duty to obey the law as such, or of a duty to accept the punishment that the State has no right to give.

Conservatives will object to the short work I have made of their point. They will argue that even if the Government was wrong to adopt some law, like a law limiting speech, there are independent reasons why the Government is justified in enforcing the law once adopted. When the law forbids demonstration, then, so they argue, some principle more important than the individual's right to speak is brought into play, namely the principle of respect for law. If a law, even a bad law, is left unenforced, then respect for law is weakened, and society as a whole suffers. So an individual loses his moral right to speak when speech is made criminal, and the Government must, for the common good and for the general benefit, enforce the law against him.

But this argument, though popular, is plausible only if we forget what it means to say that an individual has a right against the State. It is far from plain that civil disobedience lowers respect for law, but even if we suppose that it does, this fact is irrelevant. The prospect of utilitarian gains cannot justify preventing a man from doing what he has a right to do, and the supposed gains in respect for law are simply utilitarian gains. There would be no point in the boast that we respect individual rights unless that involved some sacrifice, and the sacrifice in question must be that we give up whatever marginal benefits our country would receive from overriding these rights when they prove inconvenient. So the general benefit cannot be a good ground for abridging rights, even when the benefit in question is a heightened respect for law.

But perhaps I do wrong to assume that the argument about respect for law is only an appeal to general utility. I said that a state may be justified in overriding or limiting rights on other grounds, and we must ask, before

rejecting the conservative position, whether any of these apply. The most important – and least well understood – of these other grounds invokes the notion of competing rights that would be jeopardized if the right in question were not limited. Citizens have personal rights to the State's protection as well as personal rights to be free from the State's interference, and it may be necessary for the Government to choose between these two sorts of rights. The law of defamation, for example, limits the personal right of any man to say what he thinks, because it requires him to have good grounds for what he says. But this law is justified, even for those who think that it does invade a personal right, by the fact that it protects the right of others not to have their reputations ruined by a careless statement.

The individual rights that our society acknowledges often conflict in this way, and when they do it is the job of government to discriminate. If the Government makes the right choice, and protects the more important at the cost of the less, then it has not weakened or cheapened the notion of a right; on the contrary it would have done so had it failed to protect the more important of the two. So we must acknowledge that the Government has a reason for limiting rights if it plausibly believes that a competing right is more important.

May the conservative seize on this fact? He might argue that I did wrong to characterize his argument as one that appeals to the general benefit, because it appeals instead to competing rights, namely the moral right of the majority to have its laws enforced, or the right of society to maintain the degree of order and security it wishes. These are the rights, he would say, that must be weighed against the individual's right to do what the wrongful law prohibits.

But this new argument is confused, because it depends on yet another ambiguity in the language of rights. It is true that we speak of the 'right' of society to do what it wants, but this cannot be a 'competing right' of the sort that may justify the invasion of a right against the Government. The existence of rights against the Government would be jeopardized if the Government were able to defeat such a right by appealing to the right of a democratic majority to work its will. A right against the Government must be a right to do something even when the majority thinks it would be wrong to do it, and even when the majority would be worse off for having it done. If we now say that society has a right to do whatever is in the general benefit, or the right to preserve whatever sort of environment the majority wishes to live in, and we mean that these are the sort of rights that provide justification for overruling any rights against the Government that may conflict, then we have annihilated the latter rights.

In order to save them, we must recognize as competing rights only the rights of other members of the society as individuals. We must distinguish

the 'rights' of the majority as such, which cannot count as a justification for overruling individual rights, and the personal rights of members of a majority, which might well count. The test we must use is this. Someone has a competing right to protection, which must be weighed against an individual right to act, if that person would be entitled to demand that protection from his government on his own title, as an individual, without regard to whether a majority of his fellow citizens joined in the demand.

It cannot be true, on this test, that anyone has a right to have all the laws of the nation enforced. He has a right to have enforced only those criminal laws, for example, that he would have a right to have enacted if they were not already law. The laws against personal assault may well fall into that class. If the physically vulnerable members of the community – those who need police protection against personal violence – were only a small minority, it would still seem plausible to say that they were entitled to that protection. But the laws that provide a certain level of quiet in public places, or that authorize and finance a foreign war, cannot be thought to rest on individual rights. The timid lady on the streets of Chicago is not entitled to just the degree of quiet that now obtains, nor is she entitled to have boys drafted to fight in wars she approves. There are laws – perhaps desirable laws – that provide these advantages for her, but the justification for these laws, if they can be justified at all, is the common desire of a large majority, not her personal right. If, therefore, these laws do abridge someone else's moral right to protest, or his right to personal security, she cannot urge a competing right to justify the abridgement. She has no personal right to have such laws passed, and she has no competing right to have them enforced either.

So the conservative cannot advance his argument much on the ground of competing rights, but he may want to use another ground. A government, he may argue, may be justified in abridging the personal rights of its citizens in an emergency, or when a very great loss may be prevented, or perhaps, when some major benefit can clearly be secured. If the nation is at war, a policy of censorship may be justified even though it invades the right to say what one thinks on matters of political controversy. But the emergency must be genuine. There must be what Oliver Wendell Holmes described as a clear and present danger, and the danger must be one of magnitude.

Can the conservative argue that when any law is passed, even a wrongful law, this sort of justification is available for enforcing it? His argument might be something of this sort. If the Government once acknowledges that it may be wrong – that the legislature might have adopted, the executive approved, and the courts left standing, a law that in fact abridges important rights – then this admission will lead not simply to a marginal decline in respect for law, but to a crisis of order. Citizens may decide to obey only those laws they personally approve, and that is anarchy. So the Government must insist

that whatever a citizen's rights may be before a law is passed and upheld by the courts, his rights thereafter are determined by that law.

But this argument ignores the primitive distinction between what may happen and what will happen. If we allow speculation to support the justification of emergency or decisive benefit, then, again, we have annihilated rights. We must, as Learned Hand said, discount the gravity of the evil threatened by the likelihood of reaching that evil. I know of no genuine evidence to the effect that tolerating some civil disobedience, out of respect for the moral position of its authors, will increase such disobedience, let alone crime in general. The case that it will must be based on vague assumptions about the contagion of ordinary crimes, assumptions that are themselves unproved, and that are in any event largely irrelevant. It seems at least as plausible to argue that tolerance will increase respect for officials and for the bulk of the laws they promulgate, or at least retard the rate of growing disrespect.

If the issue were simply the question whether the community would be marginally better off under strict law enforcement, then the Government would have to decide on the evidence we have, and it might not be unreasonable to decide, on balance, that it would. But since rights are at stake, the issue is the very different one of whether tolerance would destroy the community or threaten it with great harm, and it seems to me simply mindless to suppose that the evidence makes that probable or even conceivable.

The argument from emergency is confused in another way as well. It assumes that the Government must take the position either that a man never has the right to break the law, or that he always does. I said that any society that claims to recognize rights at all must abandon the notion of a general duty to obey the law that holds in all cases. This is important, because it shows that there are no short cuts to meeting a citizen's claim to right. If a citizen argues that he has a moral right not to serve in the Army, or to protest in a way he finds effective, then an official who wants to answer him, and not simply bludgeon him into obedience, must respond to the particular point he makes, and cannot point to the draft law or a Supreme Court decision as having even special, let alone decisive, weight. Sometimes an official who considers the citizen's moral arguments in good faith will be persuaded that the citizen's claim is plausible, or even right. It does not follow, however, that he will always be persuaded or that he always should be.

I must emphasize that all these propositions concern the strong sense of right, and they therefore leave open important questions about the right thing to do. If a man believes he has the right to break the law, he must then ask whether he does the right thing to exercise that right. He must remember that reasonable men can differ about whether he has a right against the Government, and therefore the right to break the law, that he thinks he has; and therefore that reasonable men can oppose him in good faith. He

must take into account the various consequences his acts will have, whether they involve violence, and such other considerations as the context makes relevant; he must not go beyond the rights he can in good faith claim, to acts that violate the rights of others.

On the other hand, if some official, like a prosecutor, believes that the citizen does not have the right to break the law, then he must ask whether he does the right thing to enforce it. In Chapter 8 I argue that certain features of our legal system, and in particular the fusion of legal and moral issues in our Constitution, mean that citizens often do the right thing in exercising what they take to be moral rights to break the law, and that prosecutors often do the right thing in failing to prosecute them for it. I will not anticipate those arguments here; instead I want to ask whether the requirement that Government take its citizens' rights seriously has anything to do with the crucial question of what these rights are.

The argument so far has been hypothetical: if a man has a particular moral right against the Government, that right survives contrary legislation or adjudication. But this does not tell us what rights he has, and it is notorious that reasonable men disagree about that. There is wide agreement on certain clearcut cases; almost everyone who believes in rights at all would admit, for example, that a man has a moral right to speak his mind in a non-provocative way on matters of political concern, and that this is an important right that the State must go to great pains to protect. But there is great controversy as to the limits of such paradigm rights, and the so-called 'anti-riot' law involved in the famous Chicago Seven trial of the last decade is a case in point.

The defendants were accused of conspiring to cross state lines with the intention of causing a riot. This charge is vague – perhaps unconstitutionally vague – but the law apparently defines as criminal emotional speeches which argue that violence is justified in order to secure political equality. Does the right of free speech protect this sort of speech? That, of course, is a legal issue, because it invokes the free-speech clause of the First Amendment of the Constitution. But it is also a moral issue, because, as I said, we must treat the First Amendment as an attempt to protect a moral right. It is part of the job of governing to 'define' moral rights through statutes and judicial decisions, that is, to declare officially the extent that moral rights will be taken to have in law. Congress faced this task in voting on the anti-riot bill, and the Supreme Court has faced it in countless cases. How should the different departments of government go about defining moral rights?

They should begin with a sense that whatever they decide might be wrong. History and their descendants may judge that they acted unjustly when they thought they were right. If they take their duty seriously, they must try to limit their mistakes, and they must therefore try to discover where the dangers of mistake lie.

They might choose one of two very different models for this purpose. The first model recommends striking a balance between the gifts of the individual and the demands of society at large. If the Government infringes on a moral right (for example, by defining the right of free speech more narrowly than justice requires), then it has done the individual a wrong. On the other hand, if the Government inflates a right (by defining it more broadly than justice requires) then it cheats society of some general benefit, like safe streets, that there is no reason it should not have. So a mistake on one side is as serious as a mistake on the other. The course of government is to steer to the middle, to balance the general good and personal rights, giving to each its due.

When the Government, or any of its branches, defines a right, it must bear in mind, according to the first model, the social cost of different proposals and make the necessary adjustments. It must not grant the same freedom to noisy demonstrations as it grants to calm political discussion, for example, because the former causes much more trouble than the latter. Once it decides how much of a right to recognize, it must enforce its decision to the full. That means permitting an individual to act within his rights, as the Government has defined them, but not beyond, so that if anyone breaks the law, even on grounds of conscience, he must be punished. No doubt any government will make mistakes, and will regret decisions once taken. That is inevitable. But this middle policy will ensure that errors on one side will balance out errors on the other over the long run.

The first model, described in this way, has great plausibility, and most laymen and lawyers, I think, would respond to it warmly. The metaphor of balancing the public interest against personal claims is established in our political and judicial rhetoric, and this metaphor gives the model both familiarity and appeal. Nevertheless, the first model is a false one, certainly in the case of rights generally regarded as important, and the metaphor is the heart of its error.

The institution of rights against the Government is not a gift of God, or an ancient ritual, or a national sport. It is a complex and troublesome practice that makes the Government's job of securing the general benefit more difficult and more expensive, and it would be a frivolous and wrongful practice unless it served some point. Anyone who professes to take rights seriously, and who praises our Government for respecting them, must have some sense of what that point is. He must accept, at the minimum, one or both of two important ideas. The first is the vague but powerful idea of human dignity. This idea, associated with Kant, but defended by philosophers of different schools, supposes that there are ways of treating a man that are inconsistent with recognizing him as a full member of the human community, and holds that such treatment is profoundly unjust.

The second is the more familiar idea of political equality. This supposes that the weaker members of a political community are entitled to the same concern and respect of their government as the more powerful members have secured for themselves, so that if some men have freedom of decision whatever the effect on the general good, then all men must have the same freedom. I do not want to defend or elaborate these ideas here, but only to insist that anyone who claims that citizens have rights must accept ideas very close to these.

It makes sense to say that a man has a fundamental right against the Government, in the strong sense, like free speech, if that right is necessary to protect his dignity, or his standing as equally entitled to concern and respect, or some other personal value of like consequence. It does not make sense otherwise.

So if rights make sense at all, then the invasion of a relatively important right must be a very serious matter. It means treating a man as less than a man, or as less worthy of concern than other men. The institution of rights rests on the conviction that this is a grave injustice, and that it is worth paying the incremental cost in social policy or efficiency that is necessary to prevent it. But then it must be wrong to say that inflating rights is as serious as invading them. If the Government errs on the side of the individual, then it simply pays a little more in social efficiency than it has to pay; it pays a little more, that is, of the same coin that it has already decided must be spent. But if it errs against the individual it inflicts an insult upon him that, on its own reckoning, it is worth a great deal of that coin to avoid.

So the first model is indefensible. It rests, in fact, on a mistake I discussed earlier, namely the confusion of society's rights with the rights of members of society. 'Balancing' is appropriate when the Government must choose between competing claims of right – between the Southerner's claim to freedom of association, for example, and the black man's claim to an equal education. Then the Government can do nothing but estimate the merits of the competing claims, and act on its estimate. The first model assumes that the 'right' of the majority is a competing right that must be balanced in this way; but that, as I argued before, is a confusion that threatens to destroy the concept of individual rights. It is worth noticing that the community rejects the first model in that area where the stakes for the individual are highest, the criminal process. We say that it is better that a great many guilty men go free than that one innocent man be punished, and that homily rests on the choice of the second model for government.

The second model treats abridging a right as much more serious than inflating one, and its recommendations follow from that judgment. It stipulates that once a right is recognized in clear-cut cases, then the Government should act to cut off that right only when some compelling reason is presented,

some reason that is consistent with the suppositions on which the original right must be based. It cannot be an argument for curtailing a right, once granted, simply that society would pay a further price for extending it. There must be something special about that further cost, or there must be some other feature of the case, that makes it sensible to say that although great social cost is warranted to protect the original right, this particular cost is not necessary. Otherwise, the Government's failure to extend the right will show that its recognition of the right in the original case is a sham, a promise that it intends to keep only until that becomes inconvenient.

How can we show that a particular cost is not worth paying without taking back the initial recognition of a right? I can think of only three sorts of grounds that can consistently be used to limit the definition of a particular right. First, the Government might show that the values protected by the original right are not really at stake in the marginal case, or are at stake only in some attenuated form. Second, it might show that if the right is defined to include the marginal case, then some competing right, in the strong sense I described earlier, would be abridged. Third, it might show that if the right were so defined, then the cost to society would not be simply incremental, but would be of a degree far beyond the cost paid to grant the original right, a degree great enough to justify whatever assault on dignity or equality might be involved.

It is fairly easy to apply these grounds to one group of problems the Supreme Court faced, imbedded in constitutional issues. The draft law provided an exemption for conscientious objectors, but this exemption, as interpreted by the draft boards, has been limited to those who object to all wars on religious grounds. If we suppose that the exemption is justified on the ground that an individual has a moral right not to kill in violation of his own principles, then the question is raised whether it is proper to exclude those whose morality is not based on religion, or whose morality is sufficiently complex to distinguish among wars. The Court held, as a matter of Constitutional law, that the draft boards were wrong to exclude the former, but competent to exclude the latter. None of the three grounds I listed can justify either of these exclusions as a matter of political morality. The invasion of personality in forcing men to kill when they believe killing immoral is just as great when these beliefs are based on secular grounds, or take account of the fact that wars differ in morally relevant ways, and there is no pertinent difference in competing rights or in national emergency. There are differences among the cases, of course, but they are insufficient to justify the distinction. A government that is secular on principle cannot prefer a religious to a non-religious morality as such. There are utilitarian arguments in favour of limiting the exception to religious or universal grounds – an exemption so limited may be less expensive to administer, and may allow

easier discrimination between sincere and insincere applicants. But these utilitarian reasons are irrelevant, because they cannot count as grounds for limiting a right.

What about the anti-riot law, as applied in the Chicago trial? Does the law represent an improper limitation of the right to free speech, supposedly protected by the First Amendment? If we were to apply the first model for government to this issue, the argument for the anti-riot law would look strong. But if we set aside talk of balancing as inappropriate, and turn to the proper grounds for limiting a right, then the argument becomes a great deal weaker. The original right of free speech must suppose that it is an assault on human personality to stop a man from expressing what he honestly believes, particularly on issues affecting how he is governed. Surely the assault is greater, and not less, when he is stopped from expressing those principles of political morality that he holds most passionately, in the face of what he takes to be outrageous violations of these principles.

It may be said that the anti-riot law leaves him free to express these principles in a non-provocative way. But that misses the point of the connection between expression and dignity. A man cannot express himself freely when he cannot match his rhetoric to his outrage, or when he must trim his sails to protect values he counts as nothing next to those he is trying to vindicate. It is true that some political dissenters speak in ways that shock the majority, but it is arrogant for the majority to suppose that the orthodox methods of expression are the proper ways to speak, for this is a denial of equal concern and respect. If the point of the right is to protect the dignity of dissenters, then we must make judgments about appropriate speech with the personalities of the dissenters in mind, not the personality of the 'silent' majority for whom the anti-riot law is no restraint at all.

So the argument fails, that the personal values protected by the original right are less at stake in this marginal case. We must consider whether competing rights, or some grave threat to society, nevertheless justify the anti-riot law. We can consider these two grounds together, because the only plausible competing rights are rights to be free from violence, and violence is the only plausible threat to society that the context provides.

I have no right to burn your house, or stone you or your car, or swing a bicycle chain against your skull, even if I find these to be natural means of expression. But the defendants in the Chicago trial were not accused of direct violence; the argument runs that the acts of speech they planned made it likely that others would do acts of violence, either in support of or out of hostility to what they said. Does this provide a justification?

The question would be different if we could say with any confidence how much and what sort of violence the anti-riot law might be expected to prevent. Will it save two lives a year, or two hundred, or two thousand? Two thousand

dollars of property, or two hundred thousand, or two million? No one can say, not simply because prediction is next to impossible, but because we have no firm understanding of the process by which demonstration disintegrates into riot, and in particular of the part played by inflammatory speech, as distinct from poverty, police brutality, blood lust, and all the rest of human and economic failure. The Government must try, of course, to reduce the violent waste of lives and property, but it must recognize that any attempt to locate and remove a cause of riot, short of a reorganization of society, must be an exercise in speculation, trial, and error. It must make its decisions under conditions of high uncertainty, and the institution of rights, taken seriously, limits its freedom to experiment under such conditions.

It forces the Government to bear in mind that preventing a man from speaking or demonstrating offers him a certain and profound insult, in return for a speculative benefit that may in any event be achieved in other if more expensive ways. When lawyers say that rights may be limited to protect other rights, or to prevent catastrophe, they have in mind cases in which cause and effect are relatively clear, like the familiar example of a man falsely crying 'Fire!' in a crowded theater.

But the Chicago story shows how obscure the causal connections can become. Were the speeches of Hoffman or Rubin necessary conditions of the riot? Or had thousands of people come to Chicago for the purposes of rioting anyway, as the Government also argues? Were they in any case sufficient conditions? Or could the police have contained the violence if they had not been so busy contributing to it, as the staff of the President's Commission on Violence said they were?

These are not easy questions, but if rights mean anything, then the Government cannot simply assume answers that justify its conduct. If a man has a right to speak, if the reasons that support that right extend to provocative political speech, and if the effects of such speech on violence are unclear, then the Government is not entitled to make its first attack on that problem by denying that right. It may be that abridging the right to speak is the least expensive course, or the least damaging to police morale, or the most popular politically. But these are utilitarian arguments in favor of starting one place rather than another, and such arguments are ruled out by the concept of rights.

This point may be obscured by the popular belief that political activists look forward to violence and 'ask for trouble' in what they say. They can hardly complain, in the general view, if they are taken to be the authors of the violence they expect, and treated accordingly. But this repeats the confusion I tried to explain earlier between having a right and doing the right thing. The speaker's motives may be relevant in deciding whether he does the right thing in speaking passionately about issues that may inflame or enrage the

audience. But if he has a right to speak, because the danger in allowing him to speak is speculative, his motives cannot count as independent evidence in the argument that justifies stopping him.

But what of the individual rights of those who will be destroyed by a riot, of the passer-by who will be killed by a sniper's bullet or the shopkeeper who will be ruined by looting? To put the issue in this way, as a question of competing rights, suggests a principle that would undercut the effect of uncertainty. Shall we say that some rights to protection are so important that the Government is justified in doing all it can to maintain them? Shall we therefore say that the Government may abridge the rights of others to act when their acts might simply increase the risk, by however slight or speculative a margin, that some person's right to life or property will be violated?

Some such principle is relied on by those who oppose the Supreme Court's recent liberal rulings on police procedure. These rulings increase the chance that a guilty man will go free, and therefore marginally increase the risk that any particular member of the community will be murdered, raped, or robbed. Some critics believe that the Court's decisions must therefore be wrong.

But no society that purports to recognize a variety of rights, on the ground that a man's dignity or equality may be invaded in a variety of ways, can accept such a principle. If forcing a man to testify against himself, or forbidding him to speak, does the damage that the rights against self-incrimination and the right of free speech assume, then it would be contemptuous for the State to tell a man that he must suffer this damage against the possibility that other men's risk of loss may be marginally reduced. If rights make sense, then the deress of their importance cannot be so different that some count not at all when others are mentioned.

Of course the Government may discriminate and may stop a man from exercising his right to speak when there is a clear and substantial risk that his speech will do great damage to the person or property of others, and no other means of preventing this are at hand, as in the case of the man shouting 'Fire' in a theater. But we must reject the suggested principle that the Government can simply ignore rights to speak when life and property are in question. So long as the impact of speech on these other rights remains speculative and marginal, it must look elsewhere for levers to pull.

I said at the beginning of this essay that I wanted to show what a government must do that professes to recognize individual rights. It must dispense with the claim that citizens never have a right to break its law, and it must not define citizens' rights so that these are cut off for supposed reasons of the general good. Any Government's harsh treatment of civil disobedience, or campaign against vocal protest, may therefore be thought to count against its sincerity.

One might well ask, however, whether it is wise to take rights all that seriously after all. America's genius, at least in her own legend, lies in not taking any abstract doctrine to its logical extreme. It may be time to ignore abstractions, and concentrate instead on giving the majority of our citizens a new sense of their Government's concern for their welfare, and of their title to rule.

That, in any even, is what former Vice-President Agnew seemed to believe. In a policy statement on the issue of 'weirdos' and social misfits, he said that the liberals' concern for individual rights was a headwind blowing in the face of the ship of state. That is a poor metaphor, but the philosophical point it expresses is very well taken. He recognized, as many liberals do not, that the majority cannot travel as fast or as far as it would like if it recognizes the rights of individuals to do what, in the majority's terms, is the wrong thing to do.

Spiro Agnew supposed that rights are divisive, and that national unity and a new respect for law may be developed by taking them more skeptically. But he is wrong. America will continue to be divided by its social and foreign policy, and if the economy grows weaker again the divisions will become more bitter. If we want our laws and our legal institutions to provide the ground rules within which these issues will be contested then these ground rules must not be the conqueror's law that the dominant class imposes on the weaker, as Marx supposed the law of a capitalist society must be. The bulk of the law – that part which defines and implements social, economic, and foreign policy – cannot be neutral. It must state, in its greatest part, the majority's view of the common good. The institution of rights is therefore crucial, because it represents the majority's promise to the minorities that their dignity and equality will be respected. When the divisions among the groups are most violent, then this gesture, if law is to work, must be most sincere.

The institution requires an act of faith on the part of the minorities, because the scope of their rights will be controversial whenever they are important, and because the officers of the majority will act on their own notions of what these rights really are. Of course these officials will disagree with many of the claims that a minority makes. That makes it all the more important that they take their decisions gravely. They must show that they understand what rights are, and they must not cheat on the full implications of the doctrine. The Government will not re-establish respect for law without giving the law some claim to respect. It cannot do that if it neglects the one feature that distinguishes law from ordered brutality. If the Government does not take rights seriously, then it does not take law seriously either.

John Finnis

RIGHTS

Source: John Finnis, *Natural Law and Natural Rights*, Clarendon Press, Oxford 1980, pp. 198-230.

Almost everything in this book is about human rights ('human rights' being a contemporary idiom for 'natural rights': I use the terms synonymously). For, as we shall see, the modern grammar of rights provides a way of expressing virtually all the requirements of practical reasonableness. Indeed, this grammar of rights is so extensive and supple in its reach that its structure is generally rather poorly understood; misunderstandings in discussions about rights, and about particular (alleged) rights and their extent, are consequently rather frequent. For this reason, and also because both the explanatory justification of claims of right and the resolution of many conflicting claims of right require us to identify values and principles which need not be expressed in terms of rights, the explicit discussion of rights occupies only this one chapter. But the reader who follows the argument of this chapter will readily be able to translate most of the previous discussions of community and justice, and the subsequent discussions of authority, law, and obligation, into the vocabulary and grammar of rights (whether 'natural' or 'legal').

This vocabulary and grammar of rights is derived from the language of lawyers and jurists, and is strongly influenced by its origins. So, although our own concern is primarily with the human or natural rights that may be appealed to whether or not embodied in the law of any community, it will be useful to devote the next section to a resume of the results of contemporary juristic analysis of rights-talk. For the logic that we can uncover in legal uses of the term 'a right' and its cognates will be found largely applicable for an understanding of 'moral' rights-talk. (Human or natural rights are the fundamental and general moral rights; particular or concrete moral rights – for example, James's right not to have his private correspondence read by John during his absence from the office today – can be spoken of as 'human' or 'natural', but it is more usual to speak of them as 'moral' rights, derived, of course, from the general forms of moral, i.e. human rights: the distinction thus drawn by usage is not, however, very firm or clear.)

The American jurist Hohfeld, building on earlier juristic work, published an analysis of rights which, though poorly understood by many of its exponents, satisfactorily accommodates a wide range of lawyers' uses

of the term 'a right' and its cognates – though not, as we shall see, all such uses. Departing from Hohfeld's own style of exposition, we may say that the fundamental postulates of his system are: (i) that all assertions or ascriptions of rights can be reduced without remainder to ascriptions of one or some combination of the following four 'Hohfeldian rights': (a) 'claim-right' (called by Hohfeld 'right *stricto sensu*'), (b). 'liberty' (called by Hohfeld 'privilege'), (c) 'power', and (d) 'immunity'; and (ii) that to assert a Hohfeldian right is to assert a three-term relation between one person, one act-description, and one other person. These two postulates, supplemented by a vocabulary partly in current use and partly devised *ad hoc*, generate the following logical relations (where A and B signify persons, natural or legal, and \emptyset stands for an act-description signifying some act):

(1) A has a claim-right that B should \emptyset , if and only if B has a duty to A to \emptyset ,

(2) B has a liberty (relative to A) to \emptyset , if and only if A has no-claim-right ('a no-right') that B should not \emptyset .

(2') B has a liberty (relative to A) not to \emptyset , if and only if A has no-claim-right ('a no-right') that B should \emptyset .

(3) A has a power (relative to B) to \emptyset , if and only if B has a liability to have his legal position changed by A's \emptyset -ing.

(4) B has an immunity (relative to A's \emptyset -ing), if and only if A has no power (i.e. a disability) to change B's legal position by \emptyset -ing.

It will be observed that the reference of ' \emptyset ' in (3) and (4) is to some act (a 'juridical act') which is defined at least partly by reference to its effect upon juridical relationships, whereas, in (1), (2), and (2'), ' \emptyset ' may denote either juridical acts or, more commonly, acts ('natural acts') fully definable without reference to their effect upon juridical relationships (even though the act may entail such an effect under a given legal regime and may accordingly be the subject of legal definition in that regime). It may be thought that in discussion of human rights, outside the context of particular legal regimes, relations on the model of (3) and (4) will play little or no part. But, although powers and immunities from the exercise of powers do indeed play a less prominent role in such discussions than claim-rights and liberties, it would be a mistake to overlook them. For wherever A can grant B permission to do something that otherwise he (B) would have the (moral) duty not to do, A can be said to have a right of much the same character as a Hohfeldian legal power; and wherever A's moral claim-rights, liberties, and powers cannot be affected merely by B's purported grants of permission to C, A's rights can be said to involve or be buttressed by a right of the same character as a Hohfeldian immunity.

Still, the most important of the aids to clear thinking provided by Hohfeld's schema is the distinction between A's claim-right (which has as

its correlative B's duty) and A's liberty (which is A's freedom from duty and thus has as its correlative the absence or negation of the claim-right that B would otherwise have). A claim-right is always either, positively, a right to be given something (or assisted in a certain way) by someone else, or, negatively, a right not to be interfered with or dealt with or treated in a certain way, by someone else. When the subject-matter of one's claim of right is one's own act(s), forbearance(s), or omission(s), that claim cannot be to a claim-right, but can only be to a liberty (or, in the case of juridical acts, to a power). Of course, one's liberty to act in the specified way may be enhanced and protected by a further right or set of rights, viz. the claim-right(s) not to be interfered with by B, C, D ... in exercising one's liberty. But a liberty thus protected by a claim-right is not a distinct type of Hohfeldian right; it is a conjunction, never logically necessary but always beneficial to the liberty-holder, of two distinct Hohfeldian relationships (each of which, of course, may be and normally is 'multital', i.e. obtains in identical form not only between A and B but also between A and C, A and D, A and ...). In the law, such conjunctions of a liberty with a claim-right are often supplemented by further conjoined rights; for example, by the claim-right to compensation in the event of wrongful (i.e. duty-breaking) interference with the liberty, and/or by the ancillary liberty to resort to self-help or to approach the courts in defence of one's substantive liberty, and/or by the power to institute legal proceedings or to waive compliance with the duty, etc. Most 'legal rights', even when not multital, are in fact combinations, often very complex, of Hohfeldian rights; Hohfeld's ambition was to enable any legal right, such as the undifferentiated legal 'right of A to £10 under this contract', to be resolved or translated without remainder into its component Hohfeldian rights.

It has, recently, however, been demonstrated that such a translation, while it may always be possible (at least in principle), may none the less fail to provide a full elucidation of lawyers' ascriptions of rights. Lawyers frequently talk about rights, not as three-term relations between two persons and an act of a certain type, but as two-term relations between persons and one subject-matter or (in a broad sense) thing: for example, someone's right to £10 under a contract, or to (a share in) a specified estate, or to the performing rights of an opera. The reason why such a two-term ascription of rights is preferred by lawyers, in many contexts, is this: it gives an intelligible unity to a temporal series of the many and varying sets of Hohfeldian rights which at different times one and the same set of rules provides in order to secure and give substance to one subsisting objective. To take the simplest example: if A has the right to £10 under a contract, he may at one time have a Hohfeldian claim-right to be paid £10 by B, and at a later time (B's debt having been assumed by C) another Hohfeldian claim-right, to be paid £10

by G; and the procedural rights (Hohfeldian claim-rights, powers, etc.) that A enjoys to enforce his right may be shifting, either in step or out of step with the shift between the earlier claim-right to be paid £10 and the later. Yet this series of differing sets of Hohfeldian rights is intelligibly unified; for the shifting applications of the various relevant legal rules all relate to one topic, the 'right to £10 under that contract', a non-Hohfeldian right of which the benefit, the burden, and the procedural props and incidents can all be shifted more or less independently of each other without affecting the 'right itself' which is the constant focus of the law's concern.

This explanation of the persistence of 'two-term' 'thing-oriented' rights-talk, amongst lawyers familiar with Hohfeld's 'three-term' 'act-oriented' schema of rights, will be worth bearing in mind when we turn to consider natural rights such as 'the right to life'. At the moment, however, it will be useful to conclude this short account of the logic of contemporary legal rights-talk by referring briefly to the jurisprudential debate about the proper explanation of rights and of the logic of rights-talk. This debate is provoked by two different problems, but the principal opposing answers to each of these problems overlap (as if there were only one problem evoking the opposing theses).

The first problem is technical. Before the Hohfeldian schema can be applied to any rule or to the translation of any non-Hohfeldian rights-talk, it is necessary to stipulate at least one further definitional postulate which Hohfeld omitted (at least, expressly) to supply. For, granted that B has a duty when, in virtue of a certain rule, he is required to act in a certain way, when shall we say that there is, correlative with this duty, a claim-right? And in whom does the claim-right vest? To these questions there are two opposing answers. The first answer is that there is a claim-right correlative to B's duty if and only if there is some ascertainable person A for whose benefit the duty has been imposed, in the sense that he is to be the recipient of the (presumable) advantage of B's performance of or compliance with his duty; and that that person A has the claim-right correlative to B's duty. The alternative answer is that there is some person A with a claim-right correlative to B's duty, if and only if there is some person A who has the power to take appropriate remedial action at law in the event of B's failure to comply with his duty. It seems that Hohfeld himself would have favoured the latter answer had he squarely faced the question. But neither answer is consistently reflected in legal discourse. Consider, for example, a body of law which (like English law) provides that, where B and C enter into a contract that C shall pay a sum to A, A has no power to enforce C's duty or to take any remedial action at law in the event of C's non-performance. On the first approach, we could express the purport of this law by saying that, under such a contract, A has a claim-right correlative to C's duty but cannot himself enforce or uphold his

claim-right at law. On the second approach, we would be bound to say that, in this state of the law, A simply has no rights under the contract made for his benefit. English lawyers, while agreed about the content of the relevant rules, in fact waver between these two approaches. Most state brusquely that in English law a third party (A) has no rights under a contract. Others, of high authority, say that such a third party does indeed have rights (meaning legal rights) which, however, he himself is unable to enforce at law.

Someone, therefore, who wishes to apply the Hohfeldian analysis must first stipulate which of these two meanings of 'claim-right' he is going to adopt, and must bear in mind that, whichever one he adopts, his subsequent ascriptions of claim-rights will not always correspond with legal usage. But beyond this first, technical problem, which is thus to be solved by simply stipulating how one will use the term 'claim-right', there is a philosophical problem not to be solved by stipulation. This is the question: What, if any, is the underlying principle, unifying the various types of relationships that are reasonably said to concern 'rights'? Or, more crudely: Is there some general explanation of what it is to have a right?

The principal competing answers to this broad question parallel and overlap with the above two proposals for providing a specific meaning for 'claim-right'. On the one hand, rights of all forms are said to be benefits secured for persons by rules regulating the relationships between those persons and other persons subject to those rules. These benefits are various: there is the advantage of being the recipient of other persons' acts of service or forbearances; the advantage of being legally or morally free to act; the advantage of being able to change one's own or others' legal position, and of being immune from such change (when of a form characteristically disadvantageous to anyone subject to the change) at the hands of others; the advantage of being able to secure any or all of the foregoing advantages by action at law, or at least compensation for wrongful denial of any of them; and finally, if we shift to the two-term thing-focused rights of lawyers' talk, there are the various advantages constituted by the things or states of affairs which are the subject-matter of such rights.

On the other hand, it has been argued that the foregoing 'benefit' or 'interest' theory of rights treats rights too indiscriminately, as if they were no more than the 'reflex' of rules which impose duties, or relieve from duties, or enable: duties to be created, shifted, or annulled. This, it is said, is to miss the point of rights. For, it is said, the point and unifying characteristic of rules which entail or create rights is that such rules specifically recognize and respect a person's choice, either negatively by not impeding or obstructing it (liberty and immunity) or affirmatively by giving legal or moral effect to it (claim-right and power). Indeed, in this view, moral rights are said to belong to a 'branch of morality which is specifically concerned to determine when

one person's freedom may be limited by another's [freedom]'. Just as the 'benefit' theory gives reason for adopting the first approach to fixing the meaning of Hohfeld's claim-right, so the 'choice' theory gives reason for adopting the second approach. As Hart puts it: 'The case of a right correlative to obligation then emerges as only a special case of legal power in which the right-holder is at liberty to waive or extinguish or to enforce or leave unenforced another's obligation.'

But Hart, the principal contemporary exponent of the 'choice' or 'will' theory of rights, has recently conceded ([...] the course of a firm defence of it as an explanation of lawyers' talk about 'ordinary' law) that that theory is inadequate to explain how the language of rights is deployed by those who, in assessing the justice or constitutionality of laws, treat 'certain freedoms and benefits ... as essential for the maintenance of the life, the security, the development, and the dignity of the individual' and thus speak of these freedoms and benefits as rights. In such discourse, 'the core of the notion of rights is neither individual choice nor individual benefit but basic or fundamental individual needs' in my terminology, basic aspects of human flourishing. In the light of this concession, it is not necessary here to settle the dispute between the 'benefit' and the 'choice' theories, as regards strictly legal rights. It suffices that, for the less restricted purposes of this chapter, we may safely speak of rights wherever a basic principle or requirement of practical reasonableness, or a rule derived therefrom, gives to A, and to each and every other member of a class to which A belongs, the benefit of (i) a positive or negative requirement (obligation) imposed upon B (including, *inter alia*, any requirement not to interfere with A's activity or with A's enjoyment of some other form of good) or of (ii) the ability to bring it about that B is subject to such a requirement, or of (iii) the immunity from being himself subjected by B to any such requirement.

In short, the modern vocabulary and grammar of rights is a many-faceted instrument for reporting and asserting the requirements or other implications of a relationship of justice from the point of view of the person(s) who benefit(s) from that relationship. It provides a way of talking about 'what is just' from a special angle: the viewpoint of the 'other(s)' to whom something (including, *inter alia*, freedom of choice) is owed or due, and who would be wronged if denied that something. And the contemporary debate shows that there is a strong though not irresistible tendency to specialize that viewpoint still further, so that the peculiar advantage implied (on any view) by any ascription of rights is taken to be the advantage of freedom of action, and/or power to affect the freedom of action of others.

All this can be better understood if we review the history of the word 'right(s)' and its antecedent in the classical language of European culture, viz. '*jus*'. For this history has a watershed, and it is essentially the same

watershed as we saw in the classification of types of justice (VII.6) and as we shall see again in the explanation of authority (IX. 4) and of the source or justification of obligation (XI.6, XI.8).

The word '*jus*' ('*ius*') begins its academic career in the Roman law. But its meaning in the Roman texts has become an object of controversy, particularly since scholars became aware of the watershed. (The Roman lawyers did not attempt a linguistic analysis of their framework juristic concepts.) So it is more convenient to begin this historical sketch by asking what '*jus*' was taken to mean by Thomas Aquinas, a philosophical theologian but fairly well acquainted with the Roman law systems of his day (especially the canon law of his Church). Here there is little ambiguity. Aquinas prefaces his elaborate study of justice with an analysis of *jus*, at the forefront of which he gives a list of meanings of '*jus*'. The primary meaning, he says, is 'the just thing itself' (and by 'thing', as the context makes clear, he means acts, objects, and states of affairs, considered as subject-matters of relationships of justice). One could say that for Aquinas '*jus*' primarily means 'the fair' or 'the what's fair'; indeed, if one could use the adverb 'aright' as a noun, one could say that his primary account is of 'arights' (rather than of rights). He then goes on to list secondary and derivative meanings of '*jus*' (relationships of justice): 'the art by which one knows or determines what is just' (and the principles and rules of this art, he adds, are the law), 'the place in which what is just is awarded' (i.e. in modern legal systems, the court), and finally 'the award (even if unjust) of the judge, whose role it is to do justice'.

If we now jump about 340 years to the treatise on law by the Spanish Jesuit Francisco Suarez, written c.1610, we find another analysis of the meanings of '*jus*'. Here the 'true, strict and proper meanings of '*jus*' is said to be: 'a kind of moral power [*facultas*] which every man has, either over his own property or with respect to that which is due to him'. The meaning which for Aquinas was primary is rather vaguely mentioned by Suarez and then drops out of sight; conversely, the meaning which for Suarez is primary does not appear in Aquinas's discussion at all. Somewhere between the two men we have crossed the watershed.

A few years after Suarez (and not altogether independently of him), Hugo Grotius begins his *De Jure Belli ac Pactis* (1625) by explaining that the meaning of the term *jus* (*jure*) in his title is 'that which is just'; but he then offers an elaborate exposition of 'another meaning of *jus*... which has reference to the person; this meaning of *jus* is: a moral quality of the person enabling [*competens*] him to have or to do something justly'. This, he says, is the meaning that hereafter he is going to treat as the word's 'proper or strict' meaning. Then he clarifies the reference of the phrase 'moral quality'. Such a quality can be 'perfect', in which case we call it a *facultas*, or 'imperfect', in which case we call it an *aptitudo*. When Roman

lawyers refer to one's *suum* (as in their defining principle of justice, *suum cuique tribuere*, which is synonymous with *jus suum cuique tribu[endi]*) they are referring, says Grotius, to this *facultas*. And '*facultas*' in turn has three principal meanings: (i) power (*potestas*), which may be power over oneself (called liberty: *libertas*) or power over others (e.g. *patria potestas*, the power of a father over his family); (ii) ownership (*dominium*) ...; and (iii) credit, to which corresponds debt (*debitum*). The last-mentioned meaning of *facultas* rather complicates the picture; the Roman law tradition had more of a hold on Grotius than on Suarez. But Grotius is still on the same side of the watershed as Suarez: *jus* is essentially something someone has, and above all (or at least paradigmatically) a power or liberty. If you like, it is Aquinas's primary meaning of '*jus*' but transformed by relating it exclusively to the beneficiary of the just relationship, above all to his doings and havings.

This shift of perspective could be so drastic as to carry the right-holder, and his right, altogether outside the juridical relationship which is fixed by law (moral or posited) and which establishes *jus* in Aquinas's sense: 'that which is just'. For within a few years Hobbes is writing:

... *jus*, and *lex*, right and law ... ought to be distinguished; because right, consisteth in liberty to do, or to forbear; whereas law, determineth and bindeth to one of them: so that law, and right, differ as much, as obligation, and liberty; which in one and the same matter are inconsistent.

Pushed as far as Hobbes's purposes, this contrast between law and rights deprives the notion of rights of virtually all its normative significance. Hobbes wishes to say that a man has most rights when he is in the 'state of nature', i.e. a vacuum of law and obligation, since 'in such a condition, every man has a right to everything; even to one another's body'. But we could just as well say that in such a condition of things, where nobody has any duty not to take anything he wants, no one has any rights. The fact that we could well say this shows that the ordinary modern idiom of 'rights' does not follow Hobbes all the way to his contrast between law and rights. Nor did Locke or Pufendorf; yet they did adopt his stipulation that 'a right' (*jus*) is paradigmatically a liberty. Their successors are those who today defend the 'choice' theory of rights, which as we saw in the preceding section is one eligible way of accounting for most, but not all, of the modern grammar of rights. And even those who defend the 'benefit' theory of rights are far from using the idiom of Aquinas, since (in common with ordinary language-speakers and lawyers in all modern languages) they think of 'a right' as something beneficial which a person has (a 'moral [including legal] quality' in Grotius's terminology), rather than 'that which is just in a given situation', the ensemble of juridical relationships established, by rules, between two or more persons in relation to some subject-matter (act, thing, or state of affairs).

There should be no question of wanting to put the clock back. The modern idiom of rights is more supple and, by being more specific in its standpoint or perspective, is capable of being used with more differentiation and precision than the pre-modern use of 'the right' (*jus*). But it is salutary to bear in mind that the modern emphasis on the powers of the right-holder, and the consequent systematic bifurcation between 'right' (including 'liberty') and 'duty', is something that sophisticated lawyers were able to do without for the whole life of classical Roman law. This is not the place to argue the translation of the Roman law texts. To establish how differently the term '*jus*' sounded in the ears of a Roman lawyer from the modern term 'a right', suffice it to cite one short passage from a student's manual of the second century ad, the Institutes of Gaius:

The *jura* of urban estates are such as the *jus* of raising a building higher and of obstructing the light of a neighbour's building, or of not raising [a building], lest the neighbour's light be obstructed

Obviously, we cannot replace the word '*jus*' in this passage with the word 'right' (meaning a right), since it is nonsense (or, if a special meaning can be found, it is far from the meaning of this passage) to speak of a 'right not to raise one's building, lest the neighbour's light be obstructed'. In Roman legal thought, '*jus*' frequently signifies the assignment made as between parties of justice according to law; and one party's 'part' in such an assignment might be a burden, not a benefit – let alone a power or liberty of choice.

And in this, the vocabulary of Roman law resembles more than one pre-modern legal vocabulary. Anthropologists studying certain African tribal regimes of law have found that in the indigenous language the English terms 'a right' and 'duty' are usually covered by a single word, derived from the verbal form normally translated as 'ought'. This single word (e.g. *swanelo* in Barotse, *tshwanelo* in Tswana) is thus found to be best translated as 'due'; for 'due' looks both ways along a juridical relationship, both to what one is due to do, and to what is due to one. This is linked, in turn, with a 'nuance in tribal societies, in that they stress duty and obligation, rather than the nuance of modern Western society, with a stress on right[s]'.

Let me conclude this review of the shift of meaning in the term 'right' and its linguistic predecessors by repeating that there is no cause to take sides as between the older and the newer usages, as ways of expressing the implications of justice in a given context. Still less is it appropriate to argue that 'as a matter of juristic logic' duty is logically prior to right (or vice versa). But when we come to explain the requirements of justice, which we do by referring to the needs of the common good at its various levels, then we find that there is reason for treating the concept of duty, obligation, or requirement as having a more strategic explanatory role than the concept

of rights. The concept of rights is not on that account of less importance or dignity: for the common good is precisely the good of the individuals whose benefit, from fulfilment of duty by others, is their right because required of those others injustice.

The modern language of rights provides, as I said, a supple and potentially precise instrument for sorting out and expressing the demands of justice. It is often, however, though not inevitably or irremediably, a hindrance to clear thought when the question is: What are the demands of justice? The aspects of human well-being are many; the commitments, projects, and actions that are apt for realizing that well-being are innumerable even for an individual contemplating only his own life-plan; when we contemplate the complexities of collaboration, co-ordination, and mutual restraint involved in pursuit of the common good, we are faced with inescapable choices between rationally eligible but competing possible institutions, policies, programmes, laws, and decisions. The strength of rights-talk is that, carefully employed, it can express precisely the various aspects of a decision involving more than one person, indicating just what is and is not required of each person concerned, and just when and how one of those persons can affect those requirements. But the conclusory force of ascriptions of rights, which is the source of the suitability of rights-talk for expressing conclusions, is also the source of its potential for confusing the rational process of investigating and determining what justice requires in a given context.

The Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations in December 1948, has been taken as a model, not only for the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966) but also for the European Convention for the Protection of Human Rights and Fundamental Freedoms (1952), itself the model for the very many Bills of Rights entrenched in the Constitutions of countries becoming independent since 1957, especially within the (British) Commonwealth. Such thoroughly pondered documents deserve close attention from anyone wishing to think out problems of human life in community in terms of rights, human or natural, or legal.

Two features of all these documents are immediately noticeable. First: each document employs not one but two principal canonical forms: (A) 'Everyone has the right to ...' and (B) 'No one shall be...'. Now it is clear that the formal logic of rights-talk permits, by simple conversion of terms and appropriate negations, a transformation from one form to the other. Hence a single canonical form would have been possible. The decision to use two different formulae cannot be ascribed to logical ineptitude or mere love of stylistic variation. The rationale of the decision can be detected by attending to the second feature common to all these documents: namely, that the exercise of the rights and freedoms' proclaimed is said to be 'subject

to limitation'. In some documents (e.g. the European Convention) these limitations are specified article by article, in conjunction with the specification of the respective rights. In others the limitation is pronounced only once, in generic terms. Thus Art. 29 of the Universal Declaration reads:

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

The grounds of limitation specified in Art. 29(2) are referred to again and again in the particular limiting clauses in the European Convention and other documents. The point to notice is that the limitations, in Art. 29(2), are said to be on the exercise of the 'rights and freedoms' specified in the document. This suggests that the limitations might not be applicable to those Articles which do not purport to define a right but instead impose a negative requirement (which could, as we have observed, have been expressed as a right, but was not). This in turn suggests a differentiation in the guiding force of the various Articles, as criteria for just laws and decisions. The Articles expressed in form (B) – 'No one shall be subjected to...' – are intended to be of conclusory force. But the Articles in form (A) have guiding force only as items in a process of rational decision-making which cannot reasonably be concluded simply by appealing to any one of these rights (notwithstanding that all are 'fundamental' and inalienable' and part of 'everyone's' entitlement).

Some of the Articles cast in the peremptory (B) form do themselves contain internal qualifications: for example, Art. 9 'No one shall be subjected to arbitrary arrest...'. But some are quite unqualified: for example, Art. 5 'No one shall be subjected to torture ...'. And none are subject (if this interpretation of the draftsmanship is correct) to the limitation on exercise of rights, stipulated in Art. 29. One's right not to be tortured (as we can indeed express it) is not a 'right' that one 'exercises' in the sense of Art. 29; acts of torture cannot therefore be justified by appeal to just requirements of public order'. The right not to be tortured, then, could be called an absolute right, to distinguish it from the rights that are 'inalienable' but subject 'in their exercise' to various limitations. Later in this chapter I consider whether it is reasonable to assert that some rights are absolute, i.e. whether this feature of the Universal Declaration can be justified.

For the moment, let us examine the specified grounds of limitation more closely. They are fourfold: (i) to secure due recognition for the rights and freedoms of others; (ii) to meet the just requirements of morality in a democratic society; (iii) to meet the just requirements of public order in a democratic society; (iv) to meet the just requirements of the general welfare in a democratic society.

The last-mentioned ground of limitation, (iv), attracts attention, not merely for its breadth and vagueness. Some theorists have treated rights as 'individuated political aims' which are not subordinate to conceptions of 'aggregate collective good' or the 'general interest' or 'general utility'. Such an account of rights would give reason for concluding that the reference to 'general welfare' in Art. 29 of the Universal Declaration is inept. Now that conclusion is indeed correct, but not for the reason just suggested. In defining or explaining rights we must not make reference to concepts which are incoherent or senseless; and, as I explained in Chapter V.6, conceptions of 'aggregate collective good' are incoherent, save in limited technical contexts. The ongoing life of a human community is not a limited technical context, and the common good of such a community cannot be measured as an aggregate, as utilitarians suppose.

The ineptitude of Art. 29's reference to 'the general welfare', as a distinct and separate ground for limiting rights, can be shown if we reflect on the first of the grounds proposed in that Article: to secure 'due recognition and respect for the rights and freedoms of others'. For amongst the rights proclaimed in the Universal Declaration are life, liberty, security of person (Art. 3), equality before the law (Art. 7), privacy (Art. 12), marriage and protection of family life (Art. 16), property (Art. 17), social security and the 'realization, through national effort and international co-operation ... of the economic, social and cultural rights indispensable for [everyone's] dignity and the free development of his personality' (Art. 22), participation in government (Art. 21), work, protection against unemployment, favourable remuneration of work (Art. 23), rest and leisure (Art. 24), 'a standard of living adequate for ... health and well-being ...' (Art. 25), education (Art. 26), enjoyment of the arts and a share in the benefits of scientific advancement (Art. 27), and 'a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised' (Art. 28). When we survey this list we realize what the modern 'manifesto' conception of human rights amounts to. It is simply a way of sketching the outlines of the common good, the various aspects of individual well-being in community. What the reference to rights contributes in this sketch is simply a pointed expression of what is implicit in the term 'common good', namely that each and everyone's well-being, in each of its basic aspects, must be considered and favoured at all times by those responsible for co-ordinating the common

life. Thus, when the human rights proclaimed in the Universal Declaration are spelt out, and amplified as in the subsequent United Nations Covenants, there is no room left for an appeal, against the 'exercise' of these rights, to 'general welfare'. Either 'general welfare' is a reference to a utilitarian aggregation, in which case it is merely illusory, or else it is a dangling and confused reference to a general concept at the end of a list of (most of) the particular components of that very concept.

What, then, are we to say about the other listed grounds of limitation: (ii) just requirements of morality in a democratic society and (iii) just requirements of public order in a democratic society? The argument of the preceding paragraph suggests that, given the breadth of the rights contemplated by the rest of the Universal Declaration, most of what these limitations import is already implicit in ground (i) in the list of grounds of limitation: viz. (i) due respect for the rights and freedoms of others. It must also be noted that neither 'morality' nor 'public order' is a term clear in its meaning (quite apart from any substantive controversies about the requirements of morality or public order). For in much modern usage, including legal usage, 'morality' signifies almost exclusively sexual morality and the requirements of decency, whereas, in philosophical usage, sexual morality (including decency) is merely one small portion of the requirements of practical reasonableness. This ambiguity affects the use of the term 'morality' even when it is conjoined with 'public' as in the frequent references of the European Convention and the later UN Conventions (1966) to 'public order or morals'. And as for 'public order', this phrase as used in the international documents suffers from the irremediable ambiguity that in common law systems it signifies absence of disorder (i.e. public peace, tranquillity, and safety), whereas the expressions *ordre public* and *orden público* used in the French and Spanish versions of those documents signify a civil law concept almost as wide as the concept of public policy in common law. For example, by using a version of the civil law concept of public order, the Second Vatican Council, in proclaiming the right to freedom of religious belief, profession, and practice, found that all the necessary limitations on this right could be expressed in terms of public order:

the protection of civil society, by civil authority, against abuses of this right must not be accomplished arbitrarily or with inequitable favour to any person or group, but must be according to juridical norms which are consistent with the objective moral order and which are required for [i] the effective protection of the rights of all citizens and of their peaceful coexistence, and [ii] a sufficient care for the authentic public peace of an ordered common life in true justice, and [iii] a proper upholding of public morality. All these factors constitute the fundamental part of the common good, and come under the notion of public order.

In the face of these terminological problems, why not say that the exercise of rights is to be limited only by respect for the rights of others? The answer must be that although it would be possible, given the logical reach of rights-talk, to express any desired restriction on rights in terms of other rights, the references to morality, public morality, public health, public order, etc., in all the contemporary declarations of rights, are neither conceptually redundant nor substantively unreasonable.

For, as we have seen, modern rights-talk is constructed primarily on the implicit model of a relationship between two individuals. So, in its primary signification (as distinct from its inherent logical reach) modern rights-talk most fittingly concerns benefits or advantages to individuals (in the limiting cases, to all individuals), 'not simply as members of a collectivity enjoying a diffuse common benefit in which all participate in indistinguishable and unassignable shares'. But public morality and public order (even in the restricted, common law sense) are both diffuse common benefits in which all participate in indistinguishable and unassignable shares. Hence, there is reason for referring to them specifically.

The fact is that human rights can only be securely enjoyed in certain sorts of milieu – a context or framework of mutual respect and trust and common understanding, an environment which is physically healthy and in which the weak can go about without fear of the whims of the strong. Consider, now, the concept of public morality, in its oddly restricted, sexual sense. Apart from such special arrangements as marriage, no one's human rights include a right that other men or women should not conduct themselves sexually in certain ways. But the great majority of any community that is reproducing itself will spend more than a quarter of their lives as children and then more than another quarter as parents bringing up children – in all, more than half their lifetimes. Now if it is the case that sexuality is a powerful force which only with some difficulty, and always precariously, can be integrated with other aspects of human personality and well-being – so that it enhances rather than destroys friendship and the care of children, for example – and if it is further the case that human sexual psychology has a bias towards regarding other persons as bodily objects of desire and potential sexual release and gratification, and as mere items in an erotically flavoured classification (e.g. 'women'), rather than as full persons with personal and individual sensitivities, restraints, and life-plans, then there is reason for fostering a milieu in which children can be brought up (and parents assisted rather than hindered in bringing them up) so that they are relatively free from inward subjection to an egoistic, impulsive, or depersonalized sexuality. Just what such a milieu concretely amounts to and requires for its maintenance is something that is matter for discussion and decision, elsewhere. But that this is an aspect of the common good, and fit matter for laws which limit the

boundless exercise of certain rights, can hardly be doubted by anyone who attends to the facts of human psychology as they bear on the realization of basic human goods. And while all this could be, and sometimes has been, expressed in terms of human rights, there is no need to consider inept, still less redundant, the reference to public morality, preferred by contemporary legislators with impressive unanimity.

Similarly, public order, in its restricted, common law sense, concerns the maintenance, not so much of the psychological substratum for mutual respect, but of the physical environment and structure of expectations and reliances essential to the well-being of all members of a community especially the weak. Inciting hatred amongst sections of the community is not merely an injury to the rights of those hated; it threatens everyone in the community with a future of violence and of other violations of right, and this threat is itself an injury to the common good and is reasonably referred to as a violation of public order. Rioting and bombing, and threats thereof, are not merely prejudicial to the rights of those killed or injured, but to everyone who has now to live in a community where such things happen. The operation of a grossly noisy aeroplane can be said to violate the rights of those awakened and deafened by it, but the problem is quite reasonably described as one of public order or public nuisance and not pinned down to the rights of those who happen so far to have been affected. The same goes for the notion of public health, a component in the civil law conception of *ordre public*, and a partner of the common law conception of public order.

This long but by no means elaborate discussion can now be summarized. On the one hand, we should not say that human rights, or their exercise, are subject to the common good; for the maintenance of human rights is a fundamental component of the common good. On the other hand, we can appropriately say that most human rights are subject to or limited by each other and by other aspects of the common good, aspects which could probably be subsumed under a very broad conception of human rights but which are fittingly indicated (one could hardly say, described) by expressions such as 'public morality', 'public health', 'public order'.

The foregoing section suggested general reasons for concluding that most assertions of right made in political discourse need to be subjected to a rational process of specification, assessment, and qualification, in a way that rather belies the peremptory or conclusory sound of '...have a right to ...'. This conclusion can be reinforced by attention to the logical structure of the assertions or claims made or recognized or conceded in Bills of Rights and in political discourse at large. We can say that these claims assert two-term relations between a (class of) persons and a (class of) subject-matter (life, body, free speech, property or ownership of property ...). Before such

assertions can reasonably be accorded a real conclusory force, they must be translated into specific three-term relations.

This translation involves specification of (a) the identity of the duty-holder(s) who must respect or give effect to A's right; (b) the content of the duty, in terms of specific act-descriptions, including the times and other circumstances and conditions for the applicability of the duty; (c) the identity or class-description of A, the correlative claim-right-holder(s) (in a Hohfeldian sense of 'claim-right'); (d) the conditions under which a claim-right-holder loses his claim-right, including the conditions (if any) under which he can waive the relevant duties; (e) the claim-rights, powers, and liberties of the claim-right-holder in the event of non-performance of duty; and, above all, (f) the liberties of the right-holder, including a specification of the limits of those liberties, i.e. a specification of his duties, especially of non-interference with the liberties of other holders of that right or of other recognized rights. Since (f) involves specifying the duties of right-holder A, it necessarily involves a specification of the claim-rights of B, and this specification in turn requires a complete specification of points (a) to (f) in respect, now, of B; which will require a similar specification in respect of B's duties of non-interference with C ...

Employing a useful contemporary jargon, we can say that people (or legal systems) who share substantially the same concept (e.g. of the human right to life, or to a fair trial) may none the less have different conceptions of that right, in that their specifications under (a) to (f) differ, partly because the circumstances they have in mind differ and partly because specification normally involves choices, by some authoritative process, from among alternatives that are more or less equally reasonable. As I said in relation to the lawyer's preference for two-term rights-talk, shifting and even competing specifications in terms of three-term rights can be intelligibly unified by their shared relationship to one topic, the two-term right (e.g. to life, or to a fair trial).

How is this process of specification and demarcation to be accomplished? How are conflicts of rights to be resolved? That is to say, how much interference with one person's enjoyment of his 'right', by other persons, in the exercise of the same right, and of other rights, is to be permitted? There is, I think, no alternative but to hold in one's mind's eye some pattern, or range of patterns, of human character, conduct, and interaction in community, and then to choose such specification of rights as tends to favour that pattern, or range of patterns. In other words, one needs some conception of human good, of individual flourishing in a form (or range of forms) of communal life that fosters rather than hinders such flourishing. One attends not merely to character types desirable in the abstract or in isolation, but also to the quality of interaction among persons; and one should not seek to realize

some patterned 'end-state' imagined in abstraction from the processes of individual initiative and interaction, processes which are integral to human good and which make the future, let alone its evaluation, incalculable.

So one will bear in mind, on the one hand, that art with all its (often competing) forms and canons really is better than trash, that culture really is better than ignorance, that reputation and privacy and property really are aspects of or important means to human well-being, that friendship and respect for human personality really are threatened by hatred, group bias, and anarchic sexuality, that children really do benefit from a formation that defines paths as well as illuminating horizons ... and, on the other hand, that servility, infantilism, and hypocrisy really are evils, that integrity and authenticity in self-constitution really is the indispensable centre to human well-being, that where 'paternalism' on the part of the political community is justified it is, like the educative function of parenthood itself, to be no more than a help and support to self-correction and self-direction, and that the resolution of all these problems of human rights is a process in which various reasonable solutions may be proposed and debated and should be settled by some decision-making procedure which is authoritative but which does not pretend to be infallible or to silence further rational discussion or to forbid the reconsideration of the decision. In short, just as the right of free speech certainly requires 'limitation', i.e. specification, in the interests both of free speech itself and of many other human goods, so too the procedure for settling the 'limits' of this and other human rights will certainly be enhanced in reasonableness by a wide freedom of cultural and political debate, in any society in which there is a sufficiently diffused respect for discussion and compromise as ways of being reasonable in community.

Human rights (not to mention the public order and morality which constitute a necessary framework for their enjoyment) can certainly be threatened by uses of rights-talk which, in bad faith or good, prematurely ascribe a conclusory or absolute status to this or that human right (e.g. property, contract, assembly, speech). However, if its logic and its place in practical reasonableness about human flourishing are kept in mind, the modern usage of claims of right as the principal counter in political discourse should be recognized (despite its dubious seventeenth-century origins and its abuse by fanatics, adventurers, and self-interested persons from the eighteenth century until today) as a valuable addition to the received vocabulary of practical reasonableness (i.e. to the tradition of 'natural law doctrine'). For first, the modern usage of rights-talk rightly emphasizes equality, the truth that every human being is a locus of human flourishing which is to be considered with favour in him as much as in anybody else. In other words, rights-talk keeps justice in the foreground of our considerations. Secondly, it tends to undercut the attractions of the 'calculations' of consequentialists (...)

Thirdly, since rights must be and are referred to by name, modern rights-talk amplifies the undifferentiated reference to 'the common good' by providing a usefully detailed listing of the various aspects of human flourishing and fundamental components of the way of life in community that tends to favour such flourishing in all.

It is sometimes argued that to prefer, and seek to embody in legislation, some conception or range of conceptions of human flourishing is unjust because it is necessarily to treat with unequal concern and respect those members of the community whose conceptions of human good fall outside the preferred range and whose activities are or may therefore be restricted by the legislation. As an argument warranting opposition to such legislation this argument cannot be justified; it is self-stultifying. Those who put forward the argument prefer a conception of human good, according to which a person is entitled to equal concern and respect and a community is in bad shape in which that entitlement is denied; moreover, they act on this preference by seeking to repeal the restrictive legislation which those against whom they are arguing may have enacted. Do those who so argue and so act thereby necessarily treat with unequal concern and respect those whose preferences and legislation they oppose? If they do, then their own argument and action is itself equally unjustified, and provides no basis for political preferences or action. If they do not (and this must be the better view), then neither do those whom they oppose. Nor can the argument be rescued by proposing that it escapes self-stultification by operating at a different 'level of discourse': for example, by being an argument about entitlements rather than about good. For there is no difficulty in translating any 'paternalist' political preference into the language of entitlement, by postulating an entitlement of every member of a community to a milieu that will support rather than hinder his own pursuit of good and the well-being of his children, or an entitlement of each to be rescued from his own folly. Whether or not such entitlements can be made out, they certainly pertain to the same level of discourse'. Nor, finally, can the argument we are considering be saved by a stipulation that arguments and political programmes motivated, as it is, by concern for 'equal respect and concern for other people' must be regarded as showing equal concern and respect for everyone, even those people whose (paternalist) arguments and legislation they reject and override. For, on the one hand, such a stipulation is merely an *ad hoc* device for escaping self-stultification; if overriding someone's political preferences and compelling him to live in a society whose ways he detests were *ipso facto* to show unequal concern and respect for him in one context, so it would be in any other. And, on the other hand, there is no difficulty in supposing that a 'paternalist' political programme may be based on a conception of what is required for equal concern and respect for all; for paternalists may well consider that,

for example, to leave a person to succumb to drug addiction on the plea that it is 'his business' is to deny him the active concern one would show for one's friend in like situation; or that to fail to forbid teachers to form sexual attachments with their pupils is to deny the children of negligent or 'wrong-headed' parents the protection that the paternalist legislator would wish for his own children, and is thus again a failure in 'equal concern and respect'. 'I wish someone had stopped me from ...': if this can rationally be said (as it can), it follows necessarily that even the most extensive and excessive programme of paternalism might be instituted without denial of equal concern and respect to anybody.

The pursuit of any form of human community in which human rights are protected by the imposition of duties will necessarily involve both selection of some and rejection of other conceptions of the common good, and considerable restrictions on the activities of everyone (including the legislators themselves, in their private capacities as persons subject to egoism and indifference to the real well-being of others). Some ways of pursuing the common good through legislation do indeed err by forgetting that personal authenticity, self-direction, and privacy for contemplation or play or friendship are aspects and important adjuncts of human well-being. Paternalist programmes guilty of this oversight should be criticized for that – a failure in commutative justice – and not for the quite different vice of discrimination, group bias, denial of equal concern and respect, a kind of refined selfishness, a failure in distributive justice. To judge another man mistaken, and to act on that judgment, is not to be equated, in any field of human discourse and judgment, with despising that man or preferring oneself.

The argument of this section has been dialectical. It has not needed to consider whether the principle 'everyone is entitled to equal concern and respect' is an adequately refined principle of justice. I said earlier that everyone is equally entitled to respectful consideration in the distribution of the common stock and the incidents of common life, including legal protection and roles and burdens. But I also indicated that this does not require 'equality of treatment' (i.e. identical treatment), even in such distributions. And it would certainly be wrong to suggest that any individual is bound or even permitted in justice to show everyone equal concern; and the same is true of those in authority in any particular community, with respect to those within and those outside their community.

Are there then no limits to what may be done in pursuit of protection of human rights or of other aspects of the common good? Are there no fixed points in that pattern of life which one must hold in one's mind's eye in resolving problems of rights? Are there no 'absolute' rights, rights that are not to be limited or overridden for the sake of any conception of the good life in community, not even 'to prevent catastrophe'?

The answer of utilitarians, of course, is clear: there are no absolute human rights, for there are no ways of treating a person of which it can be said, by a consistent utilitarian, 'Whatever the consequences, nobody must ever be treated in this way'. What is more striking, perhaps, is the fact that, whatever may be commonly professed in the modern world, no contemporary government or elite manifests in its practice any belief in absolute human rights. For every government that has the physical capacity to make its threats credible says this to its potential enemies: 'If you attack us and threaten to defeat us, we will kill all the hostages we hold; that is to say, we will incinerate or dismember as many of your old men and women and children, and poison as many of your mothers and their unborn offspring, as it takes to persuade you to desist; we do not regard as decisive the fact that they are themselves no threat to us; nor do we propose to destroy them merely incidentally, as an unsought-after side-effect of efforts to stop your armed forces in their attack on us; no, we will destroy your non-combatants precisely because you value them, and in order to persuade you to desist.' Those who say this, and have been preparing elaborately for years to act upon their threat (and most of them acted upon it massively, between 1943 and 1945, to say no more), cannot be said to accept that anyone has, in virtue of his humanity, any absolute right. These people subscribe to Bills of Rights which, like the Universal Declaration and its successors, clearly treat the right not to be tortured as (unlike most of the other inalienable' rights there proclaimed) subject to no exceptions. But their military policy involves courses of action which in all but name are torture on an unprecedented scale, inflicted for the same motive as an old-fashioned torturer seeking to change his victim's mind or the-minds of those next in line for the torture. Nor is this just a matter of governments and soldiers; many of these governments are freely elected, and their policy (as distinct from the dangers of pursuing it) arouses scant controversy among their electorates. And who does not notice the accomplished smoothness with which the issue is avoided by many who write about rights? In its classical representatives the tradition of theorizing about natural law has never maintained that what I have called the requirements of practical reasonableness, as distinct from the basic human values or basic principles of practical reasonableness, are clearly recognized by all or even most people – on the contrary. So we too need not hesitate to say that, notwithstanding the substantial consensus to the contrary, there are absolute human rights. For the seventh of the requirements of practical reasonableness (...) is this: that it is always unreasonable to choose directly against any basic value, whether in oneself or in one's fellow human beings. And the basic values are not mere abstractions; they are aspects of the real well-being of flesh-and-blood individuals. Correlative to the exceptionless duties entailed by this requirement are, therefore, exceptionless or absolute

human claim-rights – most obviously, the right not to have one's life taken directly as a means to any further end; but also the right not to be positively lied to in any situation (e.g. teaching, preaching, research publication, news broadcasting) in which factual communication (as distinct from fiction, jest, or poetry) is reasonably expected; and the related right not to be condemned on knowingly false charges; and the right not to be deprived, or required to deprive oneself, of one's procreative capacity; and the right to be taken into respectful consideration in any assessment of what the common good requires.

Because these are not two-term rights in heed of translation into three-term right-duty relationships, but are claim-rights strictly correlative to duties entailed by the requirements of practical reasonableness, the difficult task of giving precision to the specification of these rights has usually been undertaken in terms of a casuistry of duties. And because an unwavering recognition of the literally immeasurable value of human personality in each of its basic aspects (the solid core of the notion of human dignity) requires us to discount the apparently measurable evil of looming catastrophes which really do threaten the common good and the enjoyment by others of their rights, that casuistry is more complex, difficult, and controvertible in its details than can be indicated in the foregoing summary list of absolute rights. That casuistry may be framed in terms of 'direct' choices or intentions, as against 'indirect' effects, and of 'means' as against 'incidents'. But reasonable judgments in this casuistry are not made by applying a 'logic' of 'directness and indirectness' of 'means and ends' or 'intended and unintended', drawn from the use of those notions in other enquiries or contexts. Rather, such judgments are arrived at by a steady determination to respect human good in one's own existence and the equivalent humanity or human rights of others, when that human good and those human rights fall directly into one's care and disposal – rather than trade off that good and those rights against some vision of future 'net best consequences', consequences which overall, both logically and practically, one cannot know, cannot control or dispose of, and cannot evaluate.

Steven Lukes

FIVE FABLES ABOUT HUMAN RIGHTS

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I propose to discuss the topic of human rights as seen from the standpoint of five doctrines or outlooks that are dominant in our time. I don't propose to be fair to these outlooks. Rather, I shall treat them in the form of Weberian "ideal types" or caricatures – a caricature being an exaggerated and simplified representation that, when it succeeds, captures the essentials of what is represented.

The principle that human rights must be defended has become one of the commonplaces of our age. Sometimes the universality of human rights has been challenged: Those historically proclaimed are said to be Eurocentric and inappropriate, or only partly appropriate, to other cultures and circumstances. Alternative, or partly alternative, lists are therefore proposed. Sometimes the historic lists are said to be too short, and further human rights are proposed, from the second unto the third and fourth generation. Sometimes the appeal to human rights, or the language in which it is couched, is said to be unhelpful or even counterproductive in particular campaigns or struggles-in advancing the condition and position of women, say, or in promoting Third World development. But virtually no one actually rejects the principle of defending human rights.

The principle is accepted virtually everywhere. It is also violated virtually everywhere, though much more in some places than in others. Hence the pressing need for organizations such as Amnesty International and Helsinki Watch. But the virtually universal acceptance, even when hypocritical, is very important. It gives such organizations whatever political leverage they have in otherwise unpromising situations. I want to focus on the significance of that acceptance by asking: What ways of thinking does accepting the principle of defending human rights deny and what ways of thinking does it entail? I shall proceed in two stages, first by asking what it would be like not to accept the principle and second what it would be like to take it seriously.

First, then, let us ask: What would principle of human rights look like? I invite you to join me in a series of thought experiments. Let us imagine a series of places in which the principle in question is unknown – places neither utopian nor dystopian but in other respects as attractive as you like,

yet which simply lack this particular feature, whose distinctiveness we may thereby hope to understand better.

Let us imagine a society called Utilitaria. Utilitarians are public-spirited people who display a strong sense of collective purpose: Their single and exclusive goal, overriding all others, is to maximize the overall utility of everyone. Traditionally this has meant “the Greatest Happiness of the Greatest Number” (which is the national motto) but in more recent times there have been disputes about what utility is. Some say it is the same as welfare, as measured by objective indicators such as income, access to medical facilities, housing, and so on. Others, of a more mystical cast of mind, see it as a kind of inner glow, an indefinable subjective state that everyone aims at. Others say it is just the satisfaction of whatever desires anyone happens to have. Others say it is the satisfaction of the desires people ought to have or of those they would have if they were fully informed and sensible. Yet others, gloomier in disposition, say it is just the avoidance of suffering: For them the “greatest happiness” means the “least unhappiness.” Utilitarians are distinctly philistine people, who are disinclined to see utility in high culture and never tire of citing the proverb that “pushpin is as good as poetry”, though there is a minority tradition of trying to enrich the idea of utility to include the more imaginative sides of life. Despite these differences, all Utilitarians seem agreed on one principle: What counts is what can be counted. The prized possession of every Utilitarian is a pocket calculator. When faced with the question “What is to be done?” they invariably translate it into the question “Which option will produce the greatest sum of utility?” Calculating is the national obsession.

Technocrats, bureaucrats, and judges are the most powerful people in Utilitaria and are much admired. They are particularly adept at calculating, using state-of-the-art computers of ever-increasing power. There are two political parties that vie for power – the Act Party and the Rule Party. The Act Party (Actors) encourages the use of calculators on all possible occasions, whereas the Rule Party (Rulers) discourages ordinary people from using calculators in everyday life. According to the Rule Utilitarians, people should live by conventions or rules of thumb devised and interpreted by the technocrats, bureaucrats, and judges according to their superior methods of calculation.

Life in Utilitaria has its hazards. Another national proverb is “*utilitas populi suprema lex est.*” The problem is that no one can ever know for sure what sacrifices he or she may be called on to make for the greater benefit of all. The Rule Party’s rules of thumb are some protection, since they tend to restrain people from doing one another in, but they can always be overridden if a technocrat or a bureaucrat or a judge makes a calculation that overrides them. Everyone remembers the famous case at the turn of the last century of

an army captain from a despised minority group who was tried on a charge of treason and found guilty of passing documents to an enemy power. The captain was innocent of the charge but the judges and the generals agreed that the doctrine of “*utilitas populi*” must prevail. Some intellectuals tried to make a fuss, but they got nowhere. And recently, six people were found guilty of exploding a bomb at a time of trouble for Utilitaria caused by fanatical terrorists from a neighboring island. It turned out that the six were innocent, but “*utilitas populi*” prevailed and the six stayed in jail.

These hazards might seem troubling to an outsider, but Utilitarians put up with them. Their public spiritedness is so highly developed that they are ready to sacrifice themselves, and indeed one another, whenever calculations show this to be necessary.

Let us now visit a very different kind of country called Communitaria. Communitarians are much friendlier people, at least to one another, than are the Utilitarians, but they also have a high degree of public spiritedness and collective purpose. Perhaps “friendliness” is too superficial a word to describe the way they relate to one another. Their mutual bonds constitute their very being. They cannot imagine themselves unencumbered and apart from them; they call such a nightmarish vision “atomism” and recoil with horror from it. Their selves are, as they say, “embedded” or “situated.” They identify with one another and identify themselves as so identifying. Indeed, you could say that the Communitarians’ national obsession is identity.

Communitaria used to be a very *gemutlich* place, much given to agricultural metaphors. Communitarians were attached to the soil, they cultivated their roots, and they felt a truly organic connection with one another. They particularly despised the Utilitarians’ calculative way of life, relying instead on shared understandings and living according to slowly evolving traditions and customs with which they would identify and by which they would be identified.

Communitaria has undergone great changes, however. Waves of immigration and movements of people and modern communications have unsettled the old *gemutlich* ways, creating a far more heterogeneous and pluralistic society. New Communitaria is a true Community of Communities – a patchwork quilt of subcommunities, each claiming recognition for the peculiar value of its own specific way of life. New Communitarians believe in multiculturalism and practice what they call the “politics of recognition”, recognizing each subcommunity’s identity with scrupulous fairness in the country’s institutions. Positive discrimination is used to encourage those that are disadvantaged or in danger of extinction; quotas ensure that all are fairly represented in institutions and in the professions. The schools and colleges teach curricula that exactly reflect the exactly equal value of those communities’ cultures and none (certainly not the old *gemutlich* one) is allowed to predominate.

The new Communitarians feel at home in their subcommunities but also take pride in being Communitarians who recognize one another's subcommunitarian identities. But there are problems. One is the inclusion-exclusion problem, how to decide which subcommunities are included in the overall framework and which are not. Some groups get very angry at being included in subcommunities that recognize them but which they don't recognize; others get angry because they recognize themselves as a subcommunity but are not so recognized by others. Recently, for example, a province of Communitaria in which one subcommunity forms a majority passed a law prohibiting members of their subcommunity and all immigrants from attending schools that teach in the language prevailing in the rest of Communitaria and in which most of its business is conducted. The immigrants in particular are none too pleased. A related problem is the vested interests problem; once on the official list, subcommunities want to stay there for ever and keep others out. Moreover, to get on the list, you have to be, or claim to be, an indigenous people or the victims of colonialism, and preferably both.

Then there is the relativism problem. It is obligatory in Communitaria to treat the beliefs and practices of all recognized subcommunities as equally valid, or rather, none is to be treated as more or less valid than any other. But different subcommunities have incompatible beliefs and some engage in very nasty practices, mistreating, degrading, and persecuting groups and individuals, including their own members. Typically, the definers of subcommunitarian identities are men, and their women are sometimes oppressed, marginalized, and badly abused. Some require their womenfolk to conceal their identities in hooded black shrouds. Some practice female circumcision. Unfortunately, Communitaria's official relativism must allow such practices to continue unmolested. Recently, a famous writer from one subcommunity wrote a satirical novel that was partly about the life of another subcommunity's holy religious prophet and founder. Hotheads from the latter subcommunity became wildly incensed at what they took to be an insult to their faith and publicly burned the book in question. Their fanatical and fiery leader, in the home community from which they came, ordered that the famous writer be killed. Other writers from other sub-communities all over the world signed petitions and manifestoes in the famous writer's defense. Communitaria's government dealt with this tricky situation in a suitably relativistic way, declaring that the practice of writing satirical novels was no more but also no less valid than the practice of protecting one's faith against insults.

And finally there is the deviant problem. Not all Communitarians fit well into the subcommunitarian categories. Recalcitrant individuals have been known to reject the category by which they are identified or to pretend that

they don't belong to it. Some cross or refuse to acknowledge identifying boundaries, and some even reject the very idea of such boundaries. Non-, ex-, trans-, and anti-identifiers are not the happiest people in Communitaria. They feel uneasy because they tend to be seen as "not true Communitarians," as disloyal, even as rootless cosmopolitans. Fortunately, however, they are few and unorganized. Least of all are they likely to form another subcommunity.

Now I propose to take you to another place, Proletaria, so called, nostalgically, after the social class that brought it into being but that has long since withered away, along with all other social classes. Proletaria has no state; that too has withered away. Indeed, it is not a particular country but embraces the entire world. Human and other rights existed in prehistoric times but these too have withered away. The Proletariat in its struggle sometimes used to appeal to such rights for tactical reasons, but they are no longer needed in Proletariat truly human communist society.

Proletarians lead extremely varied and fulfilling lives. They hunt in the morning, fish in the afternoon, rear cattle in the evening, and criticize after dinner. They develop an enormous range of skills, and no one has to endure a one-sided, crippled development, to fit into a given job description or role, or an exclusive sphere of activity from which one cannot escape. The division of labor has also withered away. People are no longer identified with the work they do or the functions they fulfill. As the prophet Gramsci put it, no one is even an intellectual, because everyone is (among all the other things he or she is). They organize their factories like orchestras and watch over automated machinery; they organize production as associated producers, rationally regulating their interchange with nature, bringing it under their common control, under conditions most favorable to, and worthy of, human nature; and they elect representatives to communes on an annual basis. As the prophet Engels foretold, the government of persons has been replaced by the administration of things, and by the conduct of processes of production. The distinction between work and leisure has withered away; so also has that between the private and the public spheres of life. Money, according to the prophet Marx, "abases all the gods of mankind and changes them into commodities" and has "deprived the whole world, both the human world and nature, of their own proper value." Now the whole cash nexus has withered away. Now at last, as foretold, "love can only be exchanged for love, trust for trust, etc.," influence can be exercised only through stimulation and encouragement and all relations to man and to nature express one's real individual life. An arcadian abundance exists: All produce what they are able to and get what they need. People identify with one another but not, as among the Communitarians, because they belong to this or that community or subcommunity, but rather because they are equally and fully

human. Relations between the sexes are fully reciprocal and prostitution is unknown. In Proletaria there is no single dominating obsession or way of living: Everyone develops his or her rich individuality, as all-sided in its production as in its consumption, free of external impediments. There is no longer any contradiction between the interest of the separate individual or the individual family and the interest of all individuals who have intercourse with one another.

The only problem with Proletarian life is that there are no problems. For with communism, as Marx prophesied, we see the definitive resolution of the antagonism between man and nature and between man and man. It is the true solution of the conflict between existence and essence, between objectification and self-affirmation, between freedom and necessity, between individual and species. It is the solution of the riddle of history and knows itself to be this solution.

Yet visitors to Proletaria (from other planets) are sometimes disbelieving of what they behold. They find it hard to credit that such perfection could be attained and, moreover, maintained without friction. How, they wonder, can the planning of production run so smoothly without markets to provide information through prices about demand? Why are there no conflicts over allocating resources? Don't differing styles of living get in each other's way? Aren't there personal conflicts, between fathers and sons, say, or lovers? Do Proletarians suffer inner turmoil? No sign of any such problems is visible. Proletarians seem able to combine their rich individuality, developing their gifts in all directions, with fully communal social relations. Only sometimes does it occur to the extraterrestrial visitors that they may have lost their way and landed elsewhere than Earth, and that these are not human beings at all.

Human rights are unknown in the three places we have visited, but for different reasons. Utilitarians have no use for them because those who believe in them are, by definition, disposed to question that Utilitarian calculations should be used in all circumstances. As the Utilitarian state's founder, Jeremy Bentham, famously remarked, the very idea of such rights is not only nonsense but "nonsense on stilts", for "there is no right which, when the abolition of it is advantageous to society, should not be abolished." The Communitarians have always rejected such rights because of their abstractness from real, living, concrete, local ways of life. As that eloquent old Communitarian speechifier Edmund Burke put it, their "abstract perfection" is their "practical defect," for "the liberties and the restrictions vary with times and circumstances, and admit of infinite modifications, that cannot be settled upon any abstract rule." A no less eloquent new Communitarian, Alasdair MacIntyre, broadens the attack: "natural or human rights", he says, "are fictions – just as is utility." They are like "witches and unicorns" for

“every attempt to give good reasons for believing that there are such rights has failed.” According to MacIntyre, forms of behavior that presuppose such rights “always have a highly specific and socially local character, and ... the existence of particular types of social institution or practice is a necessary condition for the notion of a claim to the possession of a right being an intelligible type of human performance.” As for Proletarians, their rejection of human rights goes back to the prophet of their revolution, Karl Marx, who described talk of them as “ideological nonsense” and “obsolete verbal rubbish”, for two reasons. First, they tended to soften hearts in the heat of the class struggle; the point was to win, not feel sympathy for class enemies. It was, as Trotsky used to say, a matter of “our morals” versus “theirs”, and Lenin observed that “our morality is entirely subordinated to the interests of the proletariat’s class struggle... To a communist all morality lies in this united discipline and conscious mass struggle against the exploiters. We do not believe in an eternal morality, and we expose the falseness of all the fables about morality.” And second, Marx regarded human rights as anachronistic because they had been necessary only in that prehistorical era when individuals needed protection from injuries and dangers generated out of an imperfect, conflictual, class-ridden world. Once that world was transformed and a new world born, emancipated human beings would flourish free from the need for rights, in abundance, communal relations, and real freedom to develop their manifold human powers.

What does our thought experiment so far suggest that we are accepting when we accept the principle of defending human rights? First, that they are restraints on the pursuit of what is held to be “advantageous to society”, however enlightened or benevolent that pursuit may be. Second, that they invoke a certain kind of abstraction from “specific and socially local” practices. They involve seeing persons behind their identifying (even their self-identifying) labels and securing them a protected space within which to live their lives from the inside, whether in conformity with or deviation from the life their community requires of or seeks to impose on them. And third, that human rights presuppose a set of permanent existential facts about the human condition: that human beings will always face the malevolence and cruelty of others, that there will always be scarcity of resources, that human beings will always give priority to the interests of themselves and those close to them, that there will always be imperfect rationality in the pursuit of individual and collective aims, and that there will never be an unforced convergence in ways of life and conceptions of what makes it valuable. In the face of these facts, if all individuals are to be equally respected, they will need public protection from injury and degradation, and from unfairness and arbitrariness in the allocation of basic resources and in the operation of the laws and rules of social life. You will not be able to rely on others’

altruism or benevolence or paternalism. Even if the values of those others are your own, they can harm you in countless ways, by sheer miscalculation or mistake or misjudgment. Limited rationality puts you in danger from the well meaning no less than from the malevolent and the selfish. But often the values of others will not be your own. You will need protection to live your own life from the inside, pursuing your own conception of what is valuable, rather than a life imposed on you. For this, social and cultural preconditions must exist. Thus Kurds in Turkey must not be treated as “Mountain Turks” but have their own institutions, education, and language. Now we can see the sense in which human rights are individualistic and the sense in which they are not. To defend human rights is to protect individuals from utilitarian sacrifices, communitarian impositions, and from injury, degradation, and arbitrariness, but doing so cannot be viewed independently of economic, legal, political, and cultural conditions and may well involve the protection and even fostering of collective goods, such as the Kurdish language and culture. For to defend human rights is not merely to protect individuals. It is also to protect the activities and relations that make their lives more valuable, activities and relations that cannot be conceived reductively as merely individual goods. Thus the right to free expression and communication protects artistic expression and the communication of information; the right to a fair trial protects a well-functioning legal system; the right to free association protects democratic trade unions, social movements, and political demonstrations, and so on.

I turn now to the second stage of my inquiry. What would it be like to take human rights, thus understood, seriously? To approach this question, let me propose a further thought experiment. Let us now imagine worlds with human rights, where they are widely recognized and systematically honored.

One place where some people think rights flourish is Libertariania. Libertarian life runs exclusively and entirely on market principles. It is located somewhere in Eastern Europe or maybe in China in the near future. Everything there can be bought and sold; everything of value has a price and is subject to Libertarians’ national obsession: cost-benefit analysis. The most basic and prized of all their rights is the right to property, beginning with each Libertarian’s ownership of himself or herself and extending (as Libertarians like to say) to whatever they “mix their labor with.” They own their talents and abilities and, in developing and deploying these, Libertarians claim the right to whatever rewards the market will bring. They love to tell the story of Wilt Chamberlain, the famous basketball player whom thousands are willing to pay to watch. Would it be just, they ask, to deprive him of these freely given rewards in order to benefit others?

They also attach great importance to the right of engaging in voluntary transfers of what they rightly own – transactions of giving, receiving, and

exchanging, which they use to the advantage of their families, through private education and the inheritance of wealth. There is a very low level of regressive taxation which is used only to maintain Libertaria's system of free exchange, the infrastructure of the economy, the army and the police, and the justice system to enforce free contracts. Compulsory redistribution is prohibited since it would violate people's unlimited rights to whatever they can earn. Inequalities are great and growing, based on social class, as well as on differential talents and efforts. There is no public education, no public health system, no public support for the arts or recreation; there are no public libraries, no public transport, roads, parks, or beaches. Water, gas, electricity, nuclear power, garbage disposal, postal services, and telecommunications are all in private hands, as are the prisons. The poor, the ill, the handicapped, the unlucky, and the untalented are given some sympathy and a measure of charity, but Libertarians do not regard their worsening plight as any kind of injustice, since they do not result from anyone's rights being infringed.

No one is tortured in Libertaria. All have the right to vote, the rule of law prevails, there is freedom of expression (in media controlled by the rich) and of association (though trade unions cannot have closed shops or call strikes, since that would violate others' rights). There is equal opportunity in the sense that active discrimination against individuals and groups is prohibited, but there is an unequal start to the race for jobs and rewards; the socially privileged have a considerable advantage stemming from their social backgrounds. All can enter the race but losers fall by the wayside. The successful are fond of quoting the national motto: "The Devil take the hindmost!" The homeless sleeping under bridges and the unemployed are, however, consoled by the thought that they have the same rights as every other Libertarian.

Are human rights taken seriously enough in Libertaria? I believe the answer is no, for two reasons. First, as I said, the basic civil rights are respected there – there is no torture, there is universal franchise, the rule of law, freedom of expression and association and formal equality of opportunity. Yet the possessors of these rights are not equally respected; not all Libertarians are treated as equally human. To adapt a phrase of Anatole France, those who sleep under the bridges have the same rights as those who don't. Though all Libertarians have the right to vote, die worst off, the marginalized and the excluded, do not have equal power to organize and influence political decisions, or equal access to legal processes, or an equal chance to articulate and communicate their points of view, or an equal representation in Libertarian public and institutional life, or an equal chance in the race for qualifications, positions, and rewards.

The second reason for thinking that Libertaria fails to take human rights seriously enough relates to the distinctively Libertarian rights. Libertarians

believe that they have an unlimited right to whatever rewards their abilities and efforts can bring in the marketplace and the unlimited right to make voluntary choices that benefit themselves and their families. No Libertarian ever takes a step outside the narrowly self-interested point of view of advancing his own, or at most his family's, interests. He is impervious to the thought that others might have more urgent claims on resources, or that some of his advantages are gained at the expense of others, or that the structure of Libertarian life is a structure of injustice.

Are human rights in better shape elsewhere? Where is the principle of defending them more securely defended? Where are all human beings more securely treated as equally human? Where are they protected against Utilitarian sacrifices for the advantage of society and against Communitarian imposition of a particular way of life, against the Communist illusion that a world beyond rights can be attained and against the Libertarian illusion that a world run entirely on market principles is a world that recognizes *diem fully*?

Is Egalitaria such a place? Egalitaria is a one-status society in the sense that all Egalitarians are treated as being of equal worth. One person's well-being and freedom are regarded as just as valuable as any other's. The basic liberties, the rule of law, toleration, equality of opportunity are all constitutionally guaranteed. But they are also made real by Egalitarians' commitment to rendering everyone's conditions of life such that these equal rights are of equal worth to their possessors. They differ about how to do this, but one currently influential view is that a basic economic and political structure can be created to make everyone better off while giving priority to bettering the condition of the worst off. On this view no inequality is justified unless it results in making the worst off better off than they would otherwise be. All agree that progressive taxation and extensive welfare provision should ensure a decent minimum standard of life for all. But there is also within Egalitarian culture a momentum toward raising that minimum through policies that gradually eliminate involuntary disadvantage. That momentum is fueled by a sense of injustice that perpetually tracks further instances of illegitimate inequality, or involuntary disadvantage – whether these result from religion or class or ethnicity or gender, and so on – and seeks policies that will render Egalitarians more equal in their conditions of life.

Could there be such a place as Egalitaria? More precisely, is Egalitaria feasible: Could it be attained anywhere in the present world? And is it viable: Could it be maintained stably over time? Some doubt that it is feasible. Some say that, even if feasible, it is not viable. Some say that it might be viable, if it were feasible, but it is not. Others say that it is neither feasible nor viable. I fear that there are good reasons for these doubts. I shall suggest two major reasons for doubting the attainability and the maintainability of Egalitaria

and conclude by suggesting what they imply about how we should view the principle of defending human rights.

The first reason for thinking that Egalitaria may, after all, be a mirage is what we may call the libertarian constraint.

This is found, above all, in the economic sphere. Egalitarians are (or should be) extremely concerned to achieve maximal economic growth. For them equality cannot be traded off against efficiency. Rather, they seek most efficiently to achieve an economy that will attain the highest level of equality of condition at the highest feasible economic level. The worst off (and everyone else) under a more equal system should, they hope, be at least as well off as the worst off (and everyone else) under a less equal system. If the cost of more equality is a lesser prospect of prosperity for everyone or most people, their hopes of attaining, let alone maintaining, Egalitaria, at least under conditions of freedom, are correspondingly dimmed.

Egalitarians these days are (or should be) keen students of Libertarian economics. They know what markets can and cannot do. On the one hand, they know when and how markets can fail. Markets reproduce existing inequalities of endowments, resources, and power; they can generate external diseconomies, such as pollution, which they cannot deal with; they can, when unchecked, lead to oligopolies and monopolies; they can ravage the environment, through deforestation and in other ways; they can produce destabilizing crises of confidence with ramifying effects; they can encourage greed, consumerism, commercialism, opportunism, political passivity, indifference, and anonymity, a world of alienated strangers. They cannot fairly allocate public goods, or foster social accountability in the use of resources or democracy at the workplace, or meet social and individual needs that cannot be expressed in the form of purchasing power, or balance the needs of present and future generations.

On the other hand, they are indispensable and cannot be simulated. There is no alternative to markets as a signaling device for transmitting in a decentralized process information about tastes, productive techniques, resources, and so on, or as a discovery procedure through which restless individuals, in pursuit of entrepreneurial profit, seek new ways of satisfying needs, and even, as the Prophet Marx himself acknowledged, as an arena of freedom and choice. Egalitarians know that command economies can only fail in comparison with market economies, and they know that, even if the market can in various ways be socialized, "market socialism" is, at best, an as yet ill-defined hope.

They also know that no economy can function on altruism and moral incentives alone, and that material incentives, and notably the profit motive, are indispensable to a well-functioning economy. Most work that needs to be done, and in particular entrepreneurial functions, must draw on motives that

derive from individuals' pursuit of material advantage for themselves and for their families. They know, in short, that any feasible and viable economy must be based on market processes and material incentives, however controlled and supplemented in order to render them socially accountable, thereby creating and reinforcing the very inequalities they earnestly seek to reduce.

The second major reason for skepticism that Egalitaria can be attained and, if so, maintained we may call the communitarian constraint. This is found primarily in the cultural sphere. Egalitarians hope that everyone can, at least when considering public and political issues, achieve a certain kind of abstraction from their own point of view and circumstances. They hope that they can view anyone, including themselves, impartially, seeing everyone's life as of equal worth and everyone's well-being and freedom as equally valuable. Professor Rawls has modeled such a standpoint in his image of an "Original Position" where individuals reason behind a "veil of ignorance"; others have tried to capture it in other ways.

Yet Egalitarians must admit that this is not a natural attitude in the world in which we live and that it seems in increasingly many places less and less so. Yugoslavs turned almost overnight into Serbs and Croats. It mattered urgently to some Czechoslovaks that they are Slovaks and it matters deeply to some Canadians that they are Quebecois. Even Black or Hispanic or Asian Americans are insisting on seeing themselves in politically correct ways. It seems that belonging to certain kinds of encompassing groups with cultures of self-recognition, and identifying and being identified as so belonging, is increasingly essential to many people's well-being. To the extent that this is so, the "politics of equal dignity" that would treat individuals equally, irrespective of their group affiliations, is put in jeopardy.

Consider the idea of fraternity. Unlike liberty and equality, which are conditions to be achieved, who your brothers are is determined by the past. You and they form a collectivity in contradistinction to the rest of mankind, and in particular to that portion of it that you and they see as sources of danger or objects of envy or resentment. The history of fraternity during the course of the French Revolution is instructive. It began with a promise of universal brotherhood; soon it came to mean patriotism; and eventually the idea was used to justify militancy against external enemies and purges of enemies within. The revolutionary slogan "*la fraternité ou la mort*" thus acquired a new and ominous meaning, promising violence first against nonbrothers and then against false brothers. Collective or communal identity always requires, as they say, an "other"; every affirmation of belonging includes an explicit or implicit exclusion clause. The Egalitarians' problem is to render such exclusions harmless.

The problem is to attain a general acceptance of multiple identities that do not conflict. But how many situations in the present world are favorable

to such an outcome? The least promising, and most explosive, seems to be that of formerly communist federal states containing peoples with historical enmities at different levels of economic development. The least unpromising, perhaps, are polyethnic societies composed mainly of various immigrant groups who demand the right freely to express their particularity within the economic and political institutions of the dominant culture. But there, too, wherever that right is interpreted as a collective right to equal recognition, a threat to egalitarian outcomes is raised: that of treating individuals only or mainly as the bearers of their collective identities” and thus of building not Egalitaria but Communitaria.

Here, then, are two major reasons for doubting that Egalitaria can be realized anywhere in this world (let alone across it as a whole). They very naturally lead those impressed by them to take up anti-egalitarian political positions. They constitute the two main sources of right wing thinking today – libertarian and communitarian. Both point to severe limitations on the capacity of human beings to achieve that abstraction or impartial regard that could lead them to view all lives as equally valuable. Both are sufficiently powerful and persuasive to convince reasonable people to reject egalitarian politics.

How, in the light of this last fact, should we view human rights? I think it follows that the list of human rights should be kept both reasonably short and reasonably abstract. It should include the basic civil and political rights, the rule of law, freedom of expression and association, equality of opportunity, and the right to some basic level of material well-being, but probably no more. For only these have a prospect of securing agreement across the broad spectrum of contemporary political life, even though disagreement breaks out again once you ask how these abstract rights are to be made concrete, how the formal is to become real. Who are the possessors of civil and political rights? Nationals? Citizens? Guest-workers? Refugees? All who are residents within a given territory? Exactly what does the rule of law require? Does it involve equalizing access to legal advice and representation? Public defenders? The jury system? Equal representation of minorities on juries? The right to challenge jurors without cause? When are freedom of expression and association truly free? Does the former have implications for the distribution and forms of ownership of mass media and the modes and principles of their public regulation? Does the latter entail some form of industrial democracy that goes beyond what currently obtains? What must be equal for opportunities to be equal? Is the issue one of nondiscrimination against an existing background of economic, social, and cultural inequalities or is that background itself the field within which opportunities can be made more equal? What is the basic minimum? Should it be set low to avoid negative incentive effects? If so, how low? Or should there be a basic income

for all, and, if so, should that include those who could but don't work, or don't accept work that is on offer? And how is a basic minimum level of material well-being to be conceived and measured – in terms of welfare, or income, or resources, or level of living, or basic capabilities, or in some other way?

To defend these human rights is to defend a kind of “egalitarian plateau” on which such political conflicts and arguments can take place. I hope I have convinced you that there are powerful reasons against abandoning that plateau for any of the first four countries we have visited, even if the principle of defending human rights cannot take us any further toward Egalitaria.

The plateau is under siege. One army flies a communitarian flag and practices “ethnic cleansing.” It has already destroyed Mostar and other places and is currently threatening Kosovo and Macedonia. It is laying siege to Sarajevo, slaughtering and starving men, women, and children, and raping women, only because they have the wrong collective identity. We are complicitly allowing this to go on, within the very walls of modern, civilized Europe. The barbarians are within the gates.

I believe that the principle of defending human rights requires an end to our complicity and appeasement. We must raise the siege of Sarajevo and defeat the barbarians by force. Only then can we resume the journey to Egalitaria, which, if it can be reached at all, can only be reached from the plateau of human rights.

Judith N. Shklar

PUTTING CRUELTY FIRST

Source: "Democratiya":

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Many years ago, a deeply religious Roman Catholic friend said to me, with some irritation, "Why must you liberals bring everything down to cruelty?" What could he have meant? He was, and is, the most gentle and kindly of men, and a principled defender of political freedom and social reform. As a Christian, he obviously regarded cruelty as a dreadful vice. He was not defending cruelty or abandoning liberal politics; rather, he was explicitly rejecting the mentality that does not merely abhor brutality, but that regards cruelty as the *summum malum*, the most evil of all evils. And he was reminding me that, although intuitively, most of us might agree about right and wrong, we also, and of far more significance, differ enormously in a way we rank the virtues and vices. Those who put cruelty first, as he guessed, do not condemn it as a sin. They have all but forgotten the Seven Deadly Sins, especially those that do not involve cruelty. Sins are transgressions of a divine rule and offenses against God; pride, as the rejection of God, must always be the worst one, which gives rise to all the others. Cruelty, as the willful inflicting of physical pain on a weaker being in order to cause anguish and fear, however, is a wrong done entirely to another creature. When it is marked as a supreme evil, it is judged so in and of itself, and not because it signifies a rejection of God or any other higher norm. It is a judgement made from within a world where cruelty occurs as part both of our normal private life and our daily public practice. By putting it irrevocably first – with nothing above it, and with nothing to excuse or forgive acts of cruelty – one closes off any appeal to any order other than that of actuality.

To hate cruelty with utmost intensity is perfectly compatible with biblical religiosity, but to put it first does place one inalterably outside the sphere of revealed religion. For it is a purely human verdict upon human conduct, and so puts religion at a certain distance. But while this tension is inherent in the decision to put cruelty first, it is not just religious skepticism that prompts this moral choice. It emerges, rather, from the recognition that the habits of the faithful do not differ from those of the faithless in their brutalities, and that Machiavelli had triumphed long before he had ever written a line. To put cruelty first, therefore, is to be at odds with both religion and politics. My Catholic friend perhaps thought all this through carefully, but I suspect that

he merely sensed it, for I think few people have really considered most of the implications of putting cruelty first. That is why one might well investigate the matter more closely, and one way of illuminating it is to examine the most distinguished of those moralists who hated cruelty most of all, specifically Montaigne and his disciple Montesquieu.

Why should one hate cruelty with the utmost intensity? Montaigne thought it an entirely psychological question. He looked first of all into himself and found that the sight of cruelty instantly filled him with revulsion. It was a wholly negative reaction, for as he put it, “the horror of cruelty impels me more to clemency than any model of clemency could draw me on.” There was nothing positive here, no particular approval of charity or humane feeling. Indeed, he distrusted soft men: they tended to be unstable and easily became cruel. Cruelty, like lying, repels instantly, because it is “ugly.” It is a vice that disfigures human character. We need not doubt Montaigne’s word that he simply hated cruelty, and as he put it, “What we hate, we take seriously.” But although his loathing of cruelty was a personal choice, it was not random, nor did it occur in an intellectual or historical vacuum.

It is clear that well before he began to write his *Essays*, Montaigne had lost most of his faith in Christianity. The next step for him and his contemporaries was a return to the philosophers of classical antiquity, and Montaigne never ceased to depend on their wisdom. There was, however, a danger in this neo-paganism that he could not ignore. Given his sensibilities, he was bound to recognise that Machiavelli was also a refugee from Christian restraints, and that this most outspoken of enemies of revealed religion was also the foremost teacher of cruelty. It must have seemed to Montaigne that cruelty was everywhere, that it was the ubiquitous moral disease of Europe. He put it first among the vices, because it had become the most conspicuous and the least reformed evil, especially in the course of the then-current wars of religion. The first three of the *Essays* are, therefore, not surprisingly aimed at Machiavelli.

The opening one turns Machiavelli upside down. In *The Prince*, Machiavelli had asked whether it was more efficient for a self-made ruler to govern cruelly or leniently, and had decided that, on the whole, cruelty worked best. Montaigne raised the question that the prince’s victims might ask: was it better to plead for pity or display defiance in the face of cruelty? There are no certain answers, he concluded. Victims have no certainties. They must hope, without guide books to help them. The second of the *Essays* deals with the sadness of those whose children and friends die. And the third suggests that one might make precautions against the terrors of princes. If there were an established review of the deeds of princes as soon as they died, their passion for posthumous fame might restrain them here and now. Even Machiavelli had noted that an indiscriminate butcher was not likely to enjoy

the best of reputations in history, even if he should have succeeded in all his enterprises. Montaigne was only too aware of how cruel the passion for fame made ambitious princes, and he did not really place much hope in any restraining devices. But by reading *The Prince*, as one of its victims might, Montaigne set a great distance between his own and Machiavelli's classicism. Putting cruelty first was thus a reaction to the new science of politics. It did not reconcile Montaigne to revealed religion. Indeed, it only reinforced his conviction that Christianity had done nothing to inhibit cruelty. He could not even admit that his hatred of cruelty was a residual form of Christian morality. On the contrary, it only exacerbated his antagonism to established religiosity.

For Montaigne, and for Montesquieu after him, the failure of Christianity from a moral point of view was made perfectly manifest by the conduct of the Spaniards in the New World. Montaigne regarded them as the supreme example of the failure of Christianity. It preached a purer doctrine than any other religion but had less influence on human conduct. Mohammedans and pagans tended to behave better. What an opportunity was lost when the New World was discovered by Spaniards! How might the New World have flourished if Greek or Roman virtues had been introduced to the natives! Instead, there was unexampled slaughter for the sake of gold, with hypocritical talk of conversions to Christianity. For hypocrisy and cruelty go together, and are, as it were, unified in zeal. Zeal had taken the place of both religion and philosophy, and it works wonders "when it seconds our propensity to hatred, cruelty, ambition, avarice, detraction, rebellion", and the like. This indictment went well beyond the tradition of Christian reformers who had always invoked the memory of Christ and the Apostles to rebuke a wayward Church. To Montaigne, the distance between profession and behaviour appeared unbridgeable. Montesquieu, indeed, did use the image of a charitable Christ to shame a cruel Inquisitor, but only ironically, for he put the argument into the mouth of an Iberian Jew. For Montesquieu, the professions no longer mattered. All religions were to be treated as forms of social control – necessary, but not, on the whole, admirable. The Spaniards were, to be sure, "superbly Christian" as they went about their slaughter, but in fact they were like all other conquerors, past and present. But we are meant to feel more than a touch of disgust at this species of cruelty.

The Spaniards, as Montesquieu saw them, had created a new nightmare world. They had not only through prejudice denounced all gentle and humane feelings, but had also contrived to reorder reality. When they encountered a population with habits and an appearance unlike their own, they found it easy to say that God could not have put souls into such ugly bodies, that clearly those creatures lacked the higher rational dualities. Once the Spaniards had begun their cruelties, it became especially important to say

that “it is impossible to suppose these creatures to be men, because allowing them to be men, a suspicion might arise that we were not Christian.” For both Montesquieu and Montaigne, the Spaniards in the New World served as the ultimate example of public cruelty. It was the triumph of Machiavellism by those who claimed to be its chief opponents. Here, cruelty and pious pretense had joined to prove Machiavelli right.

Because cruelty is made easier by hypocrisy and self-deception, they are bound to stand high on the list of vices that begins with cruelty. And in fact, Uzbek, the intelligent and cruel tyrant of Montesquieu’s *Persian Letters*, is typically self-deceived. He believes that the women who are tormented in his seraglio all love him, since they are all so unlike him. Dishonesty becomes here less a violation of truth than an aid to cruelty. And other traditional vices that are remote from cruelty did not shock Montesquieu at all. He was not disturbed by any manifestation of genuine affection, even if it was incestuous. And Montaigne regarded the knot of lying, treachery, malice, and cruelty as far worse than adultery, so much berated by other moralists. Lust, in fact, was not a fault at all. We are, Montaigne argued, made infinitely worse by our self-hatred in performing the most natural and necessary acts. What would be more appalling than to hide in the dark when we create a new life, while we destroy life with whoops of joy in broad daylight as we cry, “Kill, rob, betray?” It was this transvaluation of values that took Montaigne well beyond the mere rejection of Christian doctrine. Indeed, it put him outside most of the conventions of his world. The contempt that Europeans felt for their physical nature was, in his view, just one more sign of mankind’s general moral imbecility.

In spite of their own advice and habitual good humor, hatred of cruelty reduced both Montaigne and Montesquieu to a profound philosophical misanthropy. Montesquieu was a master of black humor and satire, while Montaigne had simple outbursts of loathing for his fellowman. In one essay of really concentrated disgust, he decided that it was better to laugh rather than cry at mankind, because the former “expresses more disdain,” which is appropriate, since “we can never be despised more than we deserve.” It is not even a matter of intelligent evil, but of inanity. “We are not so wretched as we are vile.” Misanthropy is surely one of the hazards of putting cruelty first. If it horrifies us, we must, given the facts of daily life, always be in a state of outrage, overwhelmed, like Hamlet, by the density of evil. Montaigne was neither so paralyzed nor so desperate as to suggest that mankind simply stop reproducing itself, but at times he could not think of a single thing to say in favour of humanity. For positive qualities, he therefore looked to those ultimate victims of human cruelty, the animals.

Animals are our moral superiors in every significant way, according to Montaigne. They seek only “tangible” and “attainable” goods, while we have

only “wind and smoke” as out portion. They have an unimpaired sense of reality, seeking only repose, security, wealth, and peace, while we pursue reason, knowledge, and renown, which bring us nothing but grief. With the exception of the bees, they want only to preserve themselves, and know nothing of war or terror. Phyrrho’s pig, untroubled by a storm at sea, had no more ardent admirer. Montesquieu thought that, compared to animals, we are nature’s stepchildren, because animals do not seem “to make so bad a use of their passions” as we do. But Montaigne thought that nature was entirely fair. We have only ourselves to blame for our follies and cruelties. although he was devoted to Lucretius, he could not accept the latter’s melancholy picture of nature’s mindless destructiveness. That would have taken cruelty out of the realm of human choice and morality. Montaigne compared men to animals, not to condemn nature, but to reveal human folly. No greater mark of idiocy deemed imaginable than the doctrine that man was the best of creatures, destined to lord it over the vegetable and animal kingdom. The result is that we are encouraged to be cruel from our earliest years to plants and beasts. That in fact could be more absurd than that “this miserable and puny creature, who is not so much as master of himself ... should call himself master and emperor of the universe”? Such is the extremity of misanthropy to which one is driven if one looks at people through the eyes of our chief victims, plants and animals.

The need to escape from such a degree of misanthropy is particularly obvious if one is led to it by the hatred of cruelty. For loathing of one’s kind and of oneself is hardly the best cure for us. The temptation is therefore great not only to identify with the victims, but to idealize them and to attribute improbable virtues to them as well. That is how Montaigne came to overrate the animals and the peasants. Montesquieu overestimated the Jews, at least for the purposes of political argument. Dickens idolised children; Hawthorne, women. It is of course a perfect way to shame the cruel, but even more significantly, it is the only way to avoid the nausea of misanthropy. The saving virtues most becoming to a victim are fortitude and pride, and it is these that are usually ascribed to them. Pride may be a deadly sin for those who preach meekness, but it recommends itself to those who put cruelty first. Roxanne, one of Uzbek’s wives in the harem, commits suicide both as a final act of defiance and to escape from the seraglio. In this she demonstrates not only her own courage, but also her superiority over her owner, who contemplates suicide because he is a bored and frustrated despot who wants to quit this life because his existence has no cosmic significance. His chatter is typical of a tyrant’s self-importance, while her death is an act of heroic self-assertion and liberation.

Valor was for Montaigne the dearest virtue, even though he was often unsure of even that. He could dissociate it from aggression best by

recognizing its perfection in defeated soldiers, but not in victorious ones. Only the Indian kings conquered by the marauding Spaniards display valor as a spiritual, rather than as a merely physical, quality. Their invincible courage is a dignified refusal to placate their conquerors, rather than just a desire to triumph. Peasants, another victimized group, live in resignation and die without making a fuss. That is also a form of valor. Montesquieu's Jews hold philosophical discourse in sight of the stake and openly hold fast to the faith of their fathers, without deceit. That was not their only virtue. They, and they alone, engaged in commercial activities in spite of Christian persecutions and prohibitions. They thus preserved for Europe the social activity most likely to save it from war and Machiavellism. For the spirit of commerce is the spirit of peace. Montaigne in an earlier age would not have understood this improbable hope. He found it peculiarly horrible that the Spaniards had turned a beautiful country upside down merely "for a traffic in pearls and pepper." For him, only pure, aristocratic valor, courage as a style of life, was admirable and a claim to noble standing.

Valor is generous; it is the obverse of cruelty, which is the expression of cowardice. But more often, valor appears to be quite indifferent to others, for its aim is self-perfection. It serves to satisfy a heroic self-image. It can be an extreme individualism, but in its military context, Montaigne saw it occasionally as a comradeship among brave men, and he admired it as he valued the company of his peers. He could do this without considering the purposes that brought them together: war, which he despised. War, he wrote, is "a testimony of our imbecility and imperfection." Montaigne was not the first or last man to be puzzled by the fact that the most brutal of all social enterprises should also be the occasion of so much personal nobility, fellowship, and courage.

Montaigne not only detested war, he particularly did not admire victors. Winning wars is entirely a matter of fortune. Unlike Machiavelli, he did not think that Fortune was a woman to be manhandled by determined and aggressive princes. Fortune, he thought, was the sum of uncontrollable and unpredictable circumstances. Alexander the Great and Julius Caesar were merely its beneficiaries. Conquerors, in short, are deprived of all merit. Their victories are not due to their efforts or character.

Only victims can rise to true fortitude, because Fortune has obviously deserted them. The glamour of glory is quite gone. What matters is how bravely one endured defeat. Putting cruelty first may in this way lead on to an ideology of heroic self-destruction. And indeed Socrates, as the dignified suicide, was Montaigne's ideal figure. Cato's showy act seemed to him very inferior.

There is surely something disturbing about idealizing the defeated. They also are pawns of Fortune, no better than her favorites. They are just losers.

To favor them extravagantly is, however, a way of escaping from misanthropy and finding an ethos that, unlike revealed religion, lead neither to zeal nor to cruelty. Valor, as a defiant refusal to live as a slave or a victim, may be a recipe for isolation and potential suicide, but not for cruelty. It is the pride that saves. When Montaigne said, "It is fear that I stand most in fear of," he was thinking of both the victims and the victimizers. Fear makes the latter cruel and increases the suffering of the former. If we could learn not to fear the void after death, killing would lose both its appeal and its apprehension. The infliction of pain would remain, and Montaigne insisted, over the explicit objections of the ecclesiastical authorities, that any punishment beyond mere killing was cruel. He seems, however, to have thought that a more rational view of death would do much to discourage cruelty generally. Montesquieu already knew better. Much as he admired the stoic temper, he did not think that a rational attitude to death would in any way decrease our cruelty. He thought it might be better if we thought of men as sentient rather than rational beings. Uzbek, his tyrant, is indeed a model of enlightened rationality, and free from any fears of the afterlife, but he is as cruel as the next despot. Valor in the face of death might be admirable, but it did not seem to Montesquieu to lessen mankind's murderous propensities. In either case, learning how to die is hardly a social virtue. And that generally may be one of the costs of putting cruelty first. It leads to an ethic for isolates.

There are other equally significant social ideas that emerge within this mental world, especially an easy acceptance of cultural variety and a negative egalitarianism. Since the most spectacular public brutalities are usually visited upon alien peoples, Montaigne and Montesquieu were bound to investigate the justifications offered for the slaughter and enslavement of barbarians. The oldest and most common argument has been that they are naturally inferior. Since nature was taken to issue rules of conduct, it was clear that she intended Europeans to enslave those lesser peoples whom she had marked by color for that very purpose. Montaigne entirely agreed that nature was indeed our best guide to good conduct. It was therefore a matter of some importance to him whether the differences between cultures were indeed natural, and which cultures, if any, were inferior and superior, then judged in terms of their habitual cruelty.

Barbarism, he soon discovered, was anything that "does not fit in with our usages." Every people seems barbaric to some other tribe. Moreover, the endless multiplicity of customs and opinions that he loved to list proved that not one of them stood out as natural. All were human contrivances. There is nothing that is not decent or indecent somewhere. All are departures from nature's original simplicity, and their variety only proves how insignificant they are, for "nature puts to shame our vain and trivial efforts." Customs as such are all equidistant from nature, and the differences

are therefore unimportant in themselves. What does matter is who is cruel. Cannibals eat the flesh of dead people and we recoil in horror, but it is we who torture and persecute the living. Our pride is unwarranted. There are no naturally superior or inferior peoples, but arrogance and cruelty mark Europeans, not those whom they disdain as barbarians. There was, in fact, a vein of primitivism in Montaigne, but that it not necessary to his purpose. Montesquieu did not share it, and he no longer looked to nature for human standards at all. He nevertheless also used the variety of customs to undermine the pride of the European civilization. It was simply a matter of exposing the triviality of the excuses offered for the enormous harms inflicted on primitive peoples. "Because Negroes prefer a glass necklace to gold ... it is proven that they have no common sense." American Indians trimmed their beards in an unfamiliar manner, so they were legally enslaved by the Spaniards. Unlike Montaigne, Montesquieu knew enough not to dwell on any fancied superiority of the native peoples. It was enough to show that no difference could ever justify cruelty. He had, moreover, another reason for wanting his readers to know and understand all the cultures. He really believed that "knowledge makes men gentle", just as ignorance hardens us. Not the primitive, but the supracivilized may recover from cruelty at all.

All inferiority and superiority for Montesquieu were the creations of policy. Once we enslave aliens, whom in our ignorance we despise, we reduce them to inferiority. Slavery makes imbeciles, not the other way around. "Nothing makes one more like a beast than always to see free men without being oneself free." Once they have been reduced by enslavement, cruelty acts to make the distance between owner and slave even greater. In Asia, Montesquieu claimed, black slaves were castrated to that end. And in his *Persian Letters*, black eunuchs are employed to maintain the steady flow of submission and dominance in the harem. They are the abject tools of their common owner, who rules all by remote control. If such social distances create the climate for cruelty, then a greater equality might be a remedy. Even Machiavelli had known that one cannot rule one's equals with cruelty, but only one's inferior subjects. Montesquieu occasionally admired those ancient democracies whose frugality and equality made the citizens unable or unwilling to lord it over one another. And Montaigne came to admire the simplicity of the peasantry, whose relations to one another, he thought, were better regulated than those of the nobility. But this was just a rejection of aristocratic competitiveness, not a reflection on inequality as a social situation. And indeed, neither Montaigne nor Montesquieu were at all disposed to treat social equality as a positive good. Inequality mattered insofar as it encouraged cruelty. There was a purely negative egalitarianism, rooted in a suspicion of the paltry reasons offered to justify not merely inequality, but its worst consequences. Inequality moreover generates

illusions. Montaigne thought that it dims our common sense so badly, that we forget that “the pedestal is no part of the statue.” There was more here than the usual complaint that we fail to value real merit because we are easily taken on by mere finery and trappings. What Montaigne feared was the pure glamour of lower, the show of valor that accompanies it, and the cruelty that both encourage. Montesquieu was, thanks to Versailles and all it stood for, obsessed by the politics of courtly power. The vacuum that surrounds the despot and separates him from his subjects is the condition of both the maximum of inequality and of cruelty. Nothing could, then, be more dangerous than the deification of political superiors. The desacralization of politics was, in fact, one of Montesquieu’s chief objects. Equality was not required for that, and he preferred a hierarchical pluralism, although he did cherish one highly egalitarian institution, the jury chosen by lot. For juries determine the outcome of those occasions when the ordinary citizen is confronted by the criminal law. Negative egalitarianism is really a fear of the consequences of inequality and especially of the dazzling effect of power. It is an obvious result of putting cruelty first.

Not equality but modesty is the cure for arrogance. And no form of arrogance is more obnoxious than the claim that some of us are God’s agents, his deputies on earth charged with punishing his enemies. It was, after all, in defense of the divine honor that all those heretics had been tortured and burned. Montaigne saw that torture had infected the entire official world, both secular and ecclesiastical. It had become the ubiquitous evil. Montesquieu, living in a relatively milder age, was still outraged by the judicial prosecution of sins and minor faults. That was partly because neither one believed in these sins any longer, but also because they put cruelty first. The crimes so brutally punished were not themselves acts of cruelty. They therefore appeared particularly unimportant precisely when put in contrast to the horrors of official torture. Montesquieu advised the courts to leave belief and sexual habits alone, and to concentrate on the serious business of protecting the security of life and property. Montaigne had no faith in even this kind of legal reform. He thought most laws useless, because general rules never really fit the actual diversity of individual cases, and most judicial procedures are so cruel, that they terrified law-abiding citizens without achieving much else. He and Montesquieu were at one, however, in insisting that the discretion of judges must be as limited as possible, both thereby expressing a considerable distrust of the judiciary in general. That should not surprise us. Both were, after all, experienced magistrates, who had spent years in the bench at Bordeaux. They did not trust any ruling class, certainly not their own.

The wisdom of experience only enhances the skepticism of those who put cruelty first. How could it be otherwise? The usual excuse for our most

unspeakable public acts is that they are necessary. How genuine are these necessities, in fact? Neither Montaigne nor Montesquieu was blind to the imperatives of law and of reason of state, but they knew that much of what passed under these names was merely princely willfulness. To respond to danger is one thing, but necessity in the Machiavellian vocabulary means far more than that. It expresses a great confidence in controlling events once they have been intelligently analyzed. To master necessity is to rule. It is, together with the subduing of Fortune, quite within the power of an astute ruler. Once necessity has been mapped and grasped, it is just a matter of plotting and executing. This is the utopianism of efficiency, with all the cruelty and treachery that it invites. Montaigne thought that politics were far too chaotic and uncertain to be managed according to any plan. He dismissed Machiavelli as being no more plausible than any other political schemer, and just as shortsighted as most. In short, Montaigne did not think these moral arguments conclusive. They did not really amount to rational responses to any necessities. But when one doubts necessity, one doubts everything. If princes must commit atrocities, let them at least regret it and let them make some effort to avoid going to war in order to indulge some personal whim, Montaigne concluded. That amounts to throwing up one's hands in despair.

There is no temper that is less utopian than this sort of skepticism. "The world is incapable of curing itself; it is so impatient of the weight that oppresses it, that it only aims at getting rid of it, without considering the cost", Montaigne wrote. Montesquieu had more faith in legislation and social change, but he was no enthusiast. He wrote an account of a little utopian community in his novel. But even in this imaginary world, utopia appears only to prove that it must quickly end. Age and continuity are the best recommendations for institutions, not because they are anything but "barbarous" and "monstrous," Montaigne argued, but because "we wonderfully incline to the worst." Most of our laws and customs are beneath contempt, but if we alter them, we only fall into instability and direct destruction, which might well be worse. A decent, but not excessive, loyalty to the existing order, without excuses, seemed to him the only way. To that extent he had chosen sides in the civil war, since it could not be avoided. But he remained fair to the opposition. As an admiring Emerson was to write of him, he found himself "equally at odds with the evils of society and with the projects that are offered to relieve them", and went on to say that he "denies out of honesty." Honesty in this case meant that Montaigne saw no reason to suppose that changes in belief altered human behaviour significantly. Those who have attempted to correct the world by new beliefs, he noted wearily, have only removed the surface vices; the essential ones have not been touched. The vest religion, therefore, with peace in view, is the one into which one is born, the one

most established in one's country, and that which one is most used to. This is not an attempt to disregard the enormous faults of existing ideologies and institutions. It is rather the recognition that the alternatives are no better. It is the conservatism of universal disgust, if it is conservatism at all. For in what sense can one be said to support an existing order of affairs if one cannot think of anything to say on its behalf except that it is there? It is an act of perfect dissociation, but not necessarily a retreat from the public world.

When one begins with cruelty, an enormous gap between private and public life seems to open up. It begins with the exposure of the feebleness and pettiness of the reasons offered for public enormities, and goes on to a sense that governments are unreal and remote from the actualities about which they appear to talk. It is not that private life is better than public: both are equally cruel. It is rather that one has a sense of the incoherence and discontinuity of private and public experience. Montesquieu thought that it was impossible that the good man and the good citizen should ever be the same. The two were inherently incompatible. The demands of social life and those of personal morality are simply different. This may cause as much unhappiness, but it cannot be altered. "It is one of the misfortunes of the human condition", he wrote, using Montaigne's celebrated phrase, that "legislators must act more upon society than upon the citizens, and more upon the citizens than upon men." He did not despair, because he believed that, on the whole, we can control our public life more effectively than our personal characters. The climate works directly upon us, and while its effects can be modified by forcing us into specific social directions, we do not as individuals really change. The English have an excellent constitution, are solid citizens, but perfectly awful people. They also suffer from incurable melancholia and suicidal tendencies. Laws can make collective life better or worse, but each of us is fundamentally unalterable, and morality is, at some point, a personal matter. He was in fact moved to optimism by believing politics and morality were wholly dissimilar, because laws made social reform possible without demanding a moral revolution that would be both impossible and tyrannical in the extreme.

To separate morals and politics in this way is to open the door to Machiavellism to a degree that was impossible and intolerable for Montaigne. He thought, in any case, that our ability to control our personal life, even if only in isolation, was greater than our collective existence where Fortune ruled. Human volition was simply reduced in politics, and public men are forced to perform abominations as if out of necessity. For Montaigne did not deny that there was much that was unavoidable in politics, but he would not call it right, and he wanted no part of it. And even when he was resigned to public cruelties, he could not quite accept them as inevitable. There had always been generous and great men who had avoided them. His mind was

self-divided, a picture of distraction. Of his public career, he said that “the mayor and Montaigne have always been two, very distinctly separated.” Montaigne, the mayor, had played a part on a stage as a matter of duty, and fulfilled its demands as best he could. He was not one of those fastidious souls who preserve their inner purity by shunning politics altogether. As mayor, he tells us, he did as little as possible, a policy that he defended as the least harmful course of action available to him. He obviously felt more helpless in public offices than in his library, but there was for him no moral difference. Loyalty remained the same under all circumstances. He would not betray his prince for a private individual, but neither would he betray the latter nor the sake of the prince. Epaminondas seemed to Montaigne particularly admirable because he would not kill in battle an enemy who had once been his guest. Nevertheless, the irrelevance of goodness in politics did impress him deeply. Let princes be just; if they tried to be magnanimous, they would only be arbitrary. Moreover, society did not depend on personal virtue for its survival. A society of compete villains would be glued together just as well as ours, and would be no worse in general. Not morality, but physical need and laws, even the most ferocious, keep us together. After years of religious strife, Montaigne’s mind was a miniature civil war, mirroring the perpetual confusion of the world. But his jumble of political perceptions reflected not intellectual failure, but a refusal to accept either the comforts of political passivity or of Machiavelli’s platitudes.

There has been in recent years a considerable literature on Machiavelli, most of it admiring his most realistic pages. I have tried to present the views of those who rejected him, not because they were moved by religious or moral illusions, but because they were more realistic, had read Plato’s remarks about dirty hands more carefully, and were more honest. This is a position that goes well beyond anything one can call liberalism. My Catholic friend was wrong in thinking that putting cruelty first amounts to just that, but he was quite correct in seeing that it is incompatible with his faith. What he should have asked is, how many people, excepting Montaigne, are really prepared to accept all the consequences of doing so. It has been my purpose to show at least what it might involve.

John Rawls

CIVIL DISOBEDIENCE

Source: John Rawls, *A Theory of Justice*, Belknap Press (Original edn.), Cambridge Massachusetts 1971, pp. 363-391.

I now wish to illustrate the content of the principles of natural duty and obligation by sketching a theory of civil disobedience. As I have already indicated, this theory is designed only for the special case of a nearly just society, one that is well-ordered for the most part but in which some serious violations of justice nevertheless do occur. Since I assume that a state of near justice requires a democratic regime, the theory concerns the role and the appropriateness of civil disobedience to legitimately established democratic authority. It does not apply to the other forms of government nor, except incidentally, to other kinds of dissent or resistance. I shall not discuss this mode of protest, along with militant action and resistance, as a tactic for transforming or even overturning an unjust and corrupt system. There is no difficulty about such action in this case. If any means to this end are justified, then surely nonviolent opposition justified. The problem of civil disobedience as I shall interpret it, arises only within a more or less just democratic state for those citizens who recognize and accept the legitimacy of the constitution. The difficulty is one of a conflict of duties. At what point does the duty to comply with laws enacted by a legislative majority (or with executive acts supported by such a majority) cease to be binding in view of the right to defend one's liberties and the duty to oppose injustice? This question involves the nature and limits of majority rule. For this reason the problem of civil disobedience is a crucial test case for any theory of the moral basis of democracy.

A constitutional theory of civil disobedience has three parts. First, it defines this kind of dissent and separates it from other forms of opposition to democratic authority. These range from legal demonstrations and infractions of law designed to raise test cases before the courts to militant action and organized resistance. A theory specifies the place of civil disobedience in this spectrum of possibilities. Next, it sets out the grounds of civil disobedience and the conditions under which such action is justified in a (more or less) just democratic regime. And finally, a theory should explain the role of civil disobedience within a constitutional system and account for the appropriateness of this mode of protest within a free society.

Before I take up these matters, a word of caution. We should not expect too much of a theory of civil disobedience, even one framed for special circumstances. Precise principles that straightway decide actual cases are clearly out of the question. Instead, a useful theory defines a perspective within which the problem of civil disobedience can be approached; it identifies the relevant considerations and helps us to assign them their correct weights in the more important instances. If a theory about these matters appears to us, on reflection, to have cleared our vision and to have made our considered judgments more coherent, then it has been worthwhile. The theory has done what, for the present, one may reasonably expect it to do: namely, to narrow the disparity between the conscientious convictions of those who accept the basic principles of a democratic society.

I shall begin by defining civil disobedience as a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government. By acting in this way one addresses the sense of justice of the majority of the community and declares that in one's considered opinion the principles of social cooperation among free and equal men are not being respected. A preliminary gloss on this definition is that it does not require that the civilly disobedient act breach the same law that is being protested. It allows for what some have called indirect as well as direct civil disobedience. And this a definition should do, as there are sometimes strong reasons for not infringing on the law or policy held to be unjust. Instead, one may disobey traffic ordinances or laws of trespass as a way of presenting one's case. Thus, if the government enacts a vague and harsh statute against treason, it would not be appropriate to commit treason as a way of objecting to it, and in any event, the penalty might be far more than one should reasonably be ready to accept. In other cases there is no way to violate the government's policy directly, as when it concerns foreign affairs, or affects another part of the country. A second gloss is that the civilly disobedient act is indeed thought to be contrary to law, at least in the sense that those engaged in it are not simply presenting a test case for a constitutional decision; they are prepared to oppose the statute even if it should be upheld. To be sure, in a constitutional regime, the courts may finally side with the dissenters and declare the law or policy objected to unconstitutional. It often happens, then, that there is some uncertainty as to whether the dissenters' action will be held illegal or not. But this is merely a complicating element. Those who use civil disobedience to protest unjust laws are not prepared to desist should the courts eventually disagree with them, however pleased they might have been with the opposite decision.

It should also be noted that civil disobedience is a political act not only in the sense that it is addressed to the majority that holds political power, but

also because it is an act guided and justified by political principles, that is, by the principles of justice which regulate the constitution and social institutions generally. In justifying civil disobedience one does not appeal to principles of personal morality or to religious doctrines, though these may coincide with and support one's claims; and it goes without saying that civil disobedience cannot be grounded solely on group or self-interest. Instead one invokes the commonly shared conception of justice that underlies the political order. It is assumed that in a reasonably just democratic regime there is a public conception of justice by reference to which citizens regulate their political affairs and interpret the constitution. The persistent and deliberate violation of the basic principles of this conception over any extended period of time, especially the infringement of the fundamental equal liberties, invites either submission or resistance. By engaging in civil disobedience a minority forces the majority to consider whether it wishes to have its actions construed in this way, or whether, in view of the common sense of justice, it wishes to acknowledge the legitimate claims of the minority.

A further point is that civil disobedience is a public act. Not only is it addressed to public principles, it is done in public. It is engaged in openly with fair notice; it is not covert or secretive. One may compare it to public speech, and being a form of address, an expression of profound and conscientious political conviction, it takes place in the public forum. For this reason, among others, civil disobedience is nonviolent. It tries to avoid the use of violence, especially against persons, not from the abhorrence of the use of force in principle, but because it is a final expression of one's case. To engage in violent acts likely to injure and to hurt is incompatible with civil disobedience as a mode of address. Indeed, any interference with the civil liberties of others tends to obscure the civilly disobedient quality of one's act. Sometimes if the appeal fails in its purpose, forceful resistance may later be entertained. Yet civil disobedience is giving voice to conscientious and deeply held convictions; while it may warn and admonish, it is not itself a threat.

Civil disobedience is nonviolent for another reason. It expresses disobedience to law within the limits of fidelity to law, although it is at the outer edge thereof. The law is broken, but fidelity to law is expressed by the public and nonviolent nature of the act, by the willingness to accept the legal consequences of one's conduct. This fidelity to law helps to establish to the majority that the act is indeed politically conscientious and sincere, and that it is intended to address the public's sense of justice. To be completely open and nonviolent is to give bond of one's sincerity, for it is not easy to convince another that one's acts are conscientious, or even to be sure of this before oneself. No doubt it is possible to imagine a legal system in which conscientious belief that the law is unjust is accepted as a defense for noncompliance. Men of great honesty with full confidence in one another

might make such a system work. But as things are, such a scheme would presumably be unstable even in a state of near justice. We must pay a certain price to convince others that our actions have, in our carefully considered view, a sufficient moral basis in the political convictions of the community.

Civil disobedience has been defined so that it falls between legal protest and the raising of test cases on the one side, and conscientious refusal and the various forms of resistance on the other. In this range of possibilities it stands for that form of dissent at the boundary of fidelity to law. Civil disobedience, so understood, is clearly distinct from militant action and obstruction; it is far removed from organized forcible resistance. The militant, for example, is much more deeply opposed to the existing political system. He does not accept it as one which is nearly just or reasonably so; he believes either that it departs widely from its professed principles or that it pursues a mistaken conception of justice altogether. While his action is conscientious in its own terms, he does not appeal to the sense of justice of the majority (or those having effective political power), since he thinks that their sense of justice is erroneous, or else without effect. Instead, he seeks by well-framed militant acts of disruption and resistance, and the like, to attack the prevalent view of justice or to force a movement in the desired direction. Thus the militant may try to evade the penalty, since he is not prepared to accept the legal consequences of his violation of the law; this would not only be to play into the hands of forces that he believes cannot be trusted, but also to express a recognition of the legitimacy of the constitution to which he is opposed. In this sense militant action is not within the bounds of fidelity to law, but represents a more profound opposition to the legal order. The basic structure is thought to be so unjust or else to depart so widely from its own professed ideals that one must try to prepare the way for radical or even revolutionary change. And this is to be done by trying to arouse the public to an awareness of the fundamental reforms that need to be made. Now in certain circumstances militant action and other kinds of resistance are surely justified. I shall not, however, consider these cases. As I have said, my aim here is the limited one of defining a concept of civil disobedience and understanding its role in a nearly just constitutional regime.

Although I have distinguished civil disobedience from conscientious refusal, I have yet to explain the latter notion. This will now be done. It must be recognized, however, that to separate these two ideas is to give a narrower definition to civil disobedience than is traditional; for it is customary to think of civil disobedience in a broader sense as any noncompliance with law for conscientious reasons, at least when it is not covert and does not involve the use of force. Thoreau's essay is characteristic, if not definitive, of the traditional meaning. The usefulness of the narrower sense will, I believe, be clear once the definition of conscientious refusal is examined.

Conscientious refusal is noncompliance with a more or less direct legal injunction or administrative order. It is refusal since an order is addressed to us and, given the nature of the situation, whether we accede to it is known to the authorities. Typical examples are the refusal of the early Christians to perform certain acts of piety prescribed by the pagan state, and the refusal of the Jehovah's Witnesses to salute the flag. Other examples are the unwillingness of a pacifist to serve in the armed forces, or of a soldier to obey an order that he thinks is manifestly contrary to the moral law as it applies to war. Or again, in Thoreau's case, the refusal to pay a tax on the grounds that to do so would make him an agent of grave injustice to another. One's action is assumed to be known to the authorities, however much one might wish, in some cases, to conceal it. Where it can be covert, one might speak of conscientious evasion rather than conscientious refusal. Covert infractions of a fugitive slave law are instances of conscientious evasion.

There are several contrasts between conscientious refusal (or evasion) and civil disobedience. First of all, conscientious refusal is not a form of address appealing to the sense of justice of the majority. To be sure, such acts are not generally secretive or covert, as concealment is often impossible anyway. One simply refuses on conscientious grounds to obey a command or to comply with a legal injunction. One does not invoke the convictions of the community, and in this sense conscientious refusal is not an act in the public forum. Those ready to withhold obedience recognize that there may be no basis for mutual understanding; they do not seek out occasions for disobedience as a way to state their cause. Rather, they bide their time hoping that the necessity to disobey will not arise. They are less optimistic than those undertaking civil disobedience and they may entertain no expectation of changing laws or policies. The situation may allow no time for them to make their case, or again there may not be any chance that the majority will be receptive to their claims.

Conscientious refusal is not necessarily based on political principles; it may be founded on religious or other principles at variance with the constitutional order. Civil disobedience is an appeal to a commonly shared conception of justice, whereas conscientious refusal may have other grounds. For example, assuming that the early Christians would not justify their refusal to comply with the religious customs of the Empire by reasons of justice but simply as being contrary to their religious convictions, their argument would not be political; nor, with similar qualifications, are the views of a pacifist, assuming that wars of self-defense at least are recognized by the conception of justice that underlies a constitutional regime. Conscientious refusal may, however, be grounded on political principles. One may decline to go along with a law thinking that it is so unjust that complying with it is simply out of the question. This would be the case if, say, the law were to enjoin our being

the agent of enslaving another, or to require us to submit to a similar fate. These are patent violations of recognized political principles.

It is a difficult matter to find the right course when some men appeal to religious principles in refusing to do actions which, it seems, are required by principles of political justice. Does the pacifist possess an immunity from military service in a just war, assuming that there are such wars? Or is the state permitted to impose certain hardships for noncompliance? There is a temptation to say that the law must always respect the dictates of conscience, but this cannot be right. As we have seen in the case of the intolerant, the legal order must regulate men's pursuit of their religious interests so as to realize the principle of equal liberty; and it may certainly forbid religious practices such as human sacrifice, to take an extreme case. Neither religiosity nor conscientiousness suffices to protect this practice. A theory of justice must work out from its own point of view how to treat those who dissent from it. The aim of a well-ordered society, or one in a state of near justice, is to preserve and strengthen the institutions of justice. If a religion is denied its full expression, it is presumably because it is in violation of the equal liberties of others. In general, the degree of tolerance accorded opposing moral conceptions depends upon the extent to which they can be allowed an equal place within a just system of liberty.

If pacifism is to be treated with respect and not merely tolerated, the explanation must be that it accords reasonably well with the principles of justice, the main exception arising from its attitude toward engaging in a just war (assuming here that in some situations wars of self-defense are justified). The political principles recognized by the community have a certain affinity with the doctrine the pacifist professes. There is a common abhorrence of war and the use of force, and a belief in the equal status of men as moral persons. And given the tendency of nations, particularly great powers, to engage in war unjustifiably and to set in motion the apparatus of the state to suppress dissent, the respect accorded to pacifism serves the purpose of alerting citizens to the wrongs that governments are prone to commit in their name. Even though his views are not altogether sound, the warnings and protests that a pacifist is disposed to express may have the result that on balance the principles of justice are more rather than less secure. Pacifism as a natural departure from the correct doctrine conceivably compensates for the weakness of men in living up to their professions.

It should be noted that there is, of course, in actual situations no sharp distinction between civil disobedience and conscientious refusal. Moreover the same action (or sequence of actions) may have strong elements of both. While there are clear cases of each, the contrast between them is intended as a way of elucidating the interpretation of civil disobedience and its role in a democratic society. Given the nature of this way of acting as a special

kind of political appeal, it is not usually justified until other steps have been taken within the legal framework. By contrast this requirement often fails in the obvious cases of legitimate conscientious refusal. In a free society no one may be compelled, as the early Christians were, to perform religious acts in violation of equal liberty, nor must a soldier comply with inherently evil commands while awaiting an appeal to higher authority. These remarks lead up to the question of justification.

With these various distinctions in mind, I shall consider the circumstances under which civil disobedience is justified. For simplicity I shall limit the discussion to domestic institutions and so to injustices internal to a given society. The somewhat narrow nature of this restriction will be mitigated a bit by taking up the contrasting problem of conscientious refusal in connection with the moral law as it applies to war. I shall begin by setting out what seem to be reasonable conditions for engaging in civil disobedience, and then later connect these conditions more systematically with the place of civil disobedience in a state of near justice. Of course, the conditions enumerated should be taken as presumptions; no doubt there will be situations when they do not hold, and other arguments could be given for civil disobedience.

The first point concerns the kinds of wrongs that are appropriate objects as a political act addressed to the sense of justice of the community, then it seems reasonable, other things equal, to limit it to instances of substantial and clear injustice, and preferably to those which obstruct the path to removing other injustices. For this reason there is a presumption in favor of restricting civil disobedience to serious infringements of the first principle of justice, the principle of equal liberty, and to blatant violations of the second part of the second principle, the principle of fair equality of opportunity. Of course, it is not always easy to tell whether these principles are satisfied. Still, if we think of them as guaranteeing the basic liberties, it is often clear that these freedoms are not being honored. After all, they impose certain strict requirements that must be visibly expressed in institutions. Thus when certain minorities are denied the right to vote or to hold office, or to own property and to move from place to place, or when certain religious groups are repressed and others denied various opportunities, these injustices may be obvious to all. They are publicly incorporated into the recognized practice, if not the letter, of social arrangements. The establishment of these wrongs does not presuppose an informed examination of institutional effects.

By contrast infractions of the difference principle are more difficult to ascertain. There is usually a wide range of conflicting yet rational opinion as to whether this principle is satisfied. The reason for this is that it applies primarily to economic and social institutions and policies. A choice among these depends upon theoretical and speculative beliefs as well as upon a wealth of statistical and other information, all of this seasoned with shrewd

judgment and plain hunch. In view of the complexities of these questions, it is difficult to check the influence of self-interest and prejudice; and even if we can do this in our own case, it is another matter to convince others of our good faith. Thus unless tax laws, for example, are clearly designed to attack or to abridge a basic equal liberty, they should not normally be protested by civil disobedience. The appeal to the public's conception of justice is not sufficiently clear. The resolution of these issues is best left to the political process provided that the requisite equal liberties are secure. In this case a reasonable compromise can presumably be reached. The violation of the principle of equal liberty is, then, the more appropriate object of civil disobedience. This principle defines the common status of equal citizenship in a constitutional regime and lies at the basis of the political order. When it is fully honored the presumption is that other injustices, while possibly persistent and significant, will not get out of hand.

A further condition for civil disobedience is the following. We may suppose that the normal appeals to the political majority have already been made in good faith and that they have failed. The legal means of redress have proved of no avail. Thus, for example, the existing political parties have shown themselves indifferent to the claims of the minority or have proved unwilling to accommodate them. Attempts to have the laws repealed have been ignored and legal protests and demonstrations have had no success. Since civil disobedience is a last resort, we should be sure that it is necessary. Note that it has not been said, however, that legal means have been exhausted. At any rate, further normal appeals can be repeated; free speech is always possible. But if past actions have shown the majority immovable or apathetic, further attempts may reasonably be thought fruitless, and a second condition for justified civil disobedience is met. This condition is, however, a presumption. Some cases may be so extreme that there may be no duty to use first only legal means of political opposition. If, for example, the legislature were to enact some outrageous violation of equal liberty, say by forbidding the religion of a weak and defenseless minority, we surely could not expect that sect to oppose the law by normal political procedures. Indeed, even civil disobedience might be much too mild, the majority having already convicted itself of wantonly unjust and overtly hostile aims.

The third and last condition I shall discuss can be rather complicated. It arises from the fact that while the two preceding conditions are often sufficient to justify civil disobedience, this is not always the case. In certain circumstances the natural duty of justice may require a certain restraint. We can see this as follows. If a certain minority is justified in engaging in civil disobedience, then any other minority in relevantly similar circumstances is likewise justified. Using the two previous conditions as the criteria of relevantly similar circumstances, we can say that, other things equal, two

minorities are similarly justified in resorting to civil disobedience if they have suffered for the same length of time from the same degree of injustice and if their equally sincere and normal political appeals have likewise been to no avail. It is conceivable, however, even if it is unlikely, that there should be many groups with an equally sound case (in the sense just defined) for being civilly disobedient; but that, if they were all to act in this way, serious disorder would follow which might well undermine the efficacy of the just constitution. I assume here that there is a limit on the extent to which civil disobedience can be engaged in without leading to a breakdown in the respect for law and the constitution, thereby setting in motion consequences unfortunate for all. There is also an upper bound on the ability of the public forum to handle such forms of dissent; the appeal that civilly disobedient groups wish to make can be distorted and their intention to appeal to the sense of justice of the majority lost sight of. For one or both of these reasons, the effectiveness of civil disobedience as a form of protest declines beyond a certain point; and those contemplating it must consider these constraints.

The ideal solution from a theoretical point of view calls for a cooperative political alliance of the minorities to regulate the overall level of dissent. For consider the nature of the situation: there are many groups each equally entitled to engage in civil disobedience. Moreover they all wish to exercise this right, equally strong in each case; but if they all do so, lasting injury may result to the just constitution to which they each recognize a natural duty of justice. Now when there are many equally strong claims which if taken together exceed what can be granted, some fair plan should be adopted so that all are equitably considered. In simple cases of claims to goods that are indivisible and fixed in number, some rotation or lottery scheme may be the fair solution when the number of equally valid claims is too great. But this sort of device is completely unrealistic here. What seems called for is a political understanding among the minorities suffering from injustice. They can meet their duty to democratic institutions by coordinating their actions so that while each has an opportunity to exercise its right, the limits on the degree of civil disobedience are not exceeded. To be sure, an alliance of this sort is difficult to arrange; but with perceptive leadership, it does not appear impossible.

Certainly the situation envisaged is a special one, and it is quite possible that these sorts of considerations will not be a bar to justified civil disobedience. There are not likely to be many groups similarly entitled to engage in this form of dissent while at the same time recognizing a duty to a just constitution. One should note, however, that an injured minority is tempted to believe its claims as strong as those of any other; and therefore even if the reasons that different groups have for engaging in civil disobedience are not equally compelling, it is often wise to presume that their claims are

indistinguishable. Adopting this maxim, the circumstance imagined seems more likely to happen. This kind of case is also instructive in showing that the exercise of the right to dissent, like the exercise of rights generally, is sometimes limited by others having the very same right. Everyone's exercising this right would have deleterious consequences for all, and some equitable plan is called for.

Suppose that in the light of the three conditions, one has a right to appeal one's case by civil disobedience. The injustice one protests is a clear violation of the liberties of equal citizenship, or of equality of opportunity, this violation having been more or less deliberate over an extended period of time in the face of normal political opposition, and any complications raised by the question of fairness are met. These conditions are not exhaustive; some allowance still has to be made for the possibility of injury to third parties, to the innocent, so to speak. But I assume that they cover the main points. There is still, of course, the question whether it is wise or prudent to exercise this right. Having established the right, one is now free, as one is not before, to let these matters decide the issue. We may be acting within our rights but nevertheless unwisely if our conduct only serves to provoke the harsh retaliation of the majority. To be sure, in a state of near justice, vindictive repression of legitimate dissent is unlikely, but it is important that the action be properly designed to make an effective appeal to the wider community. Since civil disobedience is a mode of address taking place in the public forum, care must be taken to see that it is understood. Thus the exercise of the right to civil disobedience should, like any other right, be rationally framed to advance one's ends or the ends of those one wishes to assist. The theory of justice has nothing specific to say about these practical considerations. In any event questions of strategy and tactics depend upon the circumstances of each case. But the theory of justice should say at what point these matters are properly raised.

Now in this account of the justification of civil disobedience I have not mentioned the principle of fairness. The natural duty of justice is the primary basis of our political ties to a constitutional regime. As we noted before [...], only the more favored members of society are likely to have a clear political obligation as opposed to a political duty. They are better situated to win public office and find it easier to take advantage of the political system. And having done so, they have acquired an obligation owed to citizens generally to uphold the just constitution. But members of subjected minorities, say, who have a strong case for civil disobedience will not generally have a political obligation of this sort. This does not mean, however, that the principle of fairness will not give rise to important obligations in their case. For not only do many of the requirements of private life derive from this principle, but it comes into force when persons or groups come together for common

political purposes. Just as we acquire obligations to others with whom we have joined in various private associations, those who engage in political action assume obligatory ties to one another. Thus while the political obligation of dissenters to citizens generally is problematical, bonds of loyalty and fidelity still develop between them as they seek to advance their cause. In general, free association under a just constitution gives rise to obligations provided that the ends of the group are legitimate and its arrangements fair. This is as true of political as it is of other associations. These obligations are of immense significance and they constrain in many ways what individuals can do. But they are distinct from an obligation to comply with a just constitution. My discussion of civil disobedience is in terms of the duty of justice alone; a fuller view would note the place of these other requirements.

In examining the justification of civil disobedience I assumed for simplicity that the laws and policies protested concerned domestic affairs. It is natural to ask how the theory of political duty applies to foreign policy. Now in order to do this it is necessary to extend the theory of justice to the law of nations. I shall try to indicate how this can be done. To fix ideas I shall consider briefly the justification of conscientious refusal to engage in certain acts of war, or to serve in the armed forces. I assume that this refusal is based upon political and not upon religious or other principles; that is, the principles cited by way of justification are those of the conception of justice underlying the constitution. Our problem, then, is to relate the just political principles regulating the conduct of states to the contract doctrine and to explain the moral basis of the law of nations from this point of view.

Let us assume that we have already derived the principles of justice as these apply to societies as units and to the basic structure. Imagine also that the various principles of natural duty and of obligation that apply to individuals have been adopted. Thus the persons in the original position have agreed to the principles of right as these apply to their own society and to themselves as members of it. Now at this point one may extend the interpretation of the original position and think of the parties as representatives of different nations who must choose together the fundamental principles to adjudicate conflicting claims among states. Following out the conception of the initial situation, I assume that these representatives are deprived of various kinds of information. While they know that they represent different nations each living under the normal circumstances of human life, they know nothing about the particular circumstances of their own society, its power and strength in comparison with other nations, nor do they know their place in their own society. Once again the contracting parties, in this case representatives of states, are allowed only enough knowledge to make a rational choice to protect their interests but not so much that the more fortunate among them can take advantage of their special situation. This original position is

fair between nations; it nullifies the contingencies and biases of historical fate. Justice between states is determined by the principles that would be chosen in the original position so interpreted. These principles are political principles, for they govern public policies toward other nations.

I can give only an indication of the principles that would be acknowledged. But, in any case, there would be no surprises, since the principles chosen would, I think, be familiar ones. The basic principle of the law of nations is a principle of equality. Independent peoples organized as states have certain fundamental equal rights. This principle is analogous to the equal rights of citizens in a constitutional regime. One consequence of this equality of nations is the principle of self-determination, the right of a people to settle its own affairs without the intervention of foreign powers. Another consequence is the right of self-defense against attack, including the right to form defensive alliances to protect this right. A further principle is that treaties are to be kept, provided they are consistent with the other principles governing the relations of states. Thus treaties for self-defense, suitably interpreted, would be binding, but agreements to cooperate in an unjustified attack are void *ab initio*.

These principles define when a nation has a just cause in war or, in the traditional phrase, its *jus ad bellum*. But there are also principles regulating the means that a nation may use to wage war, its *jus in bello*. Even in a just war certain forms of violence are strictly inadmissible; and where a country's right to war is questionable and uncertain, the constraints on the means it can use are all the more severe. Acts permissible in a war of legitimate self-defense, when these are necessary, may be flatly excluded in a more doubtful situation. The aim of war is a just peace, and therefore the means employed must not destroy the possibility of peace or encourage a contempt for human life that puts the safety of ourselves and of mankind in jeopardy. The conduct of war is to be constrained and adjusted to this end. The representatives of states would recognize that their national interest, as seen from the original position, is best served by acknowledging these limits on the means of war. This is because the national interest of a just state is defined by the principles of justice that have already been acknowledged. Therefore such a nation will aim above all to maintain and to preserve its just institutions and the conditions that make them possible. It is not moved by the desire for world power or national glory; nor does it wage war for purposes of economic gain or the acquisition of territory. These ends are contrary to the conception of justice that defines a society's legitimate interest, however prevalent they have been in the actual conduct of states. Granting these presumptions, then, it seems reasonable to suppose that the traditional prohibitions incorporating the natural duties that protect human life would be chosen.

Now if conscientious refusal in time of war appeals to these principles, it is founded upon a political conception, and not necessarily upon religious or

other notions. While this form of denial may not be a political act, since it does not take place in the public forum, it is based upon the same theory of justice that underlies the constitution and guides its interpretation. Moreover, the legal order itself presumably recognizes in the form of treaties the validity of at least some of these principles of the law of nations. Therefore if a soldier is ordered to engage in certain illicit acts of war, he may refuse if he reasonably and conscientiously believes that the principles applying to the conduct of war are plainly violated. He can maintain that, all things considered, his natural duty not to be made the agent of grave injustice and evil to another outweighs his duty to obey. I cannot discuss here what constitutes a manifest violation of these principles. It must suffice to note that certain clear cases are perfectly familiar. The essential point is that the justification cites political principles that can be accounted for by the contract doctrine. The theory of justice can be developed, I believe, to cover this case.

A somewhat different question is whether one should join the armed forces at all during some particular war. The answer is likely to depend upon the aim of the war as well as upon its conduct. In order to make the situation definite, let us suppose that conscription is in force and that the individual has to consider whether to comply with his legal duty to enter military service. Now I shall assume that since conscription is a drastic interference with the basic liberties of equal citizenship, it cannot be justified by any needs less compelling than those of national security. In a well-ordered society (or in one nearly just) these needs are determined by the end of preserving just institutions. Conscription is permissible only if it is demanded for the defense of liberty itself, including here not only the liberties of the citizens of the society in question, but also those of persons in other societies as well. Therefore if a conscript army is less likely to be an instrument of unjustified foreign adventures, it may be justified on this basis alone despite the fact that conscription infringes upon the equal liberties of citizens. But in any case, the priority of liberty (assuming serial order to obtain) requires that conscription be used only as the security of liberty necessitates. Viewed from the standpoint of the legislature (the appropriate stage for this question), the mechanism of the draft can be defended only on this ground. Citizens agree to this arrangement as a fair way of sharing in the burdens of national defense. To be sure, the hazards that any particular individual must face are in part the result of accident and historical happenstance. But in a well-ordered society anyway, these evils arise externally, that is, from unjustified attacks from the outside. It is impossible for just institutions to eliminate these hardships entirely. The most that they can do is to try to make sure that the risks of suffering from these imposed misfortunes are more or less evenly shared by all members of society over the course of their life, and that there is no avoidable class bias in selecting those who are called for duty.

Imagine, then, a democratic society in which conscription exists. A person may conscientiously refuse to comply with his duty to enter the armed forces during a particular war on the ground that the aims of the conflict are unjust. It may be that the objective sought by war is economic advantage or national power. The basic liberty of citizens cannot be interfered with to achieve these ends. And, of course, it is unjust and contrary to the law of nations to attack the liberty of other societies for these reasons. Therefore a just cause for war does not exist, and this may be sufficiently evident that a citizen is justified in refusing to discharge his legal duty. Both the law of nations and the principles of justice for his own society uphold him in this claim. There is sometimes a further ground for refusal based not on the aim of the war but upon its conduct. A citizen may maintain that once it is clear that the moral law of war is being regularly violated, he has a right to decline military service on the ground that he is entitled to insure that he honors his natural duty. Once he is in the armed forces, and in a situation where he finds himself ordered to do acts contrary to the moral law of war, he may not be able to resist the demand to obey. Actually, if the aims of the conflict are sufficiently dubious and the likelihood of receiving flagrantly unjust commands is sufficiently great, one may have a duty and not only a right to refuse. Indeed, the conduct and aims of states in waging war, especially large and powerful ones, are in some circumstances so likely to be unjust that one is forced to conclude that in the foreseeable future one must abjure military service altogether. So understood a form of contingent pacifism may be a perfectly reasonable position: the possibility of a just war is conceded but not under present circumstances.

What is needed, then, is not a general pacifism but a discriminating conscientious refusal to engage in war in certain circumstances. States have not been loath to recognize pacifism and to grant it a special status. The refusal to take part in all war under any conditions is an unworldly view bound to remain a sectarian doctrine. It no more challenges the state's authority than the celibacy of priests challenges the sanctity of marriage. By exempting pacifists from its prescriptions the state may even seem to display a certain magnanimity. But conscientious refusal based upon the principles of justice between peoples as they apply to particular conflicts is another matter. For such refusal is an affront to the government's pretensions, and when it becomes widespread, the continuation of an unjust war may prove impossible. Given the often predatory aims of state power, and the tendency of men to defer to their government's decision to wage war, a general willingness to resist the state's claims is all the more necessary.

The third aim of a theory of civil disobedience is to explain its role within a constitutional system and to account for its connection with a democratic polity. As always, I assume that the society in question is one that is nearly

just; and this implies that it has some form of democratic government, although serious injustices may nevertheless exist. In such a society I assume that the principles of justice are for the most part publicly recognized as the fundamental terms of willing cooperation among free and equal persons. By engaging in civil disobedience one intends, then, to address the sense of justice of the majority and to serve fair notice that in one's sincere and considered opinion the conditions of free cooperation are being violated. We are appealing to others to reconsider, to put themselves in our position, and to recognize that they cannot expect us to acquiesce indefinitely in the terms they impose upon us.

Now the force of this appeal depends upon the democratic conception of society as a system of cooperation among equal persons. If one thinks of society in another way, this form of protest may be out of place. For example, if the basic law is thought to reflect the order of nature and if the sovereign is held to govern by divine right as God's chosen lieutenant, then his subjects have only the right of suppliants. They can plead their cause but they cannot disobey should their appeal be denied. To do this would be to rebel against the final legitimate moral (and not simply legal) authority. This is not to say that the sovereign cannot be in error but only that the situation is not one for his subjects to correct. But once society is interpreted as a scheme of cooperation among equals, those injured by serious injustice need not submit. Indeed, civil disobedience (and conscientious refusal as well) is one of the stabilizing devices of a constitutional system, although by definition an illegal one. Along with such things as free and regular elections and an independent judiciary empowered to interpret the constitution (not necessarily written), civil disobedience used with due restraint and sound judgment helps to maintain and strengthen just institutions. By resisting injustice within the limits of fidelity to law, it serves to inhibit departures from justice and to correct them when they occur. A general disposition to engage in justified civil disobedience introduces stability into a well-ordered society, or one that is nearly just.

It is necessary to look at this doctrine from the standpoint of the persons in the original position. There are two related problems which they must consider. The first is that, having chosen principles for individuals, they must work out guidelines for assessing the strength of the natural duties and obligations, and, in particular, the strength of the duty to comply with a just constitution and one of its basic procedures, that of majority rule. The second problem is that of finding reasonable principles for dealing with unjust situations, or with circumstances in which the compliance with just principles is only partial. Now it seems that, given the assumptions characterizing a nearly just society, the parties would agree to the presumptions (previously discussed) that specify when civil disobedience is

justified. They would acknowledge these criteria as spelling out when this form of dissent is appropriate. Doing this would indicate the weight of the natural duty of justice in one important special case. It would also tend to enhance the realization of justice throughout the society by strengthening men's self-esteem as well as their respect for one another. As the contract doctrine emphasizes, the principles of justice are the principles of willing cooperation among equals. To deny justice to another is either to refuse to recognize him as an equal (one in regard to whom we are prepared to constrain our actions by principles that we would choose in a situation of equality that is fair), or to manifest a willingness to exploit the contingencies of natural fortune and happenstance for our own advantage. In either case deliberate injustice invites submission or resistance. Submission arouses the contempt of those who perpetuate injustice and confirms their intention, whereas resistance cuts the ties of community. If after a decent period of time to allow for reasonable political appeals in the normal way, citizens were to dissent by civil disobedience when infractions of the basic liberties occurred, these liberties would, it seems, be more rather than less secure. For these reasons, then, the parties would adopt the conditions defining justified civil disobedience as a way of setting up, within the limits of fidelity to law, a final device to maintain the stability of a just constitution. Although this mode of action is strictly speaking contrary to law, it is nevertheless a morally correct way of maintaining a constitutional regime.

In a fuller account the same kind of explanation could presumably be given for the justifying conditions of conscientious refusal (again assuming the context of a nearly just state). I shall not, however, discuss these conditions here. I should like to emphasize instead that the constitutional theory of civil disobedience rests solely upon a conception of justice. Even the features of publicity and nonviolence are explained on this basis. And the same is true of the account of conscientious refusal, although it requires a further elaboration of the contract doctrine. At no point has a reference been made to other than political principles; religious or pacifist conceptions are not essential. While those engaging in civil disobedience have often been moved by convictions of this kind, there is no necessary connection between them and civil disobedience. For this form of political action can be understood as a way of addressing the sense of justice of the community, an invocation of the recognized principles of cooperation among equals. Being an appeal to the moral basis of civic life, it is a political and not a religious act. It relies upon common sense principles of justice that men can require one another to follow and not upon the affirmations of religious faith and love which they cannot demand that everyone accept. I do not mean, of course, that nonpolitical conceptions have no validity. They may, in fact, confirm our judgment and support our acting in ways known on other grounds to be

just. Nevertheless, it is not these principles but the principles of justice, the fundamental terms of social cooperation between free and equal persons, that underlie the constitution. Civil disobedience as defined does not require a sectarian foundation but is derived from the public conception of justice that characterizes a democratic society. So understood a conception of civil disobedience is part of the theory of free government.

One distinction between medieval and modern constitutionalism is that in the former the supremacy of law was not secured by established institutional controls. The check to the ruler who in his judgments and edicts opposed the sense of justice of the community was limited for the most part to the right of resistance by the whole society, or any part. Even this right seems not to have been interpreted as a corporate act; an unjust king was simply put aside. Thus the Middle Ages lacked the basic ideas of modern constitutional government, the idea of the sovereign people who have final authority and the institutionalizing of this authority by means of elections and parliaments, and other constitutional forms. Now in much the same way that the modern conception of constitutional government builds upon the medieval, the theory of civil disobedience supplements the purely legal conception of constitutional democracy. It attempts to formulate the grounds upon which legitimate democratic authority may nevertheless express a fidelity to law and appeal to the fundamental political principles of a democratic regime. Thus to the legal forms of constitutionalism one may adjoin certain modes of illegal protest that do not violate the aims of a democratic constitution in view of the principles by which such dissent is guided. I have tried to show how these principles can be accounted for by the contract doctrine.

Some may object to this theory of civil disobedience that it is unrealistic. It presupposes that the majority has a sense of justice, and one might reply that moral sentiments are not a significant political force. What moves men are various interests, the desires for power, prestige, wealth, and the like. Although they are clever at producing moral arguments to support their claims, between one situation and another their opinions do not fit into a coherent conception of justice. Rather their views at any given time are occasional pieces calculated to advance certain interests. Unquestionably there is much truth in this contention, and in some societies it is more true than in others. But the essential question is the relative strength of the tendencies that oppose the sense of justice and whether the latter is ever strong enough so that it can be invoked to some significant effect.

A few comments may make the account presented more plausible. First of all, I have assumed throughout that we have to do with a nearly just society. This implies that there exists a constitutional regime and a publicly recognized conception of justice. Of course, in any particular situation certain individuals and groups may be tempted to violate its principles but

the collective sentiment in their behalf has considerable strength when properly addressed. These principles are affirmed as the necessary terms of cooperation between free and equal persons. If those who perpetrate injustice can be clearly identified and isolated from the larger community, the convictions of the greater part of society may be of sufficient weight. Or if the contending parties are roughly equal, the sentiment of justice of those not engaged can be the deciding factor. In any case, should circumstances of this kind not obtain, the wisdom of civil disobedience is highly problematic. For unless one can appeal to the sense of justice of the larger society, the majority may simply be aroused to more repressive measures if the calculation of advantages points in this direction. Courts should take into account the civilly disobedient nature of the protester's act, and the fact that it is justifiable (or may seem so) by the political principles underlying the constitution, and on these grounds reduce and in some cases suspend the legal sanction. Yet quite the opposite may happen when the necessary background is lacking. We have to recognize then that justifiable civil disobedience is normally a reasonable and effective form of dissent only in a society regulated to some considerable degree by a sense of justice.

There may be some misapprehension about the manner in which the sense of justice is said to work. One may think that this sentiment expresses itself in sincere professions of principle and in actions requiring a considerable degree of self-sacrifice. But this supposition asks too much. A community's sense of justice is more likely to be revealed in the fact that the majority cannot bring itself to take the steps necessary to suppress the minority and to punish acts of civil disobedience as the law allows. Ruthless tactics that might be contemplated in other societies are not entertained as real alternatives. Thus the sense of justice affects, in ways we are often unaware of, our interpretation of political life, our perception of the possible courses of action, our will to resist the justified protests of others, and so on. In spite of its superior power, the majority may abandon its position and acquiesce in the proposals of the dissenters; its desire to give justice weakens its capacity to defend its unjust advantages. The sentiment of justice will be seen as a more vital political force once the subtle forms in which it exerts its influence are recognized, and in particular its role in rendering certain social positions indefensible.

In these remarks I have assumed that in a nearly just society there is a public acceptance of the same principles of justice. Fortunately this assumption is stronger than necessary. There can, in fact, be considerable differences in citizens' conceptions of justice provided that these conceptions lead to similar political judgments. And this is possible, since different premises can yield the same conclusion. In this case there exists what we may refer to as overlapping rather than strict consensus, in general, the overlapping

of professed conceptions of justice suffices for civil disobedience to be a reasonable and prudent form of political dissent. Of course, this overlapping need not be perfect; it is enough that a condition of reciprocity is satisfied. Both sides must believe that however much their conceptions of justice differ, their views support the same judgment in the situation at hand, and would do so even should their respective positions be interchanged. Eventually, though, there comes a point beyond which the requisite agreement in judgment breaks down and society splits into more or less distinct parts that hold diverse opinions on fundamental political questions. In this case of strictly partitioned consensus, the basis for civil disobedience no longer obtains. For example, suppose those who do not believe in toleration, and who would not tolerate others had they the power, wish to protest their lesser liberty by appealing to the sense of justice of the majority which holds the principle of equal liberty. While those who accept this principle should, as we have seen, tolerate the intolerant as far as the safety of free institutions permits, they are likely to resent being reminded of this duty by the intolerant who would, if positions were switched, establish their own dominion. The majority is bound to feel that their allegiance to equal liberty is being exploited by others for unjust ends. This situation illustrates once again the fact that a common sense of justice is a great collective asset which requires the cooperation of many to maintain. The intolerant can be viewed as free-riders, as persons who seek the advantages of just institutions while not doing their share to uphold them. Although those who acknowledge the principles of justice should always be guided by them, in a fragmented society as well as in one moved by group egoisms, the conditions for civil disobedience do not exist. Still, it is not necessary to have strict consensus, for often a degree of overlapping consensus allows the reciprocity condition to be fulfilled.

There are, to be sure, definite risks in the resort to civil disobedience. One reason for constitutional forms and their judicial interpretation is to establish a public reading of the political conception of justice and an explanation of the application of its principles to social questions. Up to a certain point it is better that the law and its interpretation be settled than that it be settled rightly. Therefore it may be protested that the preceding account does not determine who is to say when circumstances are such as to justify civil disobedience. It invites anarchy by encouraging everyone to decide for himself, and to abandon the public rendering of political principles. The reply to this is that each person must indeed make his own decision. Even though men normally seek advice and counsel, and accept the injunctions of those in authority when these seem reasonable to them, they are always accountable for their deeds. We cannot divest ourselves of our responsibility and transfer the burden of blame to others. This is true

on any theory of political duty and obligation that is compatible with the principles of a democratic constitution. The citizen is autonomous yet he is held responsible for what he does [...]. If we ordinarily think that we should comply with the law, this is because our political principles normally lead to this conclusion. Certainly in a state of near justice there is a presumption in favor of compliance in the absence of strong reasons to the contrary. The many free and reasoned decisions of individuals fit together into an orderly political regime.

But while each person must decide for himself whether the circumstances justify civil disobedience, it does not follow that one is to decide as one pleases. It is not by looking to our personal interests, or to our political allegiances narrowly construed, that we should make up our minds. To act autonomously and responsibly a citizen must look to the political principles that underlie and guide the interpretation of the constitution. He must try to assess how these principles should be applied in the existing circumstances. If he comes to the conclusion after due consideration that civil disobedience is justified and conducts himself accordingly, he acts conscientiously. And though he may be mistaken, he has not done as he pleased. The theory of political duty and obligation enables us to draw these distinctions.

There are parallels with the common understandings and conclusions reached in the sciences. Here, too, everyone is autonomous yet responsible. We are to assess theories and hypotheses in the light of the evidence by publicly recognized principles. It is true that there are authoritative words, but these sum up the consensus of many persons each deciding for himself. The absence of a final authority to decide, and so of an official interpretation that all must accept, does not lead to confusion, but is rather a condition of theoretical advance. Equals accepting and applying reasonable principles need have no established superior. To the question, who is to decide? The answer is: all are to decide, everyone taking counsel with himself, and with reasonableness, comity, and good fortune, it often works out well enough.

In a democratic society, then, it is recognized that each citizen is responsible for his interpretation of the principles of justice and for his conduct in the light of them. There can be no legal or socially approved rendering of these principles that we are always morally bound to accept, not even when it is given by a supreme court or legislature. Indeed each constitutional agency, the legislature, the executive, and the court, puts forward its interpretation of the constitution and the political ideals that inform it. Although the court may have the last say in settling any particular case, it is not immune from powerful political influences that may force a revision of its reading of the constitution. The court presents its doctrine by reason and argument; its conception of the constitution must, if it is to

endure, persuade the major part of the citizens of its soundness. The final court of appeal is not the court, nor the executive, nor the legislature, but the electorate as a whole. The civilly disobedient appeal in a special way to this body. There is no danger of anarchy so long as there is a sufficient working agreement in citizens' conceptions of justice and the conditions for resorting to civil disobedience are respected. That men can achieve such an understanding and honor these limits when the basic political liberties are maintained is an assumption implicit in a democratic polity. There is no way to avoid entirely the danger of divisive strife, any more than one can rule out the possibility of profound scientific controversy. Yet if justified civil disobedience seems to threaten civic concord, the responsibility falls not upon those who protest but upon those whose abuse of authority and power justifies such opposition. For to employ the coercive apparatus of the state in order to maintain manifestly unjust institutions is itself a form of illegitimate force that men in due course have a right to resist.

With these remarks we have reached the end of our discussion of the content of the principles of justice. Throughout this part my aim has been to describe a scheme of institutions that satisfies these principles and to indicate how duties and obligations arise. These things must be done to see if the theory of justice put forward matches our considered judgments and extends them in an acceptable way. We need to check whether it defines a workable political conception and helps to focus our reflections on the most relevant and basic moral concerns. The account in this part is still highly abstract, but I hope to have provided some guidance as to how the principles of justice apply in practice. However, we should not forget the limited scope of the theory presented. For the most part I have tried to develop an ideal conception, only occasionally commenting on the various cases of nonideal theory. To be sure the priority rules suggest directives in many instances, and they may be useful if not pressed too far. Even so, the only question of nonideal theory examined in any detail is that of civil disobedience in the special case of near justice. If ideal theory is worthy of study, it must be because, as I have conjectured, it is the fundamental part of the theory of justice and essential for the nonideal part as well. I shall not pursue these matters further. We have still to complete the theory of justice by seeing how it is rooted in human thought and feeling, and tied in with our ends and aspirations.

Charles Taylor

CONDITIONS OF AN UNFORCED CONSENSUS ON HUMAN RIGHTS

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<http://www.usm.maine.edu/bcj/issues/three/taylor.html>

What would it mean to come to a genuine, unforced international consensus on human rights? I suppose it would be something like what Rawls describes in his *Political Liberalism* as an "overlapping consensus". That is, different groups, countries, religious communities, civilizations, while holding incompatible fundamental views on theology, metaphysics, human nature, etc., would come to an agreement on certain norms that ought to govern human behaviour. Each would have its own way of justifying this from out of its profound background conception. We would agree on the norms, while disagreeing on why they were the right norms. And we would be content to live in this consensus, undisturbed by the differences of profound underlying belief.

The idea was already expressed in 1949 by Jacques Maritain. "I am quite certain that my way of justifying belief in the rights of man and the ideal of liberty, equality, fraternity is the only way with a firm foundation in truth. This does not prevent me from being in agreement on these practical convictions with people who are certain that their way of justifying them, entirely different from mine or opposed to mine..., is equally the only way founded upon truth".

Is this kind of consensus possible? Perhaps because of my optimistic nature, I believe that it is. But we have to confess at the outset that it is not entirely clear around what the consensus would form, and we are only beginning to discern the obstacles we would have to overcome on the way there. I want to talk a little about both these issues here.

First, what would the consensus be on? One might have thought this was obvious: on human rights. That's what our original question was about. But there is right away a first obstacle, which has been very often pointed out. Rights talk is something that has roots in Western culture. There are certain features of this talk which have roots in Western history, and there only. This is not to say that something very like the underlying norms expressed in schedules of rights don't turn up elsewhere. But they are not expressed in this language. We can't assume straight off, without further examination, that a future unforced world consensus could be formulated to the satisfaction of

everyone in the language of rights. Maybe yes, maybe no. Or maybe: partially yes, partially no, as we come to discriminate some of the things which have been associated together in the Western package.

This is not to say that we already have some adequate term for whatever universals we think we may discern between different cultures. Jack Donnelly speaks of “human dignity” as a universal value. Yasuaki Onuma criticizes this term, pointing out that “dignity” has been itself a favourite term in the same Western philosophical stream that has elaborated human rights. He prefers to speak of the “pursuit of spiritual as well as material well-being” as the universal. Where “dignity” might be too precise and culture-bound a term, “well-being” might be too vague and general. Perhaps we are incapable of this stage of formulating the universal values in play here. Perhaps we shall always be incapable of this. This wouldn’t matter, because what we need to formulate for an over-lapping consensus is certain norms of conduct. The deep underlying values supporting these will, in the nature of the case, belong to the alternative, mutually incompatible justifications.

I have been distinguishing in the above between norms of conduct and their underlying justification. The Western rights tradition in fact exists at both these levels. On one hand, it is a legal tradition, legitimating certain kinds of legal moves, and empowering certain kinds of people to make them. We could, and people sometimes do, consider this legal culture as the proper candidate for universalization, arguing that its adoption can be justified in more than one way. Then a legal culture entrenching rights would define the norms around which world consensus would supposedly crystallize.

Now some people already have trouble with this; e.g., Lee Kwan Yew, and those in South Asia who sympathize with him. They see something dangerously individualistic, fragmenting, dissolvent of community, in this western legal culture. (Of course, they have particularly in mind – or in their sights – the United States.) But in their criticism of Western procedures, they also seem to be attacking the underlying philosophy of the West, which allegedly gives primacy to the individual, where supposedly a “Confucian” outlook would have a larger place for the community, and the complex web of human relations in which each person stands.

For the Western rights tradition also vehicles certain views on human nature, society and the human good. In other words, it also carries some elements of an underlying justification. It might help the discussion to distinguish these two levels, at least analytically, so that we can develop a more fine-grained picture of what our options are here. Perhaps in fact, the legal culture could “travel” better, if it could be separated from some of its underlying justifications. Or perhaps the reverse is true, that the underlying picture of human life might look less frightening, if it could find expression in a different legal culture. Or maybe, neither of these simple solutions will

work (this is my hunch), but modifications need to be made in both; however, distinguishing the levels still helps, because the modifications are different on each level.

In any case, I think a good place to start the discussion would be to give a rapid portrait of the language of rights which has developed in the West, and of the surrounding notions of human agency and the good. We could then proceed to identify certain centres of disagreement across cultures, and we might then see what if anything could be done to bridge these differences.

First, let's get at the peculiarities of the language of rights. As has often been pointed out, there is something rather special here. Many societies have held that it is good to ensure certain immunities or liberties to their members – or sometimes even to outsiders (think of the stringent laws of hospitality that hold in many traditional cultures). Everywhere it is wrong to take human life, at least under certain circumstances and for certain categories of persons. Wrong is the opposite of right, and so this is in some sense in play here.

But a quite different sense of the word is invoked when we start to use the definite or indefinite articles, or to put it in the plural, and speak of “a right” or “rights”: or when we start to attribute these to persons, and speak of your rights or my rights. This is to introduce what has been called “subjective rights”. Instead of saying that it is wrong to kill me, we begin to say that I have a right to life. The two formulations are not equivalent in all respects. Because in the latter case the immunity or liberty is considered as it were the property of someone. It is no longer just an element of the law that stands over and between all of us equally. That I have a right to life says more than that you shouldn't kill me. It gives me some control over this immunity. A right is something which in principle I can waive. It is also something which I have a role in enforcing.

Some element of subjective right exists perhaps in all legal systems. The peculiarity of the West was, first, that it played a bigger role in European mediaeval societies than elsewhere in history, and, second, that it was the basis of the rewriting of Natural Law theory which marked the 17th Century. The older notion that human society stands under a Law of Nature, whose origin was the Creator, and which was thus beyond human will, was now transposed. The fundamental law was reconceived as consisting of natural rights, attributed to individuals prior to society. At the origin of society stands a Contract, which takes people out of a State of Nature, and puts them under political authority, as a result of an act of consent on their part.

So subjective rights are not only crucial to the Western tradition, because they have been an important part of its jurisprudence since the Middle Ages. Even more significant is the fact that they were projected onto Nature, and formed the basis of a philosophical view of humans and their society, one

which greatly privileges individuals' freedom and their right to consent to the arrangements under which they live. This view becomes an important strand in Western democratic theory of the last three centuries.

We can see how the notion of (subjective) right both serves to define certain legal powers, and also provides the master image for a philosophy of human nature, of individuals and their societies. It operates both as legal norm, and as underlying justification.

Moreover, these two levels are not unconnected. The force of the underlying philosophy has brought about a steady promotion of the legal norm in our politico-legal systems; so that it now occupies pride of place in a number of contemporary polities. Charters of rights are now entrenched in the constitutions of a number of countries, and also of the European Union. These are the basis of judicial review, whereby the ordinary legislation of different levels of government can be invalidated on the grounds of conflict with these fundamental rights.

That (subjective) rights thus operate today as trumps is the convergence of two different if intertwined lines of promotion. On one hand, there is the old conception of the fundamental law of our polity, which the decrees or decisions of the authority of the day cannot override. This played a role in pre-modern European societies, even as it did frequently elsewhere. The entrenchment of Charters means that the language of rights has become a privileged idiom for a good part of this fundamental law. This is one line of advance.

At the same time, European thought also had a place for a Law of Nature, a body of norms with even more fundamental status, because they are universal and holds across all societies. Again, analogous concepts can be found elsewhere. The place of rights in our political discourse today shows that it has also become the favoured idiom for this kind of law. We speak of a Universal Declaration of Human Rights. This is the second line of advance.

The rights we now entrench in Charters benefit from both these promotions. These rights occupy the niche which already existed in many legal systems, whereby laws were subject to judicial review. While at the same time, their great force in modern opinion comes from the sense that they are not just features of our legal tradition, that they are not part of what is culturally conditioned, one option among others which human societies can adopt, but fundamental, essential, belonging to human beings as such – in short inviolable.

So the Western discourse of rights involves, on one hand, a set of legal forms, by which immunities and liberties are inscribed as rights, with certain consequences for the possibility of waiver, and for the ways in which they can be secured; whether these immunities and liberties are among those from time to time granted by duly constituted authority, or among those which are entrenched in fundamental law.

And it involves, on the other hand, a philosophy of the person and of society, attributing great importance to the individual, and making significant matters turn on his or her power of consent.

When people protest against the western rights model, they seem to have this whole package in their sights. Taking it as a whole is not simply wrong, of course, because the philosophy is plainly part of what has motivated the great promotion enjoyed by this legal form. Nevertheless, it will help to distinguish them, because we can easily imagine situations in which, for all their interconnections, the package could be untied, and either the forms or the philosophy could be adopted alone, without the other. Of course, this might involve some adjustment in what was borrowed, but this inevitably happens whenever ideas and institutions developed in one area are taken up elsewhere.

It might help to understand a little better just what exactly we might want ultimately to converge onto in the world society of the future, as well as to measure our chances of getting there, if we imagine variations separately on the two levels. This is what I want to do in the following pages.

What I propose to do is to look at a number of places in which there seem to be obvious conflicts between the present language of human rights and one or more important cultures of today's world. The goal will be to try to imagine ways in which the conflict might be resolved, and the essential norms involved in the human rights claim preserved, and this through some modification, either of legal forms or of philosophy.

But here I must straightway make a confession. No merit attaches to this, because I shall be unable in any case to hide what I now avow, as the argument progresses. I am a philosopher, and not a jurist. Consequently, what I have to say about the possible variation of legal forms will be terse to the point of near-silence, and not very interesting. I make the distinction, because I want to say some things about the conflicts which could perhaps be resolved through some greater understanding of alternative philosophical foundations for human rights. But I want to stake out the category of resolution through innovations in legal forms, because I am sure that it will play an important part in arriving at an eventual world consensus.

That being said, I would like to look at four kinds of conflict. The first could perhaps be resolved by legal innovation, and I will briefly discuss this possibility. But it can also be tackled on the philosophical level. The other two involve the basic justification of human rights claims. In developing these, I will have to spell out much further the justificatory basis for Western thinking and practice about rights than I have in the rather sparse remarks above about Natural Rights theory. I shall return to this below.

Let us take the kind of objection that I mentioned at the outset, that someone like Lee Kwan Yew might raise about Western rights practice, and

its alleged unsuitability for other societies, in particular East Asian ones. The basic notion is that this practice supposes that individuals are the possessors of rights, and encourages them to act in consequence, that is, to go out and aggressively seek to make good their rights. But this has a number of bad consequences. First of all, it focusses people on their rights, that is, what they can claim from society and others, rather than on their responsibilities, what they owe to the whole community, or to its members. It encourages people to be self-regarding, and leads to an atrophy of the sense of belonging. This in turn leads to a higher degree of social conflict, more and more many-sided, tending ultimately to a war of all against all. Social solidarity weakens, and the threat of violence increases.

This scary scenario seems rather over-drawn to some. But to others it seems to have some elements of truth. Including to people within Western societies, which perhaps might make us doubt that we are on to a difference between civilizations here. In fact, there is a long tradition of thinking in the West, warning against pure rights talk outside of a context where the political community has a strong positive value. This “communitarian” theorizing has taken on a new urgency today, because of the experience of conflict and alienation and the fraying of solidarity in many Western democracies, notably but not only the USA. Does this mean that Lee Kwan Yew’s formula might offer a solution to present-day America?

The absurdity of this suggestion brings us back to the genuine differences of culture which exist today. But if we follow through on the logic of the “communitarian” critique in the West we can perhaps find a framework in which to consider these differences.

One of the key points in the critique of a too exclusive focus on rights is that this neglects the crucial importance of political trust. Dictatorships, as Tocqueville pointed out, (in *Democracy in America*) try to destroy trust between citizens. But free societies vitally depend on it. The price of freedom is a strong common commitment to the political formula that binds us, because without the commitment the formula would have to be aggressively enforced, and this threatens freedom. But what will very quickly dissolve the commitment for each and every one of us is the sense that the others no longer share it or are willing to act on it. The common allegiance is nourished on trust.

This goes for a political régime centred on the retrieval of rights as much, perhaps more, as for any other. The condition of our being able to go out and seek to enforce our own rights is that the system within which this is carried out retains the respect and allegiance of everybody. Once rights-retrieval begins to eat into this, once it begins to create a sense of embattled grievance pitting group against group, undermining the sense of common allegiance and solidarity, the whole system of free-wheeling rights-enforcement is in danger.

The issue is not “individualism” as such. There are many forms of this, and some have grown up together with modern, democratic forms of political allegiance. The danger is any form of either individualism or group identity which undercuts or undermines the trust that we share a common allegiance as citizens of this polity.

I don’t want to pursue here a search into the conditions of political trust in Western democracies, at least not for its own sake. But I want to use this requirement as a heuristic tool, in search of a point of consensus on human rights. One way of considering a claim, similar to that of Lee Kwan Yew’s, that the Western rights focus doesn’t fit a certain cultural traditions, would be to ask how certain fundamental liberties and immunities could be guaranteed in the society in question, consistent with the maintenance of political trust. This means, of course, that one will not consider satisfactory any solution which doesn’t preserve these liberties and immunities, while at the same time being led to accept whatever modifications in legal form one needs, to generate a sense of common acceptance of the guaranteeing process in the society concerned.

This would mean, in the concrete case of Lee Kwan Yew’s Singapore, that his claim in its present form is hardly receivable. There is too much evidence of the stifling of dissent, and of the cramping (to say the least) of the democratic political process, in Singapore. But this kind of claim should lead us to reflect further on how immunities of the kind we seek in human rights declarations can best be preserved in “Confucian” societies.

Turning back to our, Western societies, we note that judges and the judicial process enjoy in general a great deal of prestige and respect. In some countries, this respect is based on a long tradition, in which some notion of fundamental law played an important part, and hence in which its guardians had a special place. Is there a way of connecting rights-retrieval in other societies to offices and institutions which enjoy the highest moral prestige there?

Leaving the example of “Confucian” societies, and adverting to another tradition, we note how in Thailand, at certain crucial junctions, the immense moral prestige of the monarchy has been used to confer legitimacy and force on moves to end military violence and repression and return to constitutional rule. This was the case following the student demonstrations in October 1973, as well as during the events of May 1992. In both cases, a military junta responded with violence, only to find its position unsustainable and to be forced to give way to a civilian régime and renewed elections. In both these cases, King Bhumibhol played a critical role.

The king was able to play this role because of elements in the traditions which have contributed to the Thai conception of monarchy, some of which

go way back, e.g., that of the king as dharmaraja, in the tradition of Asoka, which sees the ruler as charged with establishing dharma in the world.

It was perhaps crucial to the turn-overs of 1973 and 1992, that a king with this kind of status played the part he did. The trouble is that, as things are, the power of the royal office can also be used in the other direction; as we can see in 1976, when right-wing groups used the slogan “Nation, King and Religion” as a rallying cry in order to attack democratic and radical leaders. The movement of reaction culminated in the October 1976 coup which relegated the democratic constitution once again to the basket.

The issue which arises from all this is perhaps the following: can the immense power to create trust and consensus which resides in the Thai monarchy be in some way stabilized, regularized, and channeled in support of constitutional rule, and the defense of certain human rights, such as those concerned with the security of the person? In Weberian terms, could the charisma here be “routinized” enough to impart a stable direction to it, without being lost altogether?

I suspect that there is somewhere a positive answer to this question. But I don't have anything concrete to propose here. I just use this as the basis of some hypothetical conjectures. If a way could be found to draw on this royal charisma, together with the legitimacy enjoyed by certain individuals of proven “merit”, who are invested with a lot of moral authority in the Thai tradition, to enhance support for a democratic order respectful of those immunities and liberties we generally describe as human rights, the fact that it might deviate from the standard western model of judicial review initiated by individuals should be accorded less importance than the fact that it protects human beings from violence and oppression. We would have in fact achieved convergence on the substance of human rights, in spite of differences in form.

But suppose we take the “communitarian” arguments against western rights discourse emanating from other societies at another level: not questioning so much the legal forms, but expressing disagreement with the underlying philosophical justification?

My example is again drawn from Thailand. This society has seen in the last century a number of attempts to formulate reformed interpretations of the overwhelmingly majority religion of this society: Theravada Buddhism. Some of these have attempted to find a basis in this Buddhism for democracy and human rights.

One main stream of reform consists of movements which (as they see it) attempt to purify Buddhism, to turn it away from a focus on ritual, on gaining merit, and even worldly success through blessings and acts of piety, and to focus more on (what they see as) the original goal of Enlightenment. The late Phutthathat (Buddhadasa) has been a major figure in this regard.

This stream tries to return to what (it sees as) the original core of Buddhist teaching, about the unavoidability of suffering, the illusion of the self, and the goal of Nibbana. It attacks what it sees as the “superstition” of those who seek potent amulets, and the blessings of monks, and the like. It wants to separate the search for enlightenment from the seeking of merit through ritual. And it is very critical of the whole metaphysical structure of belief which has developed in mainstream Buddhism, about heavens, hell, Gods and demons, which play a large part in popular belief. It has been described by the Sri Lankan anthropologist, Gananath Obeyesekere, as a “protestant Buddhism”.

It is this stream which seems to be producing new reflections on Buddhism as a basis for democratic society and practice. This is not to say that all of those concerned Buddhists, monks and lay, involved in democratic activism of one kind or another have been of this persuasion. But it is the reform stream which seems to have produced the concern to develop a Buddhist vision of democratic society. One may see something paradoxical in this, in that this rather austere reformism is espoused by a relatively small élite, rather far removed from the religious outlook of the mass of the people. But the dedication of some members of this élite to democracy, equality and human rights commands respect.

Phutthathat's reformism was the very opposite of a disengaged religion, unconcerned with the world. On the contrary, he and those inspired by him have always stressed that the path to enlightenment is inseparable from that of concern for all creatures, from *metta* (loving kindness) and *karuna* (compassion). We can't really be concerned with our own liberation without also seeking that of others, just as any acts of injustice towards them redound to our own continued imprisonment in illusion. Saneh Chamarik quotes the Buddha: “Monks: Taking care of oneself means as well taking care of others. Taking care of others means as well taking care of oneself”. This view leads to an activist concern for social justice and well-being. Phutthathat spoke of a “dhammic socialism”. It is a spiritual stance which entails heightened standards of personal commitment and responsibility, of probity and dedication to duty, even of self-sacrifice and dedication to the poor and downtrodden. Following Obeyesekere's analogy, one could say that it is reminiscent in this respect of Max Weber's description of early Calvinism, which propagated a “this-worldly asceticism”, that prompted to responsible, disciplined social action.

But this concern is not necessarily democratic. It could also find expression in other modes of social reform action, including those which see the agency of reform as a minority with the right intentions. These modes are, after all, well rooted in Theravada Buddhist history, in particular in the paradigm model of the Emperor Asoka as the ideally just ruler and upholder

of Dharma. This is, indeed, one of the models on which the Thai monarchical state was based. The dhammaraja is undoubtedly understood as an agency for good, for the welfare of the people, but he is not in any normal sense a democratic agency.

Phutthathat himself was not entirely clear on the issue of democratic agency. There has, however, been a democratic strand in this general movement. Panyanantha made a democratic application of Phutthathat's thought, for instance. And something similar could be said for Photirak and his Santi Asok movement. This has acquired additional political relevance recently, in that the charismatic leader of the Palang Dharma party, Chamlong Srimuang, is a follower of Santi Asok.

Beyond these, there are followers of Phutthathat's reformism which are deeply committed to democracy, such as Sulak Sivaraksa and Saneh Chamarik. They and others in their milieu are highly active in the NGO community. They are concerned with alternative models of development, which would be more ecologically sound, concerned to put limits to growth, critical of "consumerism", and conducive to social equality. The Buddhist commitment lies behind all these goals. As Sulak explains it, the Buddhist commitment to nonviolence entails a non-predatory stance towards the environment; and calls also for the limitation of greed, one of the sources of anger and conflict.

We can see here an agenda of universal well-being. But what specifically pushes to democracy, that is, to ensuring that people take charge of their own lives, rather than simply being the beneficiaries of benevolent rule? Two things seem to come together in this outlook to underpin a strong democratic commitment. The first is the notion, central to Buddhism, that ultimately each individual must take responsibility for his or her own Enlightenment. The second is a new application of the doctrine of non-violence, which is now seen to call for a respect for the autonomy of each person, demanding in effect a minimal use of coercion in human affairs. This carries us far from the politics of imposed order, decreed by the wise minority, which has long been the traditional background to various forms and phases of military rule. It is also evident that this underpinning for democracy also offers a strong support for human rights legislation. And that, indeed, is how it is understood by thinkers like Sulak.

There is an outlook here which converges on a policy of defense of human rights and democratic development, but which is rather different from the standard Western justifications of these. It isn't grounded on a doctrine of the dignity of human beings as something commanding respect. The injunction to respect comes rather as a consequence of the fundamental value of non-violence, which also generates a whole host of other consequences (including the requirement for an ecologically responsible development, and the need

to set limits to growth). Human rights don't stand out, as they often do in the West, as a claim on their own, independent from the rest of our moral commitments, even sometimes in potential conflict with these.

Interestingly, this Buddhist conception provides an alternative way of linking together the agenda of human rights and that of democratic development. Whereas in the Western framework, these go together because they are both seen as co-requirements of human dignity, and indeed, as two facets of liberty, a connection of a somewhat different kind is visible among Thai Buddhists of this reform persuasion. Their commitment to people-centred and ecologically-sensitive development makes them strong allies of those communities of villagers who are resisting encroachment by the state and big business, fighting to defend their lands and forests. This means that they are heavily into what has been recognized as a crucial part of the agenda of democratization in Thailand – decentralization, and in particular the recovery of local community control over natural resources. They form a significant part of the NGO community committed to this agenda. A rather different route has been travelled to a similar goal.

Other differences stand out. Because of its roots in a certain justice agenda, the politics of establishing rights in the West has often been surrounded with anger, indignation, the imperative to punish historic wrong-doing. From this Buddhist perspective comes a caution against the politics of anger, itself the potential source of new forms of violence.

My aim here is not to judge between these approaches, but to point to these differences as the source of a potentially fruitful exchange within a (hopefully) emerging world consensus on the practice of human rights and democracy.

We can in fact see a convergence here on certain norms of action, however they may be entrenched in law. But what is unfamiliar to the Western observer is the entire philosophical basis, and its appropriate reference points, as well as the rhetorical bases of its appeal. In the West, both democracy and human rights have been furthered by the steady advance of a kind of humanism, which stressed how humans stood out from the rest of the cosmos, had a higher status and dignity than anything else. This has its origins in Christianity, and also certain strands of ancient thought, but the distance is greatly exacerbated by what Weber describes as the disenchantment of the world, the rejection of a view of the cosmos as a meaningful order. The human agent stands out even more starkly from a mechanistic universe. For Pascal, the human being is a mere reed, but of incomparably greater significance than what threatens to crush it, because it is a thinking reed. Kant echoes some of the same reflections in his discussion of the sublime in the third critique, and also defines human dignity in terms of the incomparably greater worth of human beings compared to the rest of the contents of the universe.

The human rights doctrine based on this humanism stresses the incomparable importance of the human agent. It centres everything on him/her, makes his/her freedom and self-control a major value, something to be maximized. Consequently, in the Western mind, the defense of human rights seems indissolubly linked with this exaltation of human agency. It is because humans justifiably command all this respect and attention, at least in comparison to anything else, that their rights must be defended. The Buddhist philosophy that I have been describing starts from a quite different place, the demand of *ahimsa*, and yet seems to ground many of the same norms. (Of course, there will also be differences in the norms grounded, which raises its own problems, but for the moment I just want to note the substantial overlap.) The gamut of Western philosophical emotions, the exaltation at human dignity, the emphasis on freedom as the highest value, the drama of age-old wrongs righted in valour, all the things which move us in seeing *Fidelio* well performed, seem out of place in this alternative setting. And so do the models of heroism. The heroes of *ahimsa* are not forceful revolutionaries, not Cola di Rienzi or Garibaldi. And with the philosophy and the models, a whole rhetoric loses its basis.

This perhaps gives us an idea of what an unforced world consensus on human rights might look like. Agreement on norms, yes; but a profound sense of difference, of unfamiliarity, in the ideals, the notions of human excellence, the rhetorical tropes and reference points by which these norms become objects of deep commitment for us. To the extent that we can only acknowledge agreement with people who share the whole package, and are moved by the same heroes, the consensus will either never come or must be forced.

This is the situation at the outset, in any case, where consensus on some aspect of human rights has just been attained. Later a process can follow of mutual learning, moving towards a “fusion of horizons” in Gadamer’s term, where the moral universe of the other becomes less strange. And out of this will come further borrowings, and the creation of new hybrid forms.

After all, something of this has already occurred with another stream of the philosophy of *ahimsa*, that of Gandhi. Gandhi’s practices of non-violent resistance have been borrowed and adapted in the West, in the American Civil Rights Movement, for example, under Martin Luther King. And beyond that, they have become part of a world repertory of political practices, invoked in Manila in 1988, in Prague in 1989, to name just two examples.

Also worthy of remark is one other facet of this case, which may be generalizable as well. An important part of the Western consciousness of human rights lies in the awareness of an historic achievement. They define norms of respect for human beings, more radical and more exigent than have ever existed in the past. They offer in principle greater freedom, greater security from violence, from arbitrary treatment, from discrimination and

oppression than humans have enjoyed at least in most major civilizations in history. In a sense they involve taking the rather exceptional treatment accorded to privileged people in the past, and extending it to everyone. That is why so many of the landmarks of the historical development of rights were in their day instruments of élite privilege, starting with Magna Charta.

Now there is a curious convergence in this respect with the strand of Reform Buddhism I have been describing. Here too, there is the awareness that very exigent demands are being made, which go way beyond what the majority of ordinary believers recognize as required practice. Reform Buddhism is practised by an élite, as has been the case with most of its analogues in history. But here, too, in developing a doctrine of democracy and human rights, reform Buddhists are proposing to extend what has hitherto been a minority practice, and entrench it in society universally. Here again there is a consciousness of the universalization of the highest of traditional minority practice.

It's as though, in spite of the difference in philosophy, this universalization of an exigent standard, which human rights practice at its best involves, was recognized as a valid move, and recreated within a different cultural, philosophical and religious world. The hope for a world consensus is that this kind of move will be repeatedly made.

This example drawn from Thailand provides one model for what the path to world consensus might look like. A convergence on certain norms from out of very different philosophical and spiritual backgrounds. The consensus at first doesn't need to be based on any deep mutual understanding of these respective backgrounds. Each may seem strange to the other, even though both recognize and value the practical agreement attained. Of course, this is not to say that there is no borrowing involved at all. Plainly, democracy and human rights practices originated somewhere, and are now being creatively recaptured (perhaps in a significantly different variant) elsewhere. But a mutual understanding and appreciation of each other's spiritual basis for signing on the common norms may be close to non-existent.

This, however, is not a satisfactory end-point. Some attempt at deeper understanding must follow, or the gains in agreement will remain fragile. And this for at least two closely connected reasons.

The first is, that the agreement is never complete. I adverted to this in a parenthesis a couple of pages back, but couldn't go into it there. We already saw how what we can call the ahimsa basis for rights connects to ecological concerns rather differently from the Western humanist basis; how the place of anger, indignation, righteous condemnation and punishment, is quite different in the two outlooks. All this must lead to differences of practice, of the detailed schedule of rights, or at least of the priority ordering among them. Now the demands of a world consensus will often include our squaring

these differences in practical contexts, our accommodating, or coming to some compromise version that both sides can live with. These negotiations will be inordinately difficult, unless each side can come to some more fine-grained understanding of what moves the other.

The second reason follows on from the first; is in a sense just another facet of it. The continued coexistence in a broad consensus, which continually generates particular disagreements, which have in turn to be negotiated to renewed consensus, all this is impossible without mutual respect. If the sense is strong on each side that the spiritual basis of the other is ridiculous, false, inferior, unworthy, these attitudes cannot but sap the will to agree of those who hold these views, while engendering anger and resentment among those who are thus depreciated. The only cure for contempt here is understanding. This alone can replace the too-facile depreciatory stories about others with which groups often tend to shore up their own sense of rightness and superiority. Consequently the bare consensus must strive to go on towards a fusion of horizons.

Now in the above discussion I have analytically distinguished consensus from mutual understanding, and imagined that they occur sequentially, as successive phases. This is certainly a schematic over-simplification, but perhaps not totally wrong in the Thai case I was examining. There are, however, other situations in which some degree of mutual understanding is an essential condition of getting to consensus. The two can't simply occur successively, because the path to agreement lies through some degree of sympathetic mutual comprehension.

I want to look now at another difference which seems to be of this latter type. But in order to lay it out here, I will have to describe more fully another facet of the western philosophical background of rights, which can hit a wall of incomprehension once one crosses the boundary to other cultures.

This is the western concern for equality, in the form of non-discrimination. Existing Charters of rights in the western world are no longer concerned only with ensuring certain liberties and immunities to individuals. To an important degree, they also serve to counter various forms of discrimination. This represents a shift in the centre of gravity of rights talk over the last centuries. One could argue that the central importance of non-discrimination enters American judicial review with the 14th Amendment, in the aftermath of the Civil War. Since then non-discrimination provisions have been an important and growing part of schedules of rights both in the United States and elsewhere.

This connection is perhaps not surprising, although it took a long time to come to fruition. In a sense, the notion of equality was closely linked from the beginning to that of Natural Right, in contradistinction to the place of subjective rights in mediaeval systems of law, which were also those of certain

estates or privileged individuals. Once right inheres in nature, then it is hard in the long run to deny it to anyone.

But the connection to equality is the stronger, because of the thrust of modern humanism mentioned above, which defines itself against the view that we are embedded in a meaningful cosmic order. This latter has been a background against which various forms of human differentiation could appear natural, unchallengeable – be they social, racial or sexual. The differences in human society, or gender roles, could be understood to reflect differentiations in the order of things, and to correspond to differences in the cosmos, as with Plato's myth of the metals. This has been a very common form of thinking in almost all human societies.

The destruction of this order has allowed for a process of unmasking of existing social and gender differences as merely socially constructed, as without basis in the nature of things, as revocable, and hence ultimately without justification. The process of working this out has been long, and we are not yet at the end; but it has been hard to resist in Western civilization in the last two centuries.

This aspect of Western rights talk is often very hard to export, as it encounters societies in which certain of the social differences are still considered very meaningful, and they are seen in turn as intrinsically linked to certain practices, which in Western societies are now regarded as discriminatory. However hard these sticking points may be for a Westerner to grasp in detail, it is not difficult to understand the general shape of the conflict. Particularly as we in the West are far from having worked out how to combine gender equality with our conflicted ideas of gender difference.

To take this issue of gender equality as our example, we can readily understand how a certain way of framing the difference, however oppressive it maybe in practice, also serves as the reference point for deeply felt human identities. So that the rejection of the framework can be felt as the utter denial of the basis of identity, and this not just for the favoured gender, but also for the oppressed one. Throwing off this identity can be an act of liberation, but more than just liberation is involved here; since without an alternative sense of identity, the loss of the traditional one is disorienting and potentially unbearable.

The whole shape of the change that could allow for an unforced consensus on human rights here includes a redefinition of identity, perhaps building on transformed traditional reference points, in such a way as to allow for a recognition of an operative equality between the sexes. This can be a tall order; something we should have no trouble appreciating in the West, because we have yet to complete our own redefinitions in this regard.

Now this identity redefinition will be the easier to effect, the more it can be presented as in continuity with the most important traditions and

reference points, properly understood. Correspondingly, it gets maximally difficult when it comes across as a brutal break with the past, involving a condemnation and rejection of it. To some extent, which if these two scenarios gets enacted depends on developments internal to the society. But the relation with the outside world, and particularly the west can also be determining.

The more the outside portrayal, or attempt at influence, comes across as a blanket condemnation of or contempt for the tradition, the more the dynamic of a “fundamentalist” resistance to all redefinition tends to get in train; and the harder it will be to find unforced consensus. This is a self-feeding dynamic, in which perceived external condemnation helps to feed extreme reaction, which calls down further condemnation, and hence further reaction, in a vicious spiral. The world is already drearily familiar with this dynamic in the unhealthy relation between the west and great parts of the Islamic world in our time.

In a sense, therefore, the road to consensus in relation to this difference is the opposite from the one mentioned above. There, the convergence on norms between Western humanism and reform Buddhism might be seen as preceding a phase in which they come better to understand and appreciate and learn from each other. In the field of gender discrimination, it may well be that the order would be better reversed. That is, that the path to consensus passes through greater sympathetic understanding of the situation of each party by the other. In this respect, the West, with its own hugely unresolved issues about equality and difference is often more of a menace than a help.

Before concluding, I want to look at another difference, which resembles in different respects both of the above. That is, it is certainly one in which the dynamic of mutual miscomprehension and condemnation is driving us away from consensus. But it also has potentialities like the Thai case, in that we can see how a quite different spiritual or theological basis might be found for a convergence on norms. I am thinking of the difference between international human rights standards and certain facets of the Shari’a, recently discussed in so illuminating a fashion by Abdullahi Ahmed An-Na’im. Certain punishments prescribed by the Shari’a, such as amputation of the hand for theft, or stoning for adultery, appear excessive and cruel in the light of standards prevalent in other countries.

It is worth while developing here, as I have in the other cases, the facet of Western philosophical thought and sensibility which has given particular force to this condemnation. This can perhaps best be shown through an example. When we read the opening pages of Michel Foucault’s *Surveiller et Punir*, we are struck by its rivetting description of the torture, execution and dismemberment of Damien, the attempted assassin of Louis XV in the mid-18th Century. We cannot but be aware of the cultural change that we have

gone through since the Enlightenment. We are much more concerned about pain and suffering than our forbears; we shrink more from the infliction of gratuitous suffering. It would be hard to imagine people today taking their children to such a spectacle, at least openly and without some sense of unease and shame.

What has changed? Perhaps we can distinguish two factors, one positive and one negative. On the positive side, we see pain and suffering, and gratuitously inflicted death, in a new light because of the immense cultural revolution which has been taking place in modernity, which I called elsewhere “the affirmation of ordinary life”. What I was trying to gesture at with this term is the momentous cultural and spiritual change of the early modern period, which dethroned the supposedly higher activities of contemplation and the citizen life, and put the centre of gravity of goodness in ordinary living, production and the family. It belongs to this spiritual outlook that our first concern ought to be to increase life, relieve suffering, foster prosperity. Concern above all for the “good life” smacked of pride, of self-absorption. And beyond that, it was inherently inegalitarian, since the alleged “higher” activities could only be carried out by an élite minority, whereas leading rightly one’s ordinary life was open to everyone. This is a moral temper to which it seems obvious that our major concern must be our dealings with others, in justice and benevolence; and these dealings must be on a level of equality.

This affirmation, which constitutes a major component of our modern ethical outlook, was originally inspired by a mode of Christian piety. It exalted practical agape, and was polemically directed against the pride, élitism, one might say, self-absorption of those who believed in “higher” activities or spiritualities.

We can easily see how much this development is interwoven with the rise of the humanism which stands behind the western discourse of human rights. They converge on the concern for equality, and also for the security of the person against burdens, dangers and suffering imposed from outside.

But this is not the whole story. There is also a negative change. Something has been cast off. It is not as though our ancestors would have just thought the level of pain irrelevant, providing no reason at all to desist from some course of action involvin torture and wounds. For us, the relief of suffering has become a supreme value, but it was always an important consideration. It is rather that, in cases like that of Damien, the negative significance of pain was subordinated to other, weightier considerations. If it is necessary that punishment in a sense undo the evil of the crime, restore the balance – what is implicit in the whole notion of the criminal making *amende honorable* – then the very horror of regicide calls for a kind of theatre of the horrible as the medium in which this undoing can take place. In this context, pain

takes on a different significance; there has to be lots of it to make the trick. A principle of minimizing pain is trumped.

And so we relate doubly to our forbears of two centuries ago. We have new reasons to minimize suffering; but we also lack a reason to over-ride the minimizing of suffering. We no longer have the whole outlook – linked as it was to the cosmos as meaningful order – which made sense of the necessity of undoing the crime, restoring the breached order of things, in and through the punishment of the criminal.

In general, contemporaries in the West are so little aware of the positive change they have gone through – they tend anachronistically to think that people must always have felt this way – that they generally believe that the negative change is the crucial one that explains our difference from our predecessors. With this in mind, they look at the Shari'a punishments as the simple result of pre-modern illusions, in the same category in which they now place the ancien régime execution scenarios. With this dismissive condemnation, the stage is set for the dynamic I described above, in which contemptuous denunciation leads to “fundamentalist” reaffirmations, which in turn provoke even more strident denunciations, and so on.

What gets lost in this struggle is what An-Na'im shows so clearly, the possibilities of re-interpretation and re-appropriation which the tradition itself contains. And what also becomes invisible is what could be the motor of this change, analogous to the role played by the cultural revolution affirming ordinary life in the West. What this or these could be, it is not easy for an outsider to determine. But the striking Islamic theme of the mercy and compassion of God, re-invoked at the beginning of almost every Sura of the Qur'an, might be the locus of a creative theological development, which might help towards a convergence in this domain. In which case, we might see a consensus out of very different spiritual backgrounds, analogous to the Thai Buddhist views I discussed earlier.

I feel that, if not some conclusion, at least some attempt to draw together the threads of this long and perhaps rambling discussion would now be in order. Perhaps I can bring out the main themes of the preceding pages.

I started from the basic notion that an unforced world consensus on human rights would be something like a Rawlsian “overlapping consensus”, in which convergent norms would be justified in very different underlying spiritual and philosophical outlooks, I then argued that these norms have to be distinguished and analytically separated off not just from the background justifications, but also from the legal forms which give them force. These two could vary, with good reason, from society to society, even though the norms we crucially want to preserve remain constant. We need in other words a threefold distinction: norms, legal forms, and background justifications, which each have to be distinguished from the others.

I then looked at four examples of differences. These by no means exhaust the field, though each is important in the present international exchange on human rights. One of these dealt with the issue of variations in legal forms. In the other three, I tried to discuss issues around the convergence on norms out of different philosophical and spiritual backgrounds.

Two important facets of these convergences emerged. In one way, they involve the meeting of very different minds, worlds apart in their premisses, uniting only in the immediate practical conclusions. But from another side, it is clear that consensus requires that this extreme distance be closed, that we come better to understand each other in our differences, that we learn to recognize what is great and admirable in our different spiritual traditions. In some cases, this kind of mutual understanding can come after convergence, but in others it seems almost to be a condition of it.

An obstacle in the path to this mutual understanding comes from the inability of many Westerners to see their culture as one among many. An example of this difficulty was visible in the last difference discussed. To the extent that westerners see their human rights doctrine as arising simply out of the falling away of previous countervailing ideas – e.g., the punishment scenarios of the *ancien régime* – which have now been discredited, and leave the field free for the preoccupations with human life, freedom, the avoidance of suffering; to this extent they will tend to think that the path to convergence requires that others too cast off their traditional ideas, that they even reject their religious heritage, and become “unmarked” moderns like us. It is only if we in the west can recapture a more adequate view of our own history, that we can learn to understand better the spiritual ideas which have been interwoven in our development, and hence can be prepared to understand sympathetically the spiritual path of others towards the converging goal. Contrary to what many people think, world convergence will not come through a loss or denial of traditions all around, but rather by creative re-immersions of different groups, each in their own spiritual heritage, travelling different routes to the same goal.

Alasdair MacIntyre

SOME CONSEQUENCES OF THE FAILURE OF THE ENLIGHTENMENT PROJECT

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The problems of modern moral theory emerge clearly as the product of the failure of the Enlightenment project. On the one hand the individual moral agent, freed from hierarchy and teleology, conceives of himself and is conceived of by moral philosophers as sovereign in his moral authority. On the other hand the inherited, if partially transformed rules of morality have to be found some new status, deprived as they have been of their older teleological character and their even more ancient categorical character as expressions of an ultimately divine law. If such rules cannot be found a new status which will make appeal to them rational, appeal to them will indeed appear as a mere instrument of individual desire and will. Hence there is a pressure to vindicate them either by devising some new teleology or by finding some new categorical status for them. The first project is what lends its importance to utilitarianism; the second to all those attempts to follow Kant in presenting the authority of the appeal to moral rules as grounded in the nature of practical reason. Both attempts, so I shall argue, failed and fail; but in the course of the attempt to make them succeed social as well as intellectual transformations were accomplished.

Bentham's original formulations suggest a shrewd perception of the nature and scale of the problems confronting him. His innovative psychology provided a view of human nature in the light of which the problem of assigning a new status to moral rules can be clearly stated; and Bentham did not flinch from the notion that he was assigning a new status to moral-rules and giving a new meaning to key moral concepts. Traditional morality was on his view pervaded by superstition; it was not until we understood that the only motives for human action are attraction to pleasure and aversion to pain that we can state the principles of an enlightened morality, for which the prospect of the maximum pleasure and absence of pain provides a telos. 'Pleasure' Bentham took to be the name of a type of sensation-just as 'pain' is; and sensations of both types vary only in number, intensity, and duration. It is worth taking note of this false view of pleasure if only because Bentham's immediate utilitarian successors were so apt to see this as the major source of the difficulties that arise for utilitarianism. They therefore

did not always attend adequately to the way in which he makes the transition from his psychological thesis that mankind has two and only two motives to his moral thesis that out of the alternative actions or policies between which we have to choose at any given moment we ought always to perform that action or implement that policy which will produce as its consequences the greatest happiness – that is, the greatest possible quantity of pleasure with the smallest possible quantity of pain – of the greatest number. It is of course on Bentham's view the enlightened, educated mind and it alone which will recognize that the pursuit of my happiness as dictated by my pleasure-seeking, pain-avoiding psychology and the pursuit of the greatest happiness of the greatest number do in point of fact coincide. But it is the aim of the social reformer to reconstruct the social order so that even the unenlightened pursuit of happiness will produce the greatest possible happiness for the greatest possible number; from this aim spring Bentham's numerous proposed legal and penal reforms. Note that the social reformer could not himself find a motive for setting himself to those particular tasks rather than others, were it not the case that an enlightened regard for one's own happiness here and now even in as unreformed a legal and social order as late-eighteenth- and early-nineteenth-century England will lead inexorably to the pursuit of the greatest happiness. This is an empirical claim. Is it true? It took a nervous breakdown by John Stuart [Mill at once the first Benthamite child and clearly the most distinguished mind and character ever to embrace Benthamism, to make it clear to Mill himself at least that it is not. Mill concluded that it was Bentham's concept of happiness that needed reforming, but what he had actually succeeded in putting in question was the derivation of the morality from the psychology. Yet this derivation provided the whole of the rational grounding for Bentham's project of a new naturalistic teleology. It is not surprising that as this failure was recognized within Benthamism, its teleological content became more and more meagre.

John Stuart Mill was right of course in his contention that the Benthamite conception of happiness stood in need of enlargement; in Utilitarianism he attempted to make a key distinction between 'higher' and 'lower' pleasures and in *On Liberty* and elsewhere he connects increase in human happiness with the extension of human creative powers. But the effect of these emendations is to suggest – what is correct, but what no Benthamite no matter how far reformed could concede – that the notion of human happiness is not a unitary, simple notion and cannot provide us with a criterion for making our key choices. If someone suggests to us, in the spirit of Bentham and Mill, that we should guide our own choices by the prospects of our own future pleasure or happiness, the appropriate retort is to enquire: 'But which pleasure, which happiness ought to guide me?' For there are too many different kinds of

enjoyable activity, too many different modes in which happiness is achieved. And pleasure or happiness are not states of mind for the production of which these activities and modes are merely alternative means. The pleasure-of-drinking-Guinness is not the pleasure-of-swimming-at-Crane's-Beach, and the swimming and the drinking are not two different means for providing the same end-state. The happiness which belongs peculiarly to the way of life of the cloister is not the same happiness as that which belongs peculiarly to the military life. For different pleasures and different happinesses are to a large degree incommensurable: there are no scales of quality or quantity on which to weigh them. Consequently appeal to the criteria of pleasure will not tell me whether to drink or swim and appeal to those of happiness cannot decide for me between the life of a monk and that of a soldier.

To have understood the polymorphous character of pleasure and happiness is of course to have rendered those concepts useless for utilitarian purposes; if the prospect of his or her own future pleasure or happiness cannot for the reasons which I have suggested provide criteria for solving the problems of action in the case of each individual, it follows that the notion of the greatest happiness of the greatest number is a notion without any clear content at all. It is indeed a pseudo-concept available for a variety of ideological uses, but no more than that. Hence when we encounter its use in practical life, it is always necessary to ask what actual project or purpose is being concealed by its use. To say this is not of course to deny that many of its uses have been in the service of socially beneficial ideals. Chadwick's radical reforms in the provision of public health measures, Mill's own support for the extension of the suffrage and for an end to the subjugation of women and a number of other nineteenth-century ideals and causes all invoked the standard of utility to some good purpose. But the use of a conceptual fiction in a good cause does not make it any less of a fiction. We shall have to notice the presence of some other fictions in modern moral discourse later in the argument; but before we do so it is necessary to consider one more feature of nineteenth-century utilitarianism. It was a mark of the moral seriousness and strenuousness of the great nineteenth-century utilitarians that they felt a continuing obligation to scrutinize and rescrutinize their own positions, so that they might, if at all possible, not be deceived. The culminating achievement of that scrutiny' was the moral philosophy of Sidgwick. And it is with Sidgwick that the failure to restore a teleological framework for ethics finally comes to be accepted. He recognized both that the moral injunctions of utilitarianism could not be derived from any psychological foundations and that the precepts which enjoin us to pursue the general happiness are logically independent of and cannot be derived from any precepts enjoining the pursuit of our own happiness. Our basic moral beliefs have two characteristics, Sidgwick found himself forced to conclude

not entirely happily; they do not form any kind of unity, they are irreducibly heterogeneous; and their acceptance is and must be unargued. At the foundation of moral thinking lie beliefs in statements for the truth of which no further reason can be given. To such statements Sidgwick, borrowing the word from Whewell, gives the name intuitions. Sidgwick's disappointment with the outcome of his own enquiry is evident in his announcement that where he had looked for Cosmos, he had in fact found only Chaos.

It was of course from Sidgwick's final positions that Moore was presently to borrow without acknowledgment, presenting his borrowings with his own penumbra of bad argument in *Principia Ethica*. The important differences between *Principia Ethica* and Sidgwick's later writings are ones of tone rather than of substance. What Sidgwick portrays as failure Moore takes to be an enlightening and liberating discovery. And Moore's readers, for whom, as I noticed earlier, the enlightenment and the liberation were paramount, saw themselves as rescued thereby from Sidgwick and any other utilitarianism as decisively as from Christianity. What they did not see of course was that they had also been deprived of any ground for claims to objectivity and that they had begun in their own lives and judgments to provide the evidence to which emotivism was soon to appeal so cogently.

The history of utilitarianism thus links historically the eighteenth-century project of justifying morality and the twentieth century's decline into emotivism. But the philosophical failure of utilitarianism and its consequences at the level of thought and theory are of course only one part of the relevant history. For utilitarianism appeared in a variety of social embodiments and left its mark upon a variety of social roles and institutions, these remained as an inheritance long after utilitarianism had lost the philosophical importance which John Stuart Mill's exposition had conferred upon it. But although this social inheritance is far from unimportant my central thesis, I shall delay remarking upon it until I have considered the failure of a second philosophical attempt to give an account of how the autonomy of the moral agent might be consistently combined with a view of moral rules as having an independent and objective authority. Utilitarianism advanced its most successful claims in the nineteenth century. Thereafter intuitionism followed by emotivism held sway in British philosophy, while in the United States pragmatism provided the same kind of *praeparatio evangelica* for emotivism that intuitionism provided in Britain. But for reasons that we have already noticed emotivism always seemed implausible to analytical philosophers primarily concerned with questions of meaning largely because it is evident that moral reasoning does take place, that moral conclusions can often be validly derived from sets of premises. Such analytical philosophers revived the Kantian project of demonstrating that the authority and objectivity of moral rules is precisely that authority and objectivity which belongs to the exercise of reason. Hence

their central project was, indeed is, that of showing that any rational agent is logically committed to the rules of morality in virtue of his or her rationality.

I have already suggested that the variety of attempts to carry through this project and their mutual incompatibility casts doubt on their success. But it is clearly necessary to understand not only that the project fails, but why it fails, and to do this it is necessary to examine one such attempt in a little detail. The example which I have chosen is that made by Alan Gewirth in *Reason and Morality* (1978). I choose Gewirth's book because it is not only one of the most recent of such attempts, but also because it deals carefully and scrupulously with objections and criticisms that have been made of earlier writers. Moreover Gewirth adopts what is at once a clear and a strict view of what reason is: in order to be admitted as a principle of practical reason, a principle must be analytic; and in order for a conclusion to follow from premises of practical reason, it must be demonstrably entailed by those premises. There is none of the looseness and vagueness about what constitutes 'a good reason' which had weakened some earlier analytic attempts to exhibit morality as rational.

The key sentence of Gewirth's book is: 'Since the agent regards as necessary goods the freedom and well-being that constitute the generic features of his successful action, he logically must also hold that he has rights to these generic features and he implicitly makes a corresponding rights-claim' (p. 63). Gewirth's argument may be spelled out as follows. Every rational agent has to recognize a certain measure of freedom and well-being as prerequisites for his exercise of rational agency. Therefore each rational agent must will, if he is to will at all, that he possess that measure of these goods. This is what Gewirth means when he writes in the sentence quoted of 'necessary goods'. And there is clearly no reason to quarrel with Gewirth's argument so far. It turns out to be the next step that is at once crucial and questionable.

Gewirth argues that anyone who holds that the prerequisites for his exercise of rational agency are necessary goods is logically committed to biding also that he has a right to these goods. But quite clearly the introduction of the concept of a right needs justification both because it is at this point a concept quite new to Gewirth's argument and because of the special character of the concept of a right.

It is first of all clear that the claim that I have a right to do or have something is a quite different type of claim from the claim that I need or want or will be benefited by something. From the first – if it is the only relevant consideration – it follows that others ought not to interfere with my attempts to do or have whatever it is, whether it is for my own good or not. From the second it does not. And it makes no difference what kind of good or benefit is at issue.

Another way of understanding what has gone wrong with Gewirth's argument is to understand why this step is so essential to his argument. It is of course true that if I claim a right in virtue of my possession of certain characteristics, then I am logically committed to holding that anyone else with the same characteristics also possesses this right. But it is just this property of necessary universalizability that does not belong to claims about either the possession of or the need or desire for a good, even a universally necessary good.

One reason why claims about goods necessary for rational agency are so different from claims to the possession of rights is that the latter in fact presuppose, as the former do not, the existence of a socially established set of rules. Such sets of rules only come into existence at particular historical periods under particular social circumstances. They are in no way universal features of the human condition. Gewirth readily acknowledges that expressions such as 'a right' in English and cognate terms in English and other languages only appeared at a relatively late point in the history of the language toward the close of the middle ages. But he argues that the existence of such expressions is not a necessary condition for the embodiment of the concept of a right in forms of human behavior; and in this at least he is clearly right. But the objection that Gewirth has to meet is precisely that those forms of human behavior which presuppose notions of some ground to entitlement, such as the notion of a right, always have a highly specific and socially local character, and that the existence of particular types of social institution or practice is a necessary condition for the notion of a claim to the possession of a right being an intelligible type of human performance. (As a matter of historical fact such types of social institution or practice have not existed universally in human societies.) Lacking any such social form, the making of a claim to a right would be like presenting a check for payment in a social order that lacked the institution of money. Thus Gewirth has illicitly smuggled into his argument a conception which does not in any way belong, as it must do if his case is to succeed, to the minimal characterization of a rational agent.

I take it then that both the utilitarianism of the middle and late nineteenth century and the analytical moral philosophy of the middle and late twentieth century are alike unsuccessful attempts to rescue the autonomous moral agent from the predicament in which the failure of the Enlightenment project of providing him with a secular, rational justification for his moral allegiances had left him. I have already characterized that predicament as one in which the price paid for liberation from what appeared to be the external authority of traditional morality was the loss of any authoritative content from the would-be moral utterances of the newly autonomous agent. Each moral agent now spoke unconstrained by the externalities of divine

law, natural teleology or hierarchical authority; but why should anyone else now listen to him? It was and is to this question that both utilitarianism and analytical moral philosophy must be understood as attempting to give cogent answers; and if my argument is correct, it is precisely this question which both fail to answer cogently. Nonetheless almost everyone, philosopher and non-philosopher alike, continues to speak and write as if one of these projects had succeeded. And hence derives one of the features of contemporary moral discourse which I noticed at the outset, the gap between the meaning of moral expressions and the ways in which they are put to use. For the meaning is and remains such as would have been warranted only if at least one of the philosophical projects had been successful; but the use, the emotivist use, is precisely what one would expect if the philosophical projects had all failed.

Contemporary moral experience as a consequence has a paradoxical character. For each of us is taught to see himself or herself as an autonomous moral agent; but each of us also becomes engaged by modes of practice, aesthetic or bureaucratic, which involve us in manipulative relationships with others. Seeking to protect the autonomy that we have learned to prize, we aspire ourselves not to be manipulated by others; seeking to incarnate our own principles and stand-point in the world of practice, we find no way open to us to do so except by directing towards others those very manipulative modes of relationship which each of us aspires to resist in our own case. The incoherence of our attitudes and our experience arises from the incoherent conceptual scheme which we have inherited.

Once we have understood this it is possible to understand also the key place that three other concepts have in the distinctively modern moral scheme, that of rights, that of protest, and that of unmasking. By 'rights' I do not mean those rights conferred by positive law or custom on specified classes of person; I mean those rights which are alleged to belong to human beings as such and which are cited as a reason for holding that people ought not to be interfered with in their pursuit of life, liberty and happiness. They are the rights which were spoken of in the eighteenth century as natural rights or as the rights of man. Characteristically in that century they were defined negatively, precisely as rights not to be interfered with. But sometimes in that century and much more often in our own positive rights – rights to due process, to education or to employment are examples – are added to the list. The expression 'human rights' is now commoner than either of the eighteenth-century expressions. But whether negative or positive and however named they are supposed to attach equally to all individuals, whatever their sex, race, religion, talents or deserts, and to provide a ground for a variety of particular moral stances. It would of course be a little odd that there should be such rights attaching to human beings simply qua human beings in light of the fact, which I alluded to in my discussion of Gewirth's argument, that there is no expression in

any ancient or medieval language correctly translated by our expression 'a right' until near the close of the middle ages: the concept lacks any means of expression in Hebrew, Greek, Latin or Arabic, classical or medieval, before about 1400, let alone in Old English, or in Japanese even as late as the mid-nineteenth century. From this it does not of course follow that there are no natural or human rights; it only follows that no one could have known that there were. And this at least raises certain questions. But we do not need to be distracted into answering them, for the truth is plain: there are no such rights, and belief in them is one with belief in witches and in unicorns.

The best reason for asserting so bluntly that there are no such rights is indeed of precisely the same type as the best reason which we possess for asserting that there are no witches and the best reason which we possess for asserting that there are no unicorns: every attempt to give good reasons for believing that there are such rights has failed. The eighteenth-century philosophical defenders of natural rights sometimes suggest that the assertions which state that men possess them are self-evident truths; but we know that there are no self-evident truths. Twentieth-century moral philosophers have sometimes appealed to their and our intuitions; but one of the things that we ought to have learned from the history of moral philosophy is that the introduction of the word 'intuition' by a moral philosopher is always a signal that something has gone badly wrong with an argument. In the United Nations declaration on human rights of 1949 what has since become the normal UN practice of not giving good reasons for any assertions whatsoever is followed with great rigor. And the latest defender of such rights, Ronald Dworkin (*Taking Rights Seriously*, 1976) concedes that the existence of such rights cannot be demonstrated, but remarks on this point simply that it does not follow from the fact that a statement cannot be demonstrated that it is not true (p. 81). Which is true, but could equally be used to defend claims about unicorns and witches.

Natural or human rights then are fictions – just as is utility – but fictions with highly specific properties. In order to identify them it is worth noticing briefly once more the other moral fiction which emerges from the eighteenth century's attempts to reconstruct morality, the concept of utility. When Bentham first turned 'utility' into a quasi-technical term, he did so, as I have already noticed, in a way that was designed to make plausible the notion of summing individual prospects of pleasure and pain. But, as John Stuart Mill and other utilitarians expanded their notion of the variety of aims which human beings pursue and value, the notion of its being possible to sum all those experiences and activities which give satisfaction became increasingly implausible for reasons which I suggested earlier. The objects of natural and educated human desire are irreducibly heterogeneous and the notion of summing them either for individuals or for some population has

no clear sense. But if utility is thus not a clear concept, then to use it as if it is, to employ it as if it could provide us with a rational criterion, is indeed to resort to a fiction.

A central characteristic of moral fictions which comes clearly into view when we juxtapose the concept of utility to that of rights is now identifiable: they purport to provide us with an objective and impersonal criterion, but they do not. And for this reason alone there would have to be a gap between their purported meaning and the uses to which they are actually put. Moreover we can now understand a little better how the phenomenon of incommensurable premises in modern moral debate arises. The concept of rights was generated to serve one set of purposes as part of the social invention of the autonomous moral agent; the concept of utility was devised for quite another set of purposes. And both were elaborated in a situation in which substitute artifacts for the concepts of an older and more traditional morality were required, substitutes that had to have a radically innovative character if they were to give even an appearance of performing their new social functions. Hence when claims invoking rights are matched against claims appealing to utility or when either or both are matched against claims based on some traditional concept of justice, it is not surprising that there is no rational way of deciding which type of claim is to be given priority or how one is to be weighed against the other. Moral incommensurability is itself the product of a particular historical conjunction. This provides us with an insight important for understanding the politics of modern societies. For what I described earlier as the culture of bureaucratic individualism results in their characteristic overt political debates being between an individualism which makes its claims in terms of rights and forms of bureaucratic organization which make their claims in terms of utility. But if the concept of rights and that of utility are a matching pair of incommensurable fictions, it will be the case that the moral idiom employed can at best provide a semblance of rationality for the modern political process, but not its reality. The mock rationality of the debate conceals the arbitrariness of the will and power at work in its resolution. It is easy also to understand why protest becomes a distinctive moral feature of the modern age and why indignation is a predominant modern emotion. 'To protest' and its Latin predecessors and French cognates are originally as often or more often positive as negative; to protest was once to bear witness to something and only as a consequence of that allegiance to bear witness against something else. But protest is now almost entirely that negative phenomenon which characteristically occurs as a reaction to the alleged invasion of someone's rights in the name of someone else's utility. The self-assertive shrillness of protest arises because the facts of incommensurability ensure that protestors can never win an argument; the indignant self-righteousness of protest arises because the

facts of incommensurability ensure equally that the protestors can never lose an argument either. Hence the utterance of protest is characteristically addressed to those who already share the protestors' premises. The effects of incommensurability ensure that protestors rarely have anyone else to talk to but themselves. This is not to say that protest cannot be effective; it is to say that it cannot be rationally effective and that its dominant modes of expression give evidence of a certain perhaps unconscious awareness of this.

The claim that the major protagonists of the distinctively modern moral uses of the modern world – I am not here speaking at all of those who seek to uphold older traditions which have somehow or other survived into some sort of coexistence with modernity – offer a rhetoric which serves to conceal behind the masks of morality what are in fact the preferences of arbitrary will and desire is not of course an original claim. For each of the contending protagonists of modernity, while for obvious reasons unwilling to concede that the claim is true in their own case, is prepared to make it about those against whom they contend. So the Evangelicals of the Clapham Sect saw in the morality of the Enlightenment a rational and rationalizing disguise for selfishness and sin; so in turn the emancipated grandchildren of the Evangelicals and their Victorian successors saw Evangelical piety as mere hypocrisy; so later Bloomsbury, liberated by G.E. Moore, saw the whole semi-official cultural paraphernalia of the Victorian age as a pompous charade concealing the arrogant self-will not only of fathers and clergymen, but also of Arnold, Ruskin and Spencer; and so in precisely the same way D.H. Lawrence 'saw through' Bloomsbury. When emotivism was finally proclaimed as an entirely general thesis about the nature of moral utterance, it did no more than generalize what each party of cultural revolt in the modern world had already said about its particular moral predecessors. Unmasking the unacknowledged motives of arbitrary will and desire which sustain the moral masks of modernity is itself one of the most characteristically modern of activities.

It was Freud's achievement to discover that unmasking arbitrariness in others may always be a defence against uncovering it in ourselves. At the beginning of the twentieth century, autobiographies like Samuel Butler's clearly evoked an intense response from all those who felt the oppressive weight of assertive paternal self-will behind the cultural forms in which they had been educated. And this oppressive weight was surely due to the extent to which educated men and woman had internalized what they aspired to reject. Hence the importance of Lytton Strachey's mockery of the Victorians as part of the liberation of Bloomsbury and hence also the exaggerated rhetoric of Strachey's reaction to Moore's ethics. But even more important was Freud's presentation of the inherited conscience as superego, as an irrational part of ourselves whose commands we need, for the sake of our psychic health,

to be freed from. Freud of course took himself to have made a discovery about morality as such and not just about what morality had become in late nineteenth-century and early twentieth-century Europe. But this mistake must not be allowed to detract from what he did achieve.

It is worth at this point recalling the thread of my central argument. I began from the way in which contemporary moral debate is interminable and I tried to explain that interminability as a consequence of the truth of an amended version of the emotivist theory of moral judgment, originally advanced by C.L. Stevenson and others. But I treated that theory not only as a philosophical analysis, but also as a sociological hypothesis. (I am unhappy about this way of putting the matter; it is not clear to me, for reasons which I gave in Chapter 3, how any adequate philosophical analysis in this area could escape being also a sociological hypothesis, and vice versa. There seems something deeply mistaken in the notion enforced by the conventional curriculum that there are two distinct subjects or disciplines – moral philosophy, a set of conceptual enquiries, on the one hand and the sociology of morals, a set of empirical hypotheses and findings, on the other. Quine's death-blow to any substantial version of the analytic-synthetic distinction casts doubt in any case on this kind of contrast between the conceptual and the empirical.)

My argument was thus to the effect that emotivism informs a great deal of contemporary moral utterance and practice and more specifically that the central characters of modern society – in the special sense which I assigned to the word 'character' – embody such emotivist modes in their behavior. These characters, it will be recalled, are the aesthete, the therapist and the manager, the bureaucratic expert. The historical discussion of those developments which made the victories of emotivism possible has now revealed something else about these specifically modern characters, namely the extent to which they trade and cannot escape trading in moral fictions. But how far does the range of moral fiction extend beyond those of rights and utility? And who is going to be deceived by them? The aesthete is the character least likely to be their victim. Those insolent scoundrels of the philosophical imagination, Diderot's Rameau and Kierkegaard's 'A', who lounge so insolently at the entrance to the modern world, specialize in seeing through illusory and fictitious claims. If they are deceived, it is only by their own cynicism. When aesthetic deception occurs in the modern world, it is rather because of the reluctance of the aesthete to admit that that is what he is. So great can the burden of enjoying oneself become, so clearly can the emptiness and boredom of pleasure appear as a threat, that the aesthete sometimes has to resort to even more elaborate devices than were available to the younger Rameau or to 'A'. He may even become an addicted reader of Kierkegaard and make of that despair which Kierkegaard saw as

the aesthete's fate a new form of self-indulgence. And if over-indulgence in despair seems to be injuring his capacities for enjoyment, he will take himself to the therapist, just as he would for over-indulgence in alcohol, and make of his therapy one more aesthetic experience.

The therapist by contrast is not only the most liable of the three typical characters of modernity to be deceived, but is also the most liable to be seen to be deceived, and not only by moral fictions. Devastating hostile critiques of the standard therapeutic theories of our culture are easily available; indeed each school of therapists is all too anxious to make clear the theoretical defects of each rival school. Thus the problem is not why the claims of psychoanalytic or behavioral therapies are not exposed as ill-founded; it is rather why, since they have been so adequately undermined, the practices of therapy continue for the most part as though nothing had happened. And this problem, like that of the aesthete, is not only or merely a problem of moral fictions.

Of course both aesthete and therapist are doubtless as liable as anyone else to trade in such fictions; but they have no fictions which are peculiarly their own, which belong to the very definition of their role. With the manager that dominant figure of the contemporary scene, it is quite otherwise. For beside rights and utility, among the central moral fictions of the age we have to place the peculiarly managerial fiction embodied in the claim to possess systematic effectiveness in controlling certain aspects of social reality. And this thesis may at first sight seem surprising for two quite different kinds of reason: we are not accustomed to doubt the effectiveness of managers in achieving what they set out to achieve and we are equally unaccustomed to think of effectiveness as a distinctively moral concept, to be classed with such concepts as those of rights or of utility. Managers themselves and most writers about management conceive of themselves as morally neutral characters whose skills enable them to devise the most efficient means of achieving whatever end is proposed. Whether a given manager is effective or not is on the dominant view a quite different question from that of the morality of the ends which his effectiveness serves or fails to serve. Nonetheless there are strong grounds for rejecting the claim that effectiveness is a morally neutral value. For the whole concept of effectiveness is, as I noticed earlier, inseparable from a mode of human existence in which the contrivance of means is in central part the manipulation of human beings into compliant patterns of behavior; and it is by appeal to his own effectiveness in this respect that the manager claims authority within the manipulative mode.

Thus effectiveness is a defining and definitive element of a way of life which competes for our allegiance with other alternative contemporary ways of life; and if we are to evaluate the claims of the bureaucratic, managerial mode to a place of authority in our lives, an assessment of the bureaucratic

managerial claim to effectiveness will be an essential task. The concept of effectiveness as it is embodied in the utterances and practices of managerial roles and character is of course an extremely general concept; it is bound up with equally general notions of social control exercised downwards in corporations, government agencies, trade unions and a variety of other bodies. Egon Bittner some years ago identified a crucial gap between this generalized conception and any actual criteria which are precise enough to be usable in particular situations. 'While Weber is quite clear,' he noted, 'in stating that the sole justification of bureaucracy is its efficiency, he provides us with no clear-cut guide on how this standard of judgment is to be used. Indeed, the inventory of features of bureaucracy contains not one single item that is not arguable relative to its efficiency function. Long-range goals cannot be used definitely for calculating it because the impact of contingent factors multiplies with time and makes it increasingly difficult to assign a determinate value to the efficiency of a stably controlled segment of action. On the other hand, the use of shortterm goals in judging efficiency may be in conflict with the ideal of economy itself. Not only do short-term goals change with time and compete with one another in indeterminate ways, but short-term results are of notoriously deceptive value because they can be easily manipulated to show whatever one wishes them to show' (Bittner 1965, p. 247). It is the gap between the generalized notion of effectiveness and the actual behavior that is open to managers which suggests that the social uses of the notion are other than they purport to be. That the notion is used to sustain and extend the authority and power of managers is not of course in question; but its use in connection with those tasks derives from the belief that managerial authority and power are justified because managers possess an ability to put skills and knowledge to work in the service of achieving certain ends. But what if effectiveness is part of a masquerade of social control rather than a reality? What if effectiveness were a quality widely imputed to managers and bureaucrats both by themselves and others, but in fact a quality which rarely exists apart from this imputation? The word that I shall borrow to name this alleged quality of effectiveness is 'expertise'. I am not of course questioning the existence of genuine experts in many areas: the biochemistry of insulin, historical scholarship, the study of antique furniture. It is specifically and only managerial and bureaucratic expertise that I am going to put in question. And the conclusion to which I shall finally move is that such expertise does indeed turn out to be one more moral fiction, because the kind of knowledge which would be required to sustain it does not exist. But what would it be like if social control were indeed a masquerade? Consider the following possibility: that what we are oppressed by is not power, but impotence; that one key reason why the presidents of large corporations do not, as some radical critics believe, control the United

States is that they do not even succeed in controlling their own corporations; that all too often, when imputed organizational skill and power are deployed and the desired effect follows, all that we have witnessed is the same kind of sequence as that to be observed when a clergyman is fortunate enough to pray for rain just before the unpredicted end of a drought; that the levers of power – one of managerial expertise's own key metaphors – produce effects unsystematically and too often only coincidentally related to the effects of which their users boast.

Were all this to be the case, it would of course be socially and politically, important to disguise the fact, and deploying the concept of managerial effectiveness as both managers and writers about management do deploy it would be an essential part of any such disguise. Fortunately I do not need to establish as part of the present argument precisely what it is that is being disguised in order to show that the concept of managerial effectiveness functions as a moral fiction; all that I need to show is that its use presupposes knowledge claims which cannot be made good, and further that the difference between the uses to which it is put and the meaning of the assertions which embody it is precisely similar to that identified by the emotive theory in the case of other modern moral concepts.

The mention of emotivism is very much to the point; for the thesis which I am presenting about belief in managerial effectiveness parallels to some degree the thesis advanced by certain emotivist moral philosophers – Carnap and Ayer – about belief in God. Carnap and Ayer both extended the emotive theory beyond the realm of moral judgment and argued that metaphysical assertions more generally and religious assertions more particularly, while they purport to give information about a transcendent reality, actually do no more than express the feelings and attitudes of those who utter them. They disguise certain psychological realities with religious utterances. Carnap and Ayer thus open up the possibility of providing a sociological explanation for the prevalence of these illusions, although they themselves do not aspire to furnish one.

I am suggesting that 'managerial effectiveness' functions much as Carnap and Ayer supposed 'God' to function. It is the name of a fictitious, but believed-in reality, appeal to which disguises certain other realities; its effective use is expressive. And just as Carnap and Ayer reached their conclusion principally by considering what they claimed was the lack of the appropriate kind of rational justification for belief in God, so the core of my argument is the contention that interpretations of managerial effectiveness in the same way lack the appropriate kind of rational justification.

If I am right in this, the characterization of the contemporary moral scene will have been taken one stage further than my previous arguments took it. Not only will we be justified in concluding that an emotivist account

is both true of, and embodied in, a very great deal of our moral utterance and practice and that much of that utterance and practice is a trading in moral fictions (such as those of utility and of rights), but we shall also have to conclude that another moral fiction – and perhaps the most culturally powerful of them all – is embodied in the claims to effectiveness and hence to authority made by that central character of the modern social drama, the bureaucratic manager. To a disturbing extent our morality will be disclosed as a theatre of illusions.

The claim that the manager makes to effectiveness rests of course on the further claim to possess a stock of knowledge by means of which organizations and social structures can be molded. Such knowledge would have to include a set of factual law-like generalizations which would enable the manager to predict that, if an event or state of affairs of a certain type were to occur or to be brought about, some other event or state of affairs of some specific kind would result. For only such law-like generalizations could yield those particular casual explanations and predictions by means of which the manager could mold, influence and control the social environment.

There are thus two parts to the manager's claims to justified authority. One concerns the existence of a domain of morally neutral fact about which the manager is to be expert. The other concerns the law-like generalizations and their applications to particular cases derived from the study of this domain. Both claims mirror claims made by the natural sciences; and it is not surprising that expressions such as 'management science' should be coined. The manager's claim to moral neutrality, which is itself an important part of the way the manager presents himself and functions in the social and moral world, is thus parallel to the claims to moral neutrality made by many physical scientists. What it amounts to can best be understood by beginning from a consideration of how the relevant notion of 'fact' first became socially available and was put to use by the seventeenth- and eighteenth-century intellectual ancestors of the bureaucratic manager. It will turn out to be the case that this history is related in an important way to the history which I have already recounted of how the concept of the autonomous moral subject emerged in moral philosophy. That emergence involved a rejection of all those Aristotelian and quasi-Aristotelian views of the world in which a teleological perspective provided a context in which evaluative claims functioned as a particular kind of factual claim. And with that rejection the concepts both of value and of fact acquired a new character.

It is thus not a timeless truth that moral or otherwise evaluative conclusions cannot be entailed by factual premises; but it is true that the meaning assigned to moral and indeed to other key evaluative expressions so changed during the late seventeenth and the eighteenth centuries that what are by then commonly allowed to be factual premises cannot entail

what are by then commonly taken to be evaluative or moral conclusions. The historical enactment of this apparent division between fact and value was not however merely a matter of the way in which value and morality came to be reconceived; it was also reinforced by a changed and changing conception of fact, a conception whose examination has to precede any assessment of the modern manager's claim to possession of the kind of knowledge which would justify his authority.

Vittorio Possenti

THE HUMAN BEING AS BELIEVER AND CITIZEN

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To speak of human being as believer means to enter the field of religion, for which we need to fix a sufficiently defined meaning, since the term has for a long time been subject to disagreement, changes of content, and re-interpretation. According to the fundamental meaning of the term as traditionally elaborated, religion is the place of relationship between man and God, not a symbol of interests or important aims. Religion is *re-ligio*, that is something that links infinity and the finite, transcendence and man, the indication of a nexus for which man appears as a being turned upwards. The liberating powers of religion are rooted in the following characteristics: its capacity for reconciliation; its recognition of the lordship of God; its interest in real dialogue; its capacity to produce new practices in favour of mankind; the importance attributed to values in comparison with purely power-seeking strategies, are some of these aspects. If, as the Iranian jurist and scholar Ostad Elahi puts it, 'The fulcrum of Knowledge is that man understands why he has come into the world, what his duties of existence are, and what his final destiny is, then it is in religion that we encounter a fundamental understanding of what is necessary for us. Individuals and civilisations are in relationship with God in many different ways, and from this relationship they draw the essentials of their value systems. There are periods of intense religiosity, and others more profane, but all periods stay 'in front of God', in His presence. Some starting points

Following the title of this paper, I intend to describe a Christian point of view on the individual human being as believer and citizen, drawing inspiration from the Scriptures and the teaching of the Catholic Church, such as that, for example, expressed during the Second Vatican Council (1962-1965). To think about the individual human being as a believer and as a citizen means to call into question the link between religion and politics. I will point to some nuclei which appear to me to be of major importance, but which are not the whole picture. Even though the Christian religion has a universal value and is diffused over five continents, most of the countries with the most ancient Christian civilizations belongs generally to the West, where the relationship between the believer and the citizen has been and is still being more widely worked out. If we first take a look at the books of the Old Testament (OT), we find in them the figure

of the believer, but not that of the citizen/*citoyen*, of later use: but they are not silent on the condition of man in the world and in political life. In the Wisdom literature one sees a progressive affirmation of the idea that the wisdom of God is sown not only by revelation, but also in creation and in earthly things. It is the beginning of the overcoming of the idea that God manifests Himself in the world only through prodigious acts and the history of salvation: even worldly things come from God, and intelligence is given to us in order that we understand this. The perspective of biblical creationism does not consist only in the assumption that God created everything from nothing, but also that He gave order to the cosmos, is the origin of creation, sustains it, and gives it meaning (*Genesis* 1, 1-2,4).

Then it is affirmed the possibility of knowing the Transcendent ('... since through the grandeur and beauty of the creatures we may, by analogy, contemplate their Author', *Wisdom*, 13,5). Everything that exists is under the lordship of God: an assumption which is found as much in the Old Testament as in the New (NT), and which is a long way from that dualism which wants to relegate worldly things, and even man himself, outside divine dominion and the story of salvation. If we consider Jacob's dream at Bethel, when he awakes and exclaims: 'Truly, the Lord is in this place and I never knew it!' (*Genesis* 28, 16), the episode means that God is not the prisoner of any specific holy place and can be encountered by man everywhere, even in social and political life.

In the Gospels and in the Epistles, the salvation which is offered to mankind involves everything affecting him and his life, right up to the final resurrection of the dead (cf. *I Corinthians* 15), and is extended to the whole of creation (cf. *Romans* 8, 19-22). In one of the high points of Christian Revelation, the evangelist John expresses the Incarnation of the Word in Jesus Christ in particularly significant terms, writing that 'the Word was made flesh and came to dwell among us': flesh here means that He not only became fully human, but that He also shared fully in the human condition with its fragility, weakness, and pain, etc., but with the exception of sin.

In connection with the link between religion and politics (related with the question of secular State, as it came to be called later, term which does not mean that in a secular state the society is heavily secularized, but that there is a distinction between the two powers), the teaching of Jesus Christ is truly novel insofar as it concerns the difference between God and Caesar, and whether political power is invested with a sacred, divine, theocratic character, such as is largely found in the OT. The attitude of the NT, where the Christian teaching – or better, the teaching of Christ Himself, since it comes in His own words – is summed up in the famous phrase, 'Give back to Caesar that which belongs to Caesar and to God what belongs to God.' (*Matthew* 22, 21; *Mark* 12,17; *Luke* 20,25). It is a phrase which establishes

the beginning of a new way of looking at the difference between civil and religious powers, and marks a step forward in the spiritual and political experience of humanity.

With the aforesaid *logion*, the understanding of which was progressively developed, a duplicity of representation (spiritual and temporal) was introduced, in place of the previous ieropolitical unity of the ancient city, in which the spiritual power and the political one were conjoined in a single summit in the person of the emperor, who was also the pontiff. Christian diversity appears to have been an attempt of conspicuous dimensions on political life since, by introducing the idea of the difference between the two powers, previously unknown in ancient cultures, it opened possibilities for dissension. It is almost superfluous here to recall the struggles between Christianity and the Roman Empire, between the Papacy and the Holy Roman Empire – for the right of investiture, and the variable relationships between states and the Church in modern times, coming down finally to the totalitarian ideologies of the last century. Here I would like to stop and think awhile about what Jesus actually said, in that Caesar was politics, not only the state. In the first part of the phrase, in which Jesus said ‘give back to Caesar’, the value, dignity and autonomy of political life is affirmed: while ‘every power comes from God’ (*omnis potestas a Deo*), the difference between Caesar and God sets the central diversity between political and spiritual duties and responsibilities. In the second part, the fact that Caesar is not God is upheld – thus ending every political idolatry which seeks to elevate Caesar to God – and the requirement set that something should be given back to God. The phrase thus underlines not only what is needed to mark the boundary between God and Caesar, but that it is necessary to give back or render. The repeating of this verb changes the perspective of a simple separation between God and Caesar. The rendering to Caesar of as much as is necessary: justice, peace, rights, respect, is something fine. But Caesar is not God, and God is above Caesar. Caesar can be one’s native land, but it is the definitive homeland for no men. It is implied that for the giving back to Caesar to be full and genuine, there must also be a giving back to God of what is necessary and salutary. To give back only to Caesar without giving back to God is an error. The quotation from the Gospels requires a double rendering, and the one cannot be without the other.

What exactly does the phrase ‘give back to God’ mean? Various things, among which I will highlight two aspects:

A) The phrase of Jesus was spoken in reply to a question put about a coin on which the effigy of Caesar was impressed as the expression of political authority. Now, something on which someone’s image is impressed belongs to that someone. But if the image of Caesar belongs to Caesar, we can say that man, whose essential character is being made ‘in the image of God’

(cf. *Genesis* 1,27), belongs to God, and not to the state. Like the coin and the image of Caesar both belong to Caesar, so every human being belongs to God. To open oneself to God means to recognise the dignity of man as a free being, endowed with reason and capable of reaching the truth. The state and political power cannot for that reason deprive him of rights which belong to him, which are rooted in human dignity and which come from the hand of God.

B) In second place in the Gospel quotation, which has eliminated the idea of a political theocracy and grounded the just secularity of the state, the possibility of the influence of religion in the public sphere is included, since God is above Caesar, differently from the liberal canon which holds that faith is a mere private fact. Whoever denies the ties which exist between religion and politics has not really understood well what is meant by religion, Gandhi wrote at the end of his autobiography. The then Cardinal Ratzinger observed: 'Christian faith makes a distinction between this secular form [of the state] and the Kingdom of God, which does not and cannot exist as a political reality on this earth, but lives in faith, hope and charity and must transform this world from within ...the secular state is the result of fundamental Christian decision, even if a long struggle was necessary to understand all its consequences'.

It is necessary to search for the best model of difference between religion and politics, and the results are varied (Professor Ferrari will develop this further). Tocqueville observed that in America, within the constitutional separation between Church and State, religion is an independent grounding and inspiration of politics and that this 'contributes powerfully to the conserving of the democratic republic in America.' (*Democracy in America*, I, II, c. 9). Put as the fertile animating force of democratic life, religion does not become an instrument of government, but a nursery for civilisation and a force for enlivening and inspiration, so long as it is able to avoid intolerance and discrimination.

The Christian idea of the link between religion and politics, between the believer and the citizen, is a long way from two notable and concrete risks which have been put forward in various ways in the course of history and in many different contexts, well beyond the West:

– the risk of a forced or coerced marriage between religion and society, in a way that does not respect the distinction between God and Caesar. Then it follows that it is the followers of a particular religion – that which at the time is recognised by the state – who have the right to be citizens in the full sense of the word, while the believers of other religions, and non-believers, are discriminated against in various ways: this problematic solution develops easily into discrimination and the adoption of religious laws as civil law and rights, and in its most extreme forms is changed into a political theocracy;

– the opposite risk is one of complete separation between religion and politics, which leaves religion without influence and in the end tolerated by society, in the sense that it is confined to the private sphere of conscience. In this case, only Caesar exists and God is absent and a stranger in the public place. In these two cases, believers are not citizens in the usual sense of the word, as forms of inequality are introduced: in the first case because some believers are more citizens than others, and in the other because in fact it would make believers less important citizens than agnostics.

We must now put to ourselves certain questions: A) the link between believers and citizens in a way that, while maintaining their religious diversity, they can co-operate, and believers in sociologically minority religions are allowed to give their collaboration on an equal footing with believers of more numerous religions. Here one enters into the idea of the secular state, a state capable of guaranteeing substantial equality of rights and duties for all its citizens. B) the support and improvement religion offers to social life; C) The co-operation between political and spiritual authorities in civil life.

A) The rights and duties of citizens in a ‘secular’ state. Religious freedom

The question of religious freedom constitutes a fundamental nucleus of the problem of the believer and the citizen and their nexus: on the base of it the state safeguards the right of individuals to follow their own religion on equal terms with other citizens, neither does it intervene to impose a particular religion by law, but rather leaves space for various religions and allows them to be positive and fertile factors in the building of social life. The theme is immense, and in this place a good starting point for briefly explaining Catholic doctrine on the meaning and range of religious freedom can be found in the ‘Declaration on religious freedom’ with the title *Dignitatis humanae*, promulgated by the Second Vatican Council on 19 November 1965. Of this text, which consists of fifteen paragraphs, I will not present an analytical comment, which would require a great deal of space, but only the principal assertions in which revelation and reason work together fruitfully. Central is the idea of the dignity of the human person, increasingly better understood as the years pass by (cf. para. 9, *Dignitatis humanae*).

a) The sense of religious freedom is in the idea for which men, in the fulfilling of their duty to honour God, are immune from coercion by civil society (n. 1), and are considered to be on an equal footing. It is under the joined lights of Revelation and the dignity of man that it becomes necessary as a civil progress that no-one can be constrained by force to embrace a religion (n. 10). This also has the purpose of providing a juridical limit on public authorities, in order that they do not abuse their powers. The religious freedom, connected directly to the human person as such, is a fundamental human right: it does not depend from the condition of citizen but, as said, is

related to man as such. The right to religious freedom must be acknowledged by civil law, but properly speaking it is not a 'civil right' which concerns only the citizens in a full sense of a society.

b) Religious freedom is founded on the idea that the act of faith is a free act (n. 10) and its content "is that human beings must be immune from coercion by individuals, social groups and whatsoever human authority, so that in religious matters nobody is forced to act against his or her own conscience nor be stopped, within certain limits, from acting in accordance with them: privately or publicly, as an individual or as a group ... This right of the human person to religious freedom must be ratified as a civil right in the juridical arrangements of society" (n. 2), also with the aim of consolidating relations of concord and peace between all men and women within the single human family (n. 15). One can add that the civil right to religious freedom includes the possibility of changing religion without being subject to pressure or discrimination;

c) The civil authority "exceeds its competence if it presumes to direct or impede religious acts" (n. 3);

d) The right to religious freedom means that no one can be discriminated against in civil life because of their religion (n. 6); this also concerns men when they act in common (n. 4). Consequently this right does not concern simply the individuals, but the religions and the religious communities, which can acquire juridical status and obtain recognition from the state. In the case of the Church this includes the freedom to fulfil its mission (n. 13);

e) The content of religious freedom does not, therefore, concern itself with the truth or lack of truth in this or that religion or of all religions, and thus it has nothing to do with relativism or the idea that all religions are equivalent. It relates, as I have said, to the civil law, which recognises that every person has the right to embrace, without impediment from political powers, whatever religion that tradition or well-informed individual conscience indicates as the one to follow.

Three other aspects can be read into the idea of religious freedom:

1) the difference between Caesar and God implies the diversity between civil law and religious law, as it seems a scarce solution to adopt as civil law the religious law;

2) the difference between the paradigm of force and that of justice: genuine religion refuses the paradigm of force and the power that crushes, and uses the paradigm of justice and reciprocity (justice in fact looks towards the other and reciprocity is one of its laws), which puts the bond between religion and politics on a new base;

3) the idea of tolerance, which knows how to distinguish between the sin and the sinner, and which refuses to consider recourse to violence because it is a way without hope: there can never be happiness while men are ranked the one against the other. To be able to distinguish between the person and his ideas marks a noble feeling: the ideas that we retain groundless must be eliminated with arguments, not through violence.

J. Maritain has expressed this position well: "True and genuine tolerance does not exist where a man is not firmly and absolutely convinced of a truth, or of what he holds to be truth, and where, at the same time, recognises that those who deny this truth have the right to exist and to contradict him, to express their own thinking, not because they are free before the truth, but because they are seeking the truth in their own way and because he respects their human nature and human dignity, and these springs and resources of intelligence and conscience, which renders them, in power, capable of drawing, they too, to the beloved truth, if the day arrives when they will see it." The outlined position puts forward a solution under the aegis of which it is possible to gather all citizens, since they are all assigned equal dignity, rights, and duties, within a fundamental human equality, avoiding the situation where someone is treated as a second or third class citizen, and put in a position of not being able to participate fully in the life of the civil society around him.

B) Religion's contribution to civil life

Christian and Muslims can work together fruitfully in the building of a just and free society, profiting from their common religious roots, from the light of reason and from the natural law which is a carrier of the Divine intention. This last element merits a comment for the influence which it exercises on the production of civil law: that this is understood as the expression of a mere agreement between citizens is not a sound solution, since the ruling majority from time to time could decide any ignominious act, if there were not criteria which precede positive law. Then civil law cannot contradict natural law: on the contrary fundamental human rights flow from natural law and are rooted in it. This is even more true if one takes into account that the state and more widely the whole society rests on moral foundations which cannot be guaranteed, and which can be guaranteed only if a robust ethical sap and a culture of respect, justice and liberty are circulating in society. Both Muslims and Christians are called here to respectful dialogue and to the search for shared solutions, in the light of the idea that religion has a most important contribution to make to society: this assumption, which seems to me to be shared by both traditions, establishes a common base of particular importance, notwithstanding possible differences in the understanding of it.

Among the many different ways in which religion can contribute to the improvement of society, I would like to highlight one. Aiming at the vigour of moral life and virtue, religion reaches society at its nerve centre. In fact, contrary to the assertion of Marxist historical materialism, the anatomy of civil life is ethics, not political economy. Whoever manages to improve people's moral behaviour fulfils the most important task in society. However much may be endowed by very elaborate institutions, no society can exist in a decent manner and have an acceptable civil life, if its citizens surrender too much to vices and the unchaining of passions. If the state is subject to an excess of hedonistical demands, and it cannot guarantee its own moral foundations, it must find these bases elsewhere, in society.

In the relationship between religion and society it is advisable not to limit to institutional agreements, but to work among and with the people, attentive to the pluralistic structure of social formations intermediating between citizens and the state, so that a democracy of citizens results, something which is a long way from the mirage of a democracy without citizens and without people. In this way centres of social activity and diffused counter-powers are created.

If we turn our glance to the historical-political situation of the world, we see that various religious movements have more than once entered the public domain in pursuit of fundamental objectives: 1) to protect not only their own rights and liberties, but those of all; 2) to protect the person and his fundamental expression, determined by questions of life (abortion, euthanasia, genetic manipulations), and by the natural structure of the family; 3) to take part in the formation of the agenda of public questions. It is worthwhile recalling the shifting perspectives operating in the Christian churches, passed from institutions tied to the state to institutions centred on society. In my opinion the most politically active expression of religions today launches challenges to the powers of the globalised world at very sensitive points: the promotion of human rights, of civil liberties and of respect for the person against aggression which can come as much from intolerance, violence, terrorism and religious discrimination, as from the ideology of the free market; the outlawing of nuclear arms and war; the confirmation of a system of bioethics for the defence of life and family (the issue of family and the new problems concerning the supposed new forms of family such as the homosexual partnership, should attract a great deal of attention from Christian and Muslim side, as family is the basic cell of society, and if it is destroyed the issue of society will likely be dark). Thus today social and political movements inspired by religion raise important questions about the legitimacy and autonomy of two important secular spheres: the state with its myth of absolute sovereignty and the market as an untouchable reality.

C) Co-operation between temporal and spiritual Authorities

With the distinction between religion and civil society, between Church and State, the conditions to achieve their collaboration are set, which involve the two entities as institutions, and which draw on freedom and conscience of the citizens. Co-operation represents a fertile model of political government in view of the greater well-being of society and the promotion of man. I would like to offer, by way of example, that such a model can be found in the revision of the Concordat, in February 1984, between the Italian Republic and the Holy See. The Concordat (1929) replaced a period of disagreement between the Church and the modern State with a reciprocal agreement for collaboration for the common good and religious peace. The revision occurred in 1984, overcoming the idea of a complete reciprocal extraneousness between Church and State, which could be drawn by an extremist interpretation of the difference between temporal and spiritual power, finds adequate formulation in the following extract: “The Italian Republic and the Holy See reaffirm that the State and the Catholic Church are, each in its own way, independent and sovereign, and commit themselves... to reciprocal collaboration for the promotion of man and the good of the country”.

The relationship between civil government and religious authority was set up on a new basis, as the politics is treated not as a power, but as an action in service of mankind and common good. And religious conscience offers fertile support to this action.

Conclusions

Rethinking the nexus between religion and society. Men of good will cannot free themselves from the need to put forward more humane solutions and to inform with the spirit of brotherly love, peace and justice the social life of individuals and of peoples, going beyond the disenchantment of *Qohelet* according to which there is never progress or novelty under the sun. For this it is necessary to rethink the nexus between religion and society after the terrible events caused by the totalitarianism of the XXth century and in front of new events such as: a) the slowness in the recognition of fundamental human rights, among which is that of religious freedom, and the recurrence of intolerance based on religion; b) the presence in the West of a secularism which wants to marginalise the religion from the public and to make it a private concern enclosed by a double mandate within individual conscience. How can we rectify the path towards justice and peace, and safeguard the unity of mankind as a divine mission? The Muslim faith in God and the idea that we are all under the judgement of God, is a positive challenge for the secularised West. The difference between religious law and civil law, with the link of substantial equality of rights and duties for all citizens, and also

for different religions and cultures, is a positive challenge for the area which makes reference to Islam.

Promoting inter-religious dialogue. One of the most urgent needs of our time consists in avoiding the clash of cultures and this requires dialogue, mutual understanding, a refusal to trivialise the respective identities. Those responsible for nations and religions are called to overcome the temptation to enter into conflict with anything that is different, belonging to another ethnic group or religion. People and religions need to find the best values in their spiritual and cultural heritage, in order to meet the other without fear, in the attempt to create a fair sharing which is to everyone's advantage. Giorgio La Pira often used to invite us to look at the events of history from the 'Abraham's terrace' (la 'terrazza di Abramo'), as he called it in his language made of concepts and images. The believers of the three monotheistic religions can find a particularly important point of encounter in the common root represented by Abraham.

Maria Ossowska

MORAL NORMS WHICH PROTECT OUR INDEPENDENCE

Source: Maria Ossowska, *Moral Norms, A Tentative Systematization*, translated by Irena Gulowska, Polish Scientific Publications, Warsaw 1980, pp. 74-101.

*The only way you could breathe there was
by continually joining in the cheers.*

S. J. Lec, *Unkempt Thoughts*

Whether or not we perceive the moral character of particular rules depends to an extent on whether we were trained to obey them from early childhood. In this chapter we are going to discuss a number of such rules, so some of which might not appear to be of a moral character. A child has little opportunity to use force; consequently this problem does not get proper emphasis in the process of upbringing. While admittedly children are frequently cruel and sadistic towards helpless animals, a child is not often the one who gets a chance to use force. Rather, force is used against the child, for instance to curb his movement, and then, even as an infant, the child reacts with helpless rage.

While the rules protecting us from the use of force are not generally found in the handbooks of ethics they clearly have to be classified as moral rules. When Locke stated that one individual cannot domineer over others his "cannot" did not concern any technical difficulty involved here but spelled the moral disapproval awaiting someone who wants to use force. According to Locke all people are equal when it comes to the application of the law or, to the ways in which people can be governed by each other. While it appears to be a statement of fact, Locke's pronouncement is really a postulate, indeed one of a moral character.

Coercion is something that is used against the weaker party physically, socially, economically, etc. The following are the best known examples of those social situations where coercion was common. (1) The parent-child relationship. The parents possess greater physical strength, and a superior social as well as economic position, which makes the use of force possible; or it is social custom which gives them the same kind of right towards their children as people have with respect to their property. (2) The attitude of men towards women. In his *Prawem i Lewem* (Right and Left) Władysław Łoziński quotes numerous examples of the use of force against women for

whom the law did not provide any protection. For instance a single woman's brothers would often lock her up in a convent in order to appropriate her dowry. In India the sacrifice of a widow on her husband's pyre was often anything but a voluntary action. Prostitutes were sometimes treated harshly or even occasionally shot by the very men who availed themselves of their services. In the Muslim world women are till today completely in men's power. In July 1963 Paris newspapers reported the case of a Muslim who, suspecting his wife's infidelity, announced his decision to kill her; according to their custom she had no appeal from such a sentence. He took her to the Bois de Boulogne and strangled her in the bushes. (3) Force is frequently used by rulers towards their subjects. (4) The dangerous aspects of political power were known long before people became aware of the power gained through economic privileges. (5) Finally we have to mention the attitude of a majority towards a minority such as, for instance, the pressure exerted by public opinion on an individual.

Undoubtedly, among the many examples of the use of force we could include the treatment of animals. Locking animals up in cages for their lifetime just for the diversion of the visitors at the ZOO, the killing of animals by hunters who treat this as entertainment, or keeping watchdogs on a chain seldom evoke protest in cultures which have developed under the influence of Christianity, for, according to its teaching, God created animals for the service of man.

In this chapter we shall not concern ourselves with this form of coercion; we shall also leave aside biological constraints such as the necessity to grow old and to die. Here we shall discuss only the constraints imposed by one human being on another.

In order to become more aware of the moral problems involved in the use of power we shall first look for some examples from the past. However, since history abounds in examples of this kind we shall have to be very selective. The only issues to be discussed here will be the doctrine of liberalism as formulated by its classic representative – Locke; human rights interpreted by the Declaration of the Rights of Man and of the Citizen of 1789, Mill's treatise *On Liberty* – a classic work which draws the limits of acceptable coercion – and finally the Universal Declaration of Human Rights worked out by the United Nations and adopted in 1948.

Concerning the authority of parents, Locke saw it as an aid for the weak child; father and mother were to share it equally. However, those desiderata applied only to people from Locke's own social class; as I have pointed out elsewhere the children of the poor were to be sent to work as soon as they were three years old which could not have been done without the use of force, for the children undoubtedly preferred activities other than the carding of wool for many hours a day.

As we know, Locke was mainly concerned with that kind of coercion which can be used by the rulers towards the population. According to him religious wars seem to prove that people have a tendency to subjugate others. On the other hand, only those can govern people whom these people themselves have voluntarily invested with authority, leaving open the possibility of taking it back if the chosen leaders should stop working on their behalf. Elsewhere I have quoted the opinion of those who criticized Locke on the grounds that he imagined society as a sort of company and its members as shareholders who joined voluntarily and can withdraw at any time. According to him the government should have only enough authority to be able to protect the lives, health, freedom and property of its citizens. It must not impose any creed or belief on the people – apart from the fact that all such attempts are doomed to failure since such is the nature of the mind that it cannot have beliefs thrust into it by force.

The Declaration of Rights of Man and of the Citizen (we shall return to it again later to compare it with the one adopted by the U.N. in 1948) establishes the following rights as indisputable: the rights to freedom, property, and security and the right to resist oppression. Liberty consists in an ability to do as one pleases as long as it does not hurt others; the exercise of these rights by each individual can be limited only by one consideration: that others should be able to enjoy the same rights (Art. 4). No one should be persecuted for having different beliefs, religious or otherwise, as long as the public display of these beliefs does not interfere with the order established by the law.

“Can” here does not refer to any technical possibility but only to an action which does not arouse moral objections. “Every man who has power tends to abuse it”, wrote Montesquieu in *The Spirit of Laws*. (Art. 10). One of the most precious human rights is free exchange (Libre communication) of thoughts and opinions; therefore, every citizen can speak, write and print freely as long as this freedom is not abused. What constitutes such an abuse of freedom should be determined by the law. All the compulsory actions which originate with the state, as for instance the collection of taxes, have to be first agreed upon by the citizens (Art. 13 and 14), for we should remember that the whole duty of government officials is to protect the rights of the citizens. Additionally, the Declaration of Rights of Maryland, adopted in 1776, states that the doctrine of non-resistance to an arbitrary power and to oppression is preposterous, servile and obstructive to the happiness of humanity.

The struggle for freedom and against coercion widened its scope in the 19th century. In his treatise on liberty Mill sets for himself a task to analyze “the nature and limits of the power which can be legitimately exercised by society over the individual”. In a statement which excluded only children and

barbarians he proclaims the absolute mastery of human beings over their souls and bodies. "The only purpose for which power can rightly be exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so..." "I am not aware that any community has a right to force another to be civilized" – these words were particularly significant in the years of expanding British imperialism. In general, more evil results from oppression than from giving freedom to the people.

Concerning the economic liberties such as freedom of trade, Mill also stipulated that freedom should be permissible as long as it brings no harm to anyone. He did not, however, perceive the perils resulting from such freedom; desire for gain seemed to him a perfectly natural incentive and liberty was the best means of insuring high quality and low cost of goods.

The liberties which according to Mill are primarily to be protected are the freedom of thoughts and feelings, freedom of speech and of the press, freedom of preferences and associations and freedom from the pressure of public opinion. "Nobody can be a great thinker who does not recognize that as a thinker it is his first duty to follow his intellect to whatever conclusions it may lead." This is clearly a duty of a moral character. To support this view Mill gives three additional arguments:

1. The opinion which we suppress may turn out to be correct while the suppression can be simply an expression of an unjustified belief in our own infallibility.

2. The truth can triumph only through confrontations of different opinions. In his article *Idea wolności (The Idea of Freedom)* Kotarbiński asked: "Is it possible to solve our problems rightly if we solve them in accordance with someone's orders?"

3. Even if the officially accepted view turns out to be correct, if it stays unchallenged it will degenerate, will lose its dynamism and power to stimulate people into action.

The state can impose compulsory education but it should not control its contents. It ought to allow a considerable variety here and see to it that the state examinations do not cover matters of ideology.

In comparison with his predecessors Mill's work is peculiar in its emphasis on the struggle against the despotism of public opinion. This pressure being particularly strong in Britain, it becomes a necessity to balance social controls and the independence of the individual. Mill declares himself a staunch opponent of conformism and standardization. He fights for the right to be different, for the people who are different are the salt of the earth. A state which stunts the growth of its citizens in order to make them easier to govern is headed for a disaster. Undoubtedly this stressing of the right to be

different had its origin in Mill's personal experiences. His long-time liaison with a married woman, later separated from her husband, evoked strong pressure from society and this caused him considerable suffering.

It is interesting to note that in spite of all his struggle with the terrorism of a majority against a minority or an individual, in his *Utilitarianism* Mill would let the majority have the last word on many issues. Theoretically, when it came to a choice between two kinds of experience those who knew them both were to be asked to choose the more pleasurable of the two. However, if their choice was uncertain the correct order of preference was to be established by the majority.

While Mill remained undisturbed by the free play of economic forces or by the human desire for gain, Marx, as we know, clearly perceived wrongs in those very areas where Mill failed to see them. A society free from methods of coercion could come into existence only as a result of profound changes which would put a definite end to such wrongs. But there was no reason why the struggle for the freedom of speech should be put off till the distant future. "Opposition is in general an index of the level a community has reached... A nation that allows the right of thinking and speaking the truth only to court jesters can only be a nation deprived of all independence and personality." "All other freedoms", Marx wrote "are illusory without freedom of the press". "I can show my mental countenance", he said jestingly "only if I first give it an official expression".

One more doctrine ought to be mentioned here that of *ahimsa*, that is non-violence as preacher in India, which is supposed to exclude all violent forms of coercion, even towards an enemy. As Nehru states in his autobiography, this doctrine was used for the first time in political struggle by Mohandas Karamchand Gandhi.

Gandhi understood violence mainly as the use of arms and his exhortation to non-violence was essentially a call to obtain the desired concessions from the enemy by peaceful methods, in other words it was the voice of a pacifist. Such methods included a boycott of Manchester calico with which Britain flooded India, and the silent protest against salt monopoly in the form of a mass march to the sea-shore to obtain salt by evaporation from sea-water. But the classic form of this peaceful struggle was the exaction of concessions by a hunger strike. Gandhi fasted to obtain the representation of the untouchables in the Congress and to force the Hindus, the Muslims and the Sikhs into a reconciliation. When Gandhi wanted to abolish the tradition which did not let the untouchables cross the villages of the Brahmins, he offered to lead a group of untouchables through one such village. When British troops stood in their way the hostile groups confronted each other; a battle of patience and endurance ensued and lasted into the rainy season. Gandhi and his associates stayed where they were, and the British finally gave up.

From this last example it becomes obvious that – as has often been pointed out – this method will work only against an enemy who respects the moral values and virtues of his opponents. Hitler would have let Gandhi fast to death and the Nazi troops would have machine-gunned the unarmed group trying to cross the village. However – as Nehru emphasized – the advantage of this method lies in the fact that it allows us to fight a much stronger opponent, that it inspires the weak with confidence in their powers and empowers an individual to contend against a state.

In his autobiography Nehru gave a sound evaluation of the method, and warned against any dogmatic faith in nonviolence: while at times it is the right course of action for a given end, its use should be considerably limited. Nehru realized that under certain conditions the use of force by the state is necessary and that the privileged groups will usually fight to retain their status. Coercion could disappear only if all countries united and formed one world-wide state. He also realized that Gandhi's method was a particularly acute form of coercion: "And can anything be greater coercion than the psychic coercion of Gandhi?... often enough moral force is a far more terrible coercive factor than physical violence."

We have gathered enough examples to be able to introduce certain conceptual distinctions. While because of the vastness of the subject and its intimidating historical traditions these distinctions cannot be very profound, they seem to be, in their brief form as given here, necessary for our further consideration.

There exists a well-known and often quoted distinction between negative freedom consisting in the lack of coercion and freedom in the positive sense. This distinction appears in many languages. English has freedom from and freedom to; in German it is *Freiheit von etwas* and *Freiheit zu etwas*. Since our interest is in forms of coercion which are or are not morally justified, we shall concentrate on freedom in the first sense, that is on freedom in the sense of not being subjected to force; however, at the end we shall briefly discuss freedom in the other sense, prompted to this by certain contemporary writers who, in my opinion, seem to talk about it in a rather irresponsible manner.

So far we have been using the words "compulsion" and "coercion" as if the only difference between them was that coercion was a stronger form of compulsion and, like violence, it usually implied the use of physical force.

While the use of coercion, like the locked door to a prisoner's cell, makes a decision impossible, compulsion may leave us the freedom of choice and still remain compulsion. This will happen when the choices we have are all equally repulsive. This is for instance, the situation of a man examined in prison who is told that if he does not squeal on his friends to the interrogator, then his wife who is locked in the adjacent cell will be tortured. Here we have freedom of choice under the conditions of compulsion. Such a situation

contradicts the common definition of freedom as a possibility of choosing. Voltaire's *Candide* could freely choose whether to run the gauntlet of a whole regiment thirty-six times or to get twelve bullets in his brain. Kidnapping is an act of coercion which will be turned into a moral compulsion when the kidnapper demands a ransom. The cases where we act under the pressure of a tempting reward have also been classified among the instances of forced actions by those who see here a form of compulsion similar to the kind where we act out of fear of bad consequences.

As we know, the progress of science has brought about greater possibilities of moulding people's characters since infancy in order to make them do what they have to. People so trained will not feel the compulsion even though they can be aware of the manipulative process itself. This gives occasion to the distinction between subjective compulsion, that is compulsion which is perceived as such, and objective compulsion which may or may not be felt. For our purposes this distinction is very useful, since it draws our attention to the fact that the objections against compulsion can be based on two different moral rules. Since subjective compulsion usually causes unpleasantness, it violates the rule of minimizing suffering. Compulsion which is not perceived cannot cause suffering just by being compulsion; consequently this rule does not apply here. What counts is the demand for respect for a person as such, which does not let us manipulate anyone in order to achieve a goal this person does not approve of. It is worth noting that the kind of external compulsion (recently much discussed by sociologists) which has been internalized and therefore accepted need not cease to be perceived as compulsion. Chinese women who, yielding to the pressure of tradition, used to bind their feet admitted that a tiny foot cost a sea of tears.

The notion of freedom is so much loaded with inherited difficulties that in our further considerations we shall try to do without it, using the word "right", not "freedom", as the opposite to "compulsion". This seems the more justified since the struggle for freedom was carried on usually within this conceptual framework; namely as a struggle for the extension of the rights of the people. While lawyers grumble about the ambiguity of this word we feel that it will be to our advantage to use it.

In his work *Uprawnienie a obowiazek (Right and Duty)* Zygmunt Ziembinski defines right as an ability to act guaranteed by the law. In this sense if X has the right to something, somebody else has the duty to guarantee this right and support X if X's right is being infringed upon. Here, as in Leon Petrażycki's and Bentham's opinion, right and duty are correlatives.

In our discussion we would not like to tie the notion of a right to the existing positive law. In its struggle for human rights the Declaration of Rights of Man and of the Citizen, fought for a legislation which would respect those rights; clearly then these rights could not have been defined on the basis of

a law for none such was yet in existence. The same concept was used in all discussions concerning the rights to which everyone is entitled such as the right to life, to minimum subsistence, etc., though the legal rights showed a considerable variety. For instance, in Nevada a person is entitled to winnings from roulette or to a divorce, but not so in other states. Here rights simply open up a new road and remove the possibility of exerting pressure, as is the case, for instance, with the right to marry according to one's own choice and liking. Here we have a different, broader concept of right, a concept which is of great importance to someone who deals with morality, for it is supported by certain claims of a moral character.

Tentatively then we shall adopt here this broader concept and treat Ziemiński's definition as its narrower version.

According to this broader concept X in a group G is entitled to action A or to possession P if this action or possession is not condemned or punished by the group. In this sense a student has the right to ask questions and the teacher has the right to reprimand the student for improper behaviour. In the narrower sense X in a group G is entitled to action A or possession (or receiving) of P if there exists some Y whose duty is to ensure for X the possibility of action A or to secure for X the possession or receipt of P. For instance, X has the right to a yearly paid vacation if there exists legislation to this effect and also an executive authority. It is only in this sense that the rights of one party are the duties of another and a statement of certain rights is at the same time a statement of certain duties. However, independent of any binding legislation, to every social role there is attached a system of expectations which license certain behaviour on an individual's part and rule out certain other forms of behaviour, under pain, if not of punishment, at least of reprobation. It is only rights backed by political power, however which can form the basis of claims which have a chance of being given a fair hearing. Because of this Bentham denied the existence of natural rights in the sense of innate rights and considered only political rights to be of any significance.

In its common, lay use the concept of right changes its meaning according as we are concerned with the rights of those who hold power or of those who are subject to this power. For instance, when we talk about the extent of the rights of parents with respect to their children we usually have in mind the acceptable limits of coercion. When we talk about the rights of children towards their parents we are concerned with the extent of children's claim. In the first instance we would ask, for example, whether the parents can confiscate the petty earnings of their children or whether they can use hunger as a punishment. An illustration of the second case is the question of how long children can demand to be fully supported by their parents. In both cases the granting of a right is a signal which gives an individual freedom of movement in a given, limited area.

In an attempt to treat the number of rights as an index of individual autonomy we shall now compare two historical documents: the Declaration of the Rights of Man and of the Citizen of 1789 and the Universal Declaration of Human Rights prepared for the United Nations by a team of experts from many countries and adopted in its final form in December 1948. The first striking difference between the two is the fact that the later document has nearly twice as many articles as the earlier one. While every right to an action or possession opens a new avenue, among the rights specified in both the documents we can distinguish ones that are not concerned with the removal of a compulsion but are an expression of a demand to have a share of certain goods (the right to education, to paid vacation or to old age benefits) and the rights of a defensive character which clearly are meant to protect a citizen against unwanted compulsion. It is the latter kind of rights that we are going to discuss here.

As we know, the Declaration of 1789 lays the greatest emphasis on equality before the law, on the functioning of the administration of justice according to the letter of the law (Articles 7 and 8), on the sacred and inviolable right to property, on freedom of conscience and speech. These rights have a specifically defensive character; they protect the citizen (as we know, often ineffectively) against privileges, against the wrong use of legal coercion, against intervention into private property, and against attempts to limit the freedom of belief and of speech. Here we should also add the general right to resist oppression.

The Declaration of 1948 is far more detailed. Here we shall touch upon those of the articles which seem to deal mainly with the removal of certain forms of coercion.

Article 4 bans every form of slavery and slave trade. Article 5 bans torture and cruel and humiliating punishment. Article 9 forbids arbitrary arrest, imprisonment or exile. Article 11 demands public trials in which the accused is initially assumed innocent and provided with adequate legal defence. Article 12 forbids arbitrary interference with the private life and correspondence of an individual. Article 13 provides for freedom of movement within each state and the possibility of leaving and returning to one's country. Article 14 assures everyone the right of asylum in cases of political persecution, while Article 15 states that citizenship must not be taken away from anyone, nor should anybody be prevented from changing it. Article 16 excludes parental pressure with respect to the marriage of children and declares that mutual consent of the interested parties should be sufficient. Article 17 forbids all expropriation. Articles 18 and 19 demand that everyone should be given freedom of conscience, of speech, of seeking and of transmitting information through all the media and across state borders. Article 20 insists on freedom of association and forbids pressuring people into joining an organization

against their will. Article 22 talks about assuring everyone the conditions for the free development of personality. Article 23 posits, among other things, freedom in the choice of profession and in membership of trade unions and demands proper safeguards against various forms of economic exploitation. Article 29 reiterates the statement of the Declaration of 1789 that individual liberties may be curtailed only in a manner determined by law and only insofar as is necessary for the protection of the rights of others.

This last article is, or at least should be taken as a guideline in the use of punishment in the administration of justice: that is, in the application of the form of coercion, which constitutes a chapter in itself, a chapter full of troublesome problems.

Here we are not concerned with the question whether the articles of the U.N. declaration represent anything more than desiderata, as is the case, for instance, with the proclaimed equality of rights between women and men. Even if the progress were only in the realm of thought it should not be disregarded. In many cases however it is more than progress on paper. Anyone who believes that reduced coercion is a sign of progress has to admit that family relations in Euro-American culture have changed for the better. Nowadays we do not think it possible to sacrifice children to the gods, to return to the practice of killing or abandoning weak children or of their exposure, practised in antiquity by those who did not want to keep them. To force little children to work in factories under the conditions described by Marx would nowadays arouse the indignation of the public; some would like to include among human rights the right to childhood. At least since the 18th century the opinion has been voiced that young people should not be forced into marriage against their will. The use of physical force, that is beating, is ardently opposed by the majority of educators. Country youths' independence of their parents is increasing nowadays in Poland due to the growing chances of finding a job in industry, and this is generally noted as a positive development. Formerly young people in villages were completely dependent on their parents till such time as the parents signed away their land. This led to infantilization of the young and, if they did not want to submit to this dependence, resulted in bitter quarrels, often ending in murder.

Concerning the use of force by men against women the situation also seems to be improving somewhat. For instance, in the country where till recently widows were burnt on their husbands' pyres a widow has become prime minister. But this isolated case does not mean the end of male supremacy in India or other Asian countries, particularly those with strong Moslem traditions. Between 1893 and 1950, 56 countries extended voting rights to women, and by 1967 the number had increased by 57 more. With all this, however, in Latin America for example a married woman has to have

her husband's permission in order to get a job and cannot make decisions concerning the future of her children. Even recently in France the debate on the right of a married woman to a separate bank account was carried on in a rather turbulent atmosphere. Progress in the sphere of compulsions resulting from economic privilege, political power and the pressure of public opinion is much less apparent. In a variety of ways political power curtails the freedom of speech, association and travel over the world. A mediaeval student could easily travel from Poland to Padua, never troubled about a passport or visa. Planning has become a necessity which results in compulsions threatening our freedom, for instance the freedom of choice of a profession. Any moment now science will make it possible to determine the sex of our offspring and demographic policy may bar someone from having, let us say, a daughter if the quota for that particular year had been exhausted. As recently as in the 18th century mental patients were chained to a wall and could be teased for pleasure. The death penalty – the most striking example of violence – is nowadays a subject of numerous debates and is banned by a majority of the West-European nations. On the other hand, in many European and North African countries the use of cruel tortures has continued till today. The development of motorization gave people a certain sense of freedom while at the same time limiting the movements of pedestrians, who can now cross a street only at designated places.

Freeing some people from a compulsion often results in the creation of a different, new compulsion for others. This is the situation of the law, which oppresses some individuals in order to free some others from an oppression. "It is true," writes Rapoport, "that the freedom of an individual to act can be only within restraints imposed by society. For these restraints are inescapable. But the freedom of an individual to think and to feel – that freedom can be absolute."

The pressure of public opinion on an individual diminishes with increased urbanization and with the limiting of the freedom of speech. Sometimes this process constitutes a gain, sometimes a loss. Limits set to the freedom of do not allow a public expression of just disapproval. According to Bentham, freedom of the press is the most powerful instrument of moral sanction.

In accordance with our citations of authors and of documents produced by collective effort, we have assumed so far that compulsion is bad on two accounts: first, because people do not tolerate it well, which brings into play the rule that forbids causing pain to others; secondly, it is bad because in Locke's words "nobody can dominate others". What is involved here is the respect for the autonomy of an individual and the respect for a human being as such, for a person who is humiliated by being subjected to the power of another.

Those who try to use force usually feel the need to justify their actions, while those who are going to be subjected to compulsion rather than have a

chance to use it themselves agree to it only under certain limited conditions. This can be explained only by the fact that in principle coercion meets with disapproval; it is considered permissible when used to secure people such unquestionable goods as life, health or education or to protect them against obvious evil such as, for instance, loss of the independence of their country. For those reasons compulsory inoculation, compulsory education or military service which protects people against the potential evil of foreign aggression have all been considered justified. Compulsion designed to avoid obvious evil has always been easier to justify than compulsion undertaken to impose certain benefits, because in the latter case irreconcilable differences of opinion are more likely to exist. Consequently, some will allow for attempts to make people happy by force in very limited cases only. They apparently share the opinion of Friedrich Holderlin who warned that life can be easily turned into hell when we forcibly attempt to make it into a paradise.

Compulsory taxes are counted not as securing unquestionable goods, but simply as necessities, and are taken for granted by everyone: but in fact they may be the necessary means to effect unquestionable goods. The only thing the Declaration of Rights of 1789 stipulated here was that they should be accepted by all the citizens; the necessities would then be determined by collegiate bodies. Compulsory military service is usually cited as an example by those who allow compulsion only when it saves us from a compulsion still greater, such as is usually the lot of all conquered nations. While one had to justify the use of force, rights did not need justification of any kind and their only limitation was the possibility of encroachment on the rights of others. In the life of a society this clash of rights is not uncommon and to deal with it we would need a recognized hierarchy of values which would let certain rights take precedence over other rights. Compulsion has to be used against some in order to secure indisputable goods for others. In the 18th century people used to write their last will before going for a long trip. Locking robbers up in jail increased the feeling of security for travellers. The regulation which makes it obligatory to lower the volume of radio and TV after 10 P.M. limits the freedom of some individuals in order to secure peace and quiet for everyone else. The restrictions on the sale of alcohol are meant to protect the health of its consumers and their children. This is a case of a conflict of interests within one and the same individual. Hume was among the first to point out the conflict between freedom from compulsion and equality. He maintained that equality could be preserved only at the expense of freedom, for freedom of action given to people soon results in inequality. In his article about the idea of freedom Kotarbinski compares liberty and equality to two dogs that are fighting while attached in the same harness. "Equality is best achieved through the use of force which is contrary to freedom, while liberty apparently leading to equality at the start brings about inequality as

the final result of this start.” As Charles Alexis Tocqueville suggested, one has to choose between *l'égalité dans la servitude* and *Vinégalité dans la liberté*. As we know, Hume was inclined to sacrifice equality for the sake of liberty, while Bentham, who believed in a benevolent lawmaker and in the power of wise legislation, would rather sacrifice freedom for the sense of security. Some others have tried to obscure these painful conflicts through specially constructed definitions. For instance, Montesquieu wrote in this *Spirit of the Laws* that “Political freedom is the peace of mind born of a confidence in our security.” Similarly Bentham at times confused these two goods treating freedom from as indemnity from and as form of security.

The writers who dealt with freedom from compulsion seldom appreciated the nature of those human rights which will lead to a conflict even under the conditions of a system which does away with private property. Such conflicts have come into the open when, for example, attempts were made to coordinate the limits of acceptable coercion applied by the government with the limits of justified demands of the governed. It was such conflicts that Kant had in mind when he recommended that legislation should reflect the points of view acceptable to both – the government and the people. According to Kotarbiński: “The concessions that a true liberal demands of a government are those which he himself, when in power, would be willing to grant to his opponents.”

Both of the declarations of rights discussed here fulfilled this demand in various degrees. The demands formulated there sometimes had added qualifications which provided convenient and occasionally dangerous loopholes for governments. While demanding freedom of speech, press, etc. the Declaration of 1789 also stipulated that this right became inoperative in cases of abuse specified by the law. Property ceased to be sacred if a legally determined necessity clearly called for its confiscation, if adequate compensation was provided. In the Declaration of 1948 these qualifications disappear.

Sigmund Freud saw a basic contradiction between human needs and the requirements of “culture” when he hypostatized culture as an oppressive force subjugating human drives. This view was also shared by Fromm.

If we classify the rights which are a matter of concern in the most recent works on the subject, they will apparently fall into three categories: (1) the right to privacy which is being threatened by the latest developments in technology as well as by censorship of private letters, etc.; (2) the right to reliable information, threatened by the fact that the press and other sources of information have fallen under the control of various powerful agencies such as the state, press syndicates, trusts or trade unions; (3) the right to free expression.

As we mentioned at the beginning of this chapter, besides its meaning as the absence of compulsion freedom is often referred to as the kind of good which we do or do not possess apparently quite independently of the presence or absence of compulsion. In this sense it is freedom in the singular while in the case of freedom from compulsion one can talk about freedoms in the plural, as is done in English where the term “liberties” is used. For there are as many kinds of liberty as there are rights. “Positive freedom”, writes Fromm, consists in the spontaneous activity of the total integrated personality.” As Charles Bay proclaims under the influence of Fromm this freedom is the harmony between the basic motives and the overt behaviour of a person, the harmony which allows a full expression of personality. This reminds us of certain insights known since the time of Aristotle, for whom free action was an action which had its source in one’s own self. As Fromm explains it, it is the freedom to be ourselves; the spontaneous activity mentioned in the definition is best observed in children and artists and ought to become possible for everyone. This activity originates in our authentic “self” and is carried on for its own sake. A total personality is supposed to be a personality which is not torn between nature and reason, and is not checked by the inner censor. In Fromm’s opinion the “freedom from”, that is freedom from external pressures, could be actualized only after we have achieved the freedom of being ourselves, when our ideals have become our own ideals.

The positive freedom of someone whose authentic “self” has been allowed its expression was, according to Fromm, a necessary condition for liberating ourselves from external pressures. The right to express one’s thoughts made sense only for someone who was capable of independent

Fromm’s concept of positive freedom is far from being operational, for we have no criteria for distinguishing between an activity which is an expression of a total, integrated personality and one which is not. Therefore we would not have discussed it here, were it not for the fact that Fromm’s book questions a very basic assumption which we have so far accepted in our deliberations and which we share with many others; namely that freedom from outside pressures is, at least in our culture, considered something worth fighting for and even worth dying for. The very title of Fromm’s book expressed a different standpoint.

In order to understand his approach we have to follow the author’s historical considerations. According to his rather stereotyped picture of the Middle Ages, in those times people were not free. The social class into which someone was born determined his position for his lifetime. Most people remained forever at the place of their birth and dressed according to the requirements of their social status. Members of a guild were subject to its various regulations. However, lacking self-awareness an individual was neither lonely nor aware of the many compulsions and various external

pressures. Capitalism, which liberated individual economic initiative, was the main factor in freeing people from their traditional bonds. This freedom in turn brought feelings of helplessness and anxiety. To overcome these an individual began to look for support, and this need for support gave rise to a longing for submission, to a desire to bow to powerful authority and to merge with a group whose rules one could obey, trying at the same time to dominate others within this group, since a desire to dominate is a symptom of weakness, not of strength.

In the period from Martin Luther to Kant the authority that one desired to obey became slowly internalized until the victory of the middle class led to the external authority being replaced by inner authority, that is by conscience. The victory of freedom here was only illusory, for this voice of conscience was not the voice of one's self and the freedom thus acquired was only freedom from one kind of compulsions in return for other compulsions sought for voluntarily. However, it was only positive freedom which had the ability to cure us from that feeling of loneliness resulting from the severance of the umbilical cord binding us to others and to restore that bond through love and work. The amiable dreamer did not see that hatred could serve as an integrating bond, too.

Fromm's book did not sound convincing to us at all. The picture of the Middle Ages as regards the freedom then realized is decidedly simplistic and the lack of self-awareness in that period is assumed without any sound basis. It appears to me that this awareness can be easily read off from St. Augustine's *Confessions* or from Abelard's and Heloise's letters. The description of the craving for submission, resulting from the individualism allegedly brought about by the development of capitalism, apparently relates to the history of Germany; the events which resulted in the triumph of Nazism there are even up to now a live issue for German emigrants. It is Hitler's Germany which is supposed to be the prime example of this craving for submission as well as for dominance, a craving described, for instance, by Heinrich Mann in *The Patrioteer* or in the well-known collective work *The Authoritarian Personality*. It has been pointed out, though, that British capitalism did not promote the spread of the attitudes described by Fromm; this fact contradicts some of the crucial points of Fromm's argument. The existence of a craving for submission posited by Fromm is no more corroborated by facts than is the existence of a craving for liberty. When the Stoics proclaimed that the only real goods are the moral virtues, for we cannot be deprived of them by anyone, they spoke under the influence of a desire for independence from people as well as fate. A tyrant could sentence us to death or exile but could not deprive us of the ability to behave with dignity. As a defense against the feeling of compulsion the Stoics recommended us to will the things that actually happen. This of course did not remove the objectively

existing compulsion. Friedrich Engels's concept of freedom as a recognition of necessity developed in the same direction.

Under capitalism many people saw an opportunity to gain independence through money. This was Benjamin Franklin's idea when he said: live modestly so you will be able to save out of your earnings and that is the only way to achieve the supreme happiness – independence.

Trade has been often commended for the working conditions where one can be one's own boss; learned professions, before they became socialized, were recommended for the same reasons – as an escape from the pressure which one individual can exert on another. Fromm had the same kind of freedom in mind when he denied its desirability and talked about a need for submission and obedience.

Only one kind of freedom could give Fromm a basis for his thesis that freedom is not always desirable and at times even to be avoided, and that is freedom of decision. As a popular German saying puts it "Those who have a choice also have trouble" (*Wer die Wahl hat, hat die Qual*). As we know one often avoids making a decision, because it requires an effort and brings responsibility towards oneself as well as others and that means a threat of disapproval if the choice turned out to be wrong. Consequently, some people prefer to have their profession chosen by their parents or by circumstance they don't have themselves to blame. But an escape from freedom in this sense has nothing to do with the development of capitalism. It should be rather attributed to certain traits of personality. If this shirking of responsibility through the avoidance of decision takes on a mass character it should be attributed to social factors such as, for instance, the kind of legal sanctions created by society which have a paralysing effect on the individual. Under such conditions everybody tries, if possible, to pass the responsibility on to a higher level of bureaucratic hierarchy. Freedom from compulsion, though, remains desirable and coercion still needs justification. In 1935 Kotarbiński said that the modern spirit of independence made us desire freedom not because it could save us from mistakes, but because by itself it is so appealing that life without it would lose all its charm.

If, in spite of his striking simplifications and questionable generalizations, Fromm became so popular it is perhaps because he stressed the feeling of helplessness of an individual confronted with the machinery of a modern state – a motif present in the work of many authors and apparently based on reality. This feeling of helplessness, though, is not limited to the capitalist countries. It appears whenever people have to face overwhelming political powers and the modern means of coercion at their disposal, with a huge bureaucratic apparatus and a stiff administration of justice (in literature this was depicted by such authors as Franz Kafka and Friedrich Dürrenmatt).

We may recall that, in our consideration we are trying to order the rules of ethics according to the kind of goods they protect, not going into the problem of their origin or into the question whether or not they were created with the intention of protecting those goods. If by the word “good” we understand something that is an object of human desires we have to make it clear that here we are concerned only with those goods which are generally recognized as such in a given group. While many believe that lust for power is universal, Western culture does not approve of it enough to put power under special protection. Rather, as we have seen, it makes an effort to curtail power through a set of desiderata discussed above.

Those desiderata safeguarded the three main goods: human freedom, safety and dignity. The first two of these are often considered basic because their presence is a necessary condition for the enjoyment of all other non-moral goods. “Freedom”, writes Bay, “is the soil required for the full growth of other values.” According to him the same is true of security, which gives us the conviction that we shall be able to continue to enjoy our possessions. Bay’s view contains a suggestion for a general axiological hierarchy of values. As for the question about the position of moral values in such a hierarchy we shall be ready to discuss it only in the last chapter.

Francis Fukuyama

THE UNIVERSAL AND HOMOGENEOUS STATE

Source: Francis Fukuyama, *The End of History and the Last Man*, Penguin Books, London 1992, pp. 199-208.

For Hegel, the French Revolution was the event that took the Christian vision of a free and equal society, and implemented it here on earth. In making this revolution, the former slaves risked their lives, and in so doing proved that they had overcome the very fear of death that had served originally to define them as slaves. The principles of liberty and equality were then carried to the rest of Europe by Napoleon's victorious armies. The modern liberal democratic state that came into being in the aftermath of the French Revolution was, simply, the realization of the Christian ideal of freedom and universal human equality in the here-and-now. This was not an attempt to deify the state or give it a "metaphysical" significance absent in Anglo-Saxon liberalism. Rather, it constituted a recognition that it was man who had created the Christian God in the first place, and therefore man who could make God come down to earth and live in the parliament buildings, presidential palaces, and bureaucracies of the modern state. Hegel gives us the opportunity to reinterpret modern liberal democracy in terms that are rather different from the Anglo-Saxon tradition of liberalism emanating from Hobbes and Locke. This Hegelian understanding of liberalism is at the same time a more noble vision of what liberalism represents, and a more accurate account of what people around the world mean when they say they want to live in a democracy.

For Hobbes and Locke, and for their followers who wrote the American Constitution and Declaration of Independence, liberal society was a social contract between individuals who possessed certain natural rights, chief among which were the right to life – that is, self-preservation – and to the pursuit of happiness, which was generally understood as the right to private property. Liberal society is thus a reciprocal and equal agreement among citizens not to interfere with each other's lives and property.

For Hegel, by contrast, liberal society is a reciprocal and equal agreement among citizens to mutually recognize each other. If Hobbesian or Lockean liberalism can be interpreted as the pursuit of rational self-interest, Hegelian "liberalism" can be seen as the pursuit of *rational recognition*, that is, recognition on a universal basis in which the dignity of each person as a free and autonomous human being is recognized by all. What is at stake

for us when we choose to live in a liberal democracy is not merely the fact that it allows us the freedom to make money and satisfy the desiring parts of our souls. The more important and ultimately more satisfying thing it provides us is recognition of our dignity. Life in a liberal democracy is potentially the road to great material abundance, but it also shows us the way to the completely nonmaterial end of recognition of our freedom. The liberal democratic state values us at our own sense of self-worth. Thus both the desiring and thymotic parts of our souls find satisfaction. Universal recognition solves the severe defect in recognition that existed in slaveholding societies and its many variants. Virtually every society prior to the French Revolution was either a monarchy or aristocracy, in which either one person (the king), or a few persons (the “ruling class” or the elite), were recognized. Their satisfaction at being recognized came at the expense of the great mass of people whose humanity was not acknowledged in return. Recognition could be rationalized only if it were put on a universal and equal basis. The internal “contradiction” of the master-slave relationship was solved in a state which successfully synthesized the morality of the master and the morality of the slave. The very distinction between masters and slaves was abolished, and the former slaves became the new masters – not of other slaves, but of themselves. This was the meaning of the “Spirit of 1776” – not the victory of yet another group of masters, not the rise of a new slavish consciousness, but the achievement of self-mastery in the form of democratic government. Something of both lordship and bondage was preserved in this new synthesis – the satisfaction of recognition on the part of the master, and the work of the slave.

We can better understand the rationality of the universal recognition by contrasting it with other forms of recognition that are not rational. For example, a nationalist state, that is, a state in which citizenship is restricted to members of a particular national, ethnic, or racial group, constitutes a form of *irrational* recognition. Nationalism is very much a manifestation of the desire for recognition, arising out of *thymos*. The nationalist is primarily preoccupied not with economic gain, but with recognition and dignity. Nationality is not a natural trait; one has nationality only if one is recognized by other people as having it. The recognition one seeks, however, is not for oneself as an individual, but for the group of which one is a member. In a sense, nationalism represents a transmutation of the *megalothymia* of earlier ages into a more modern and democratic form. Instead of individual princes struggling for personal glory, we now have entire nations demanding recognition of their nationhood. Like the aristocratic master, these nations have shown themselves willing to accept the risk of violent death for the sake of recognition, for their “place in the sun.”

The desire for recognition based on nationality or race, however, is not a rational one. The distinction between human and non-human is fully rational: only human beings are free, that is, able to struggle for recognition in a battle for pure prestige. This distinction is based on nature, or rather, on the radical disjunction between the realm of nature and the realm of freedom. The distinction between one human group and another, on the other hand, is an accidental and arbitrary by-product of human history. And the struggle between national groups for recognition of their national dignity leads, on an international scale, to the same impasse as the prestige battle between aristocratic masters: one or another nation becomes a master, so to speak, and the other becomes a slave. The recognition available to either is defective for the same reasons that the original, individual relationship of lordship and bondage was unsatisfactory.

The liberal state, on the other hand, is rational because it reconciles these competing demands for recognition on the only mutually acceptable basis possible, that is, on the basis of the individual's identity as a human being. The liberal state must be *universal*, that is, grant recognition to all citizens because they are human beings, and not because they are members of some particular national, ethnic, or racial group. And it must be *homogeneous* insofar as it creates a classless society based on the abolition of the distinction between masters and slaves. The rationality of this universal and homogeneous state is further evident in the fact that it is consciously founded on the basis of open and publicized principles, such as occurred in the course of the constitutional convention that led to the birth of the American republic. That is, the authority of the state does not arise out of age-old tradition or from the murky depths of religious faith, but as the result of a public debate in which the citizens of the state agree amongst one another on the explicit terms under which they will live together. It represents a form of rational self-consciousness because for the first time human beings as a society are aware of their own true natures, and are able to fashion a political community that exists in conformity with those natures.

In what way can we say that modern liberal democracy "recognizes" all human beings universally?

It does this by granting and protecting their *rights*. That is, any human child born on the territory of the United States or France or any of a number of other liberal states is by that very act endowed with certain rights of citizenship. No one may harm the life of that child, whether he or she is poor or rich, black or white, without being prosecuted by the criminal justice system. In time, that child will have the right to own property, which must be respected both by the state and by fellow citizens. This child will have the right to have thymotic options (i.e., opinions concerning value and worth) about any topic he or she conceives, and will have the right to publish and

disseminate those opinions as broadly as possible. These thymotic opinions can take the form of religious belief, which may be exercised with complete freedom. And finally, when this child reaches adulthood, he or she will have the right to participate in the very government that establishes these rights in the first place, and to contribute to deliberations on the highest and most important questions of public policy. This participation can take the form of either voting in periodic elections, or the more active form of entering into the political process directly, for instance by running for office, or writing editorials in support of a person or position, or by serving in a public-sector bureaucracy. Popular self-government abolishes the distinction between masters and slaves; everyone is entitled to at least some share in the role of master. Mastery now takes the form of the promulgation of democratically determined laws, that is, sets of universal rules by which man self-consciously masters himself. Recognition becomes *reciprocal* when the state and the people recognize each other, that is, when the state grants its citizens rights and when citizens agree to abide by the state's laws. The only limitations on these rights occur when they become self-contradictory, in other words, when the exercise of one right interferes with the exercise of another.

This description of the Hegelian state sounds virtually identical to the Lockean liberal state, which is similarly defined as a system for protecting a set of individual rights. The Hegel specialist will immediately object that Hegel was critical of Lockean or Anglo-Saxon liberalism, and would have rejected the notion that a Lockean United States of America or England constituted the final stage of history. He would of course be right in a certain sense, Hegel would never have endorsed the view of certain liberals in the Anglo-Saxon tradition, now primarily represented on the libertarian Right, who believe that government's only purpose is to get out of the way of individuals, and that the latter's freedom to pursue their selfish private interests is absolute. He would have rejected the version of liberalism that viewed political rights simply as a means by which men could protect their lives and their money or, in more contemporary language, their personal "lifestyles."

On the other hand, Kojève identified an important truth when he asserted that postwar America or the members of the European Community constituted the embodiment of Hegel's state of universal recognition. For while the Anglo-Saxon democracies may have been founded on explicitly Lockean grounds, their self-understanding has never been purely Lockean. We have seen, for example, how both Madison and Hamilton in the *Federalist* took account of the thymotic side of human nature, and how the former believed that one of the purposes of representative government was to give an outlet to men's thymotic and passionate opinions. When people in contemporary America talk about their society and form of government, they frequently use language that is more Hegelian than Lockean. For example, during the

civil rights era, it was perfectly normal for people to say that the purpose of a particular piece of civil rights legislation was to recognize the dignity of black people, or to fulfill the promise of the Declaration of Independence and the Constitution to allow all Americans to live in dignity and freedom. One did not need to be a Hegel scholar to understand the force of this argument; it was part of the vocabulary of the least educated and most humble citizen. (The constitution of the Federal Republic of Germany makes explicit reference to human dignity.) The right to vote, in the United States and in other democratic countries, first for people who did not meet property qualifications, then for blacks and other ethnic or racial minorities, and for women, was never seen as an exclusively economic matter (i.e., that the right to vote allowed these groups to protect their economic interests), but was generally perceived as a symbol of their worth and equality, and was valued as an end in itself. The fact that the American Founding Fathers did not use the terms "recognition" and "dignity" did not prevent the Lockean language of rights from sliding effortlessly and invisibly into the Hegelian language of recognition.

The universal and homogeneous state that, appears at the end of history can thus be seen as resting on the twin pillars of economics and recognition. The human historical process that leads up to it has been driven forward equally by the progressive unfolding of modern natural science, and by the struggle for recognition. The former emanates from the desiring part of the soul, which was liberated in early modern times and turned to the unlimited accumulation of wealth. This unlimited accumulation was made possible because of an alliance that was formed between desire and reason: capitalism is inextricably bound to modern natural science. The struggle for recognition, on the other hand, originated in the thymotic part of the soul. It was driven forward by the reality of slavery, which contrasted with the slave's vision of mastery in a world where all men were free and equal in the sight of God. A full description of the historical process – a true Universal History – cannot really be complete without giving an account of both of these pillars, just as a description of the human personality is not complete that does not take account of desire, reason, and *thymos*. Marxism, "modernization theory," or any other theory of history based primarily on economics will be radically incomplete unless it takes account of the thymotic part of the soul, and of the struggle for recognition as a major driver of history.

We are now in a position to explicate more fully the interrelationship between liberal economics and liberal politics, and to give an account of the high degree of correlation between advanced industrialization and liberal democracy. There is, as stated earlier, no *economic* rationale for democracy; if anything, democratic politics is a drag on economic efficiency. The choice of democracy is an autonomous one, undertaken for the sake of recognition and not for the sake of desire.

But economic development creates certain conditions that make that autonomous choice more likely. This happens for two reasons. In the first place, economic development demonstrates to the slave the concept of mastery, as he discovers he can master nature through technology, and master himself as well through the discipline of work and education. As societies become better educated, slaves have the opportunity to become more conscious of the fact that they are slaves and would like to be masters, and to absorb the ideas of other slaves who have reflected on their condition of servitude. Education teaches them that they are human beings with dignity, and that they ought to struggle to have that dignity recognized. The fact that modern education teaches the ideas of liberty and equality is not accidental; these are slave ideologies that have been thrown up in reaction to the real situation in which slaves found themselves. Christianity and communism were both slave ideologies (the latter unanticipated by Hegel) that captured part of the truth. But in the course of time the irrationalities and self-contradictions of both were revealed: Communist societies, in particular, despite their commitment to principles of freedom and equality, were exposed as modern variants of slave-holding ones, in which the dignity of the great mass of people went unrecognized. The collapse of Marxist ideology in the late 1980s reflected, in a sense, the achievement of a higher level of rationality on the part of those who lived in such societies, and their realization that rational universal recognition could be had only in a liberal social order.

The second way in which economic development encourages liberal democracy is because it has a tremendous leveling effect through its need for universal education. Old class barriers are broken down in favor of a general condition of equality of opportunity. While new classes arise based on economic status or education, there is an inherently greater mobility in society that promotes the spread of egalitarian ideas. The economy thus creates a kind of *de facto* equality before such equality arises *de jure*. If human beings were nothing but reason and desire, they would be perfectly content to live in a South Korea under military dictatorship, or under the enlightened technocratic administration of Francoist Spain, or in a Guomindang-led Taiwan, hellbent on rapid economic growth. And yet, citizens of these countries are something more than desire and reason: they have a thymotic pride and belief in their own dignity, and want that dignity to be recognized, above all by the government of the country they live in.

The desire for recognition, then, is the missing link between liberal economics and liberal politics. We have seen how advanced industrialization produces societies that are urban, mobile, increasingly well-educated, and free from traditional forms of authority like that of tribe, priest, or guild. We saw that there was a high degree of empirical correlation between such societies and liberal democracy, without being able to fully explain the

reason for that correlation. The weakness in our interpretive framework lay in the fact that we were seeking an economic explanation for the choice of liberal democracy, that is, an explanation that in one way or another arose out of the desiring part of the soul. But we should instead have looked at the thymotic part, at the soul's desire for recognition. For the social changes that accompany advanced industrialization, in particular education, appear to liberate a certain demand for recognition that did not exist among poorer and less educated people. As people become wealthier, more cosmopolitan, and better educated, they demand not simply more wealth but recognition of their status. It is this completely non-economic, non-material drive that can explain why people in Spain, Portugal, South Korea, Taiwan, and the People's Republic of China have all expressed a demand not just for market economics but for free governments by and for the people as well.

Alexandre Kojève, interpreting Hegel, maintained that the universal and homogeneous state would be the last stage in human history because it was *completely satisfying* to man. This was based, in the end, on his belief in the primacy of *thymos*, or the desire for recognition, as the most deep-seated and fundamental human longing. In pointing to the metaphysical, as well as psychological, importance of recognition, Hegel and Kojève perhaps saw more profoundly into the human personality than other philosophers like Locke or Marx, for whom desire and reason were paramount. While Kojève claimed that he had no trans-historical standard by which to measure the adequacy of human institutions, the desire for recognition in fact constituted such a standard. *Thymos* was in the end for Kojève a permanent part of human nature. The struggle for recognition arising out of *thymos* may have required an historical march of ten thousand years or more, but it was no less a constitutive part of the soul for Kojève than for Plato.

Kojève's claim that we are at the end of history therefore stands or falls on the strength of the assertion that the recognition provided by the contemporary liberal democratic state adequately satisfies the human desire for recognition. Kojève believed that modern liberal democracy successfully synthesized the morality of the master and the morality of the slave, overcoming the distinction between them even as it preserves something of both forms of existence. Is this really true? In particular, has the *megalothymia* of the master been successfully sublimated and channeled by modern political institutions so that it no longer presents a problem for contemporary politics? Will man be forever content to be recognized simply as the equal of all other men, or will he not demand more in time? And if *megalothymia* has been so totally sublimated or channeled by modern politics, should we agree with Nietzsche that this is not a cause for celebration, but an unparalleled disaster? [...]

Samuel P. Huntington

THE CLASH OF CIVILIZATIONS?

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World politics is entering a new phase, and intellectuals have not hesitated to proliferate visions of what it will be – the end of history, the return of traditional rivalries between nation states, and the decline of the nation state from the conflicting pulls of tribalism and globalism, among others. Each of these visions catches aspects of the emerging reality. Yet they all miss a crucial, indeed a central, aspect of what global politics is likely to be in the coming years.

It is my hypothesis that the fundamental source of conflict in this new world will not be primarily ideological or primarily economic. The great divisions among humankind and the dominating source of conflict will be cultural. Nation states will remain the most powerful actors in world affairs, but the principal conflicts of global politics will occur between nations and groups of different civilizations. The clash of civilizations will be the battle lines of the future.

Conflict between civilizations will be the latest phase of the evolution of conflict in the modern world. For a century and a half after the emergence of the modern international system of the Peace of Westphalia, the conflicts of the Western world were largely among princes – emperors, absolute monarchs and constitutional monarchs attempting to expand their bureaucracies, their armies, their mercantilist economic strength and, most important, the territory they ruled. In the process they created nation states, and beginning with the French Revolution the principal lines of conflict were between nations rather than princes. In 1793, as R.R. Palmer put it, “The wars of kings were over; the wars of peoples had begun.” This nineteenth-century pattern lasted until the end of World War I. Then, as a result of the Russian Revolution and the reaction against it, the conflict of nations yielded to the conflict of ideologies, first among communism, fascism-Nazism and liberal democracy, and then between communism and liberal democracy. During the Cold War, this latter conflict became embodied in the struggle between the two superpowers, neither of which was a nation state in the classical European sense and each of which defined its identity in terms of ideology.

These conflicts between princes, nation states and ideologies were primarily conflicts within Western civilization, “Western civil wars,” as William Lind has labeled them. This was as true of the Cold War as it was

of the world wars and the earlier wars of the seventeenth, eighteenth and nineteenth centuries. With the end of the Cold War, international politics moves out of its Western phase, and its center-piece becomes the interaction between the West and non-Western civilizations and among non-Western civilizations. In the politics of civilizations, the people and governments of non-Western civilizations no longer remain the objects of history as targets of Western colonialism but join the West as movers and shapers of history.

During the cold war the world was divided into the First, Second and Third Worlds. Those divisions are no longer relevant. It is far more meaningful now to group countries not in terms of their political or economic systems or in terms of their level of economic development but rather in terms of their culture and civilization.

What do we mean when we talk of a civilization? A civilization is a cultural entity. Villages, regions, ethnic groups, nationalities, religious groups, all have distinct cultures at different levels of cultural heterogeneity. The culture of a village in southern Italy may be different from that of a village in northern Italy, but both will share in a common Italian culture that distinguishes them from German villages. European communities, in turn, will share cultural features that distinguish them from Arab or Chinese communities. Arabs, Chinese and Westerners, however, are not part of any broader cultural entity. They constitute civilizations. A civilization is thus the highest cultural grouping of people and the broadest level of cultural identity people have short of that which distinguishes humans from other species. It is defined both by common objective elements, such as language, history, religion, customs, institutions, and by the subjective self-identification of people. People have levels of identity: a resident of Rome may define himself with varying degrees of intensity as a Roman, an Italian, a Catholic, a Christian, a European, a Westerner. The civilization to which he belongs is the broadest level of identification with which he intensely identifies. People can and do redefine their identities and, as a result, the composition and boundaries of civilizations change.

Civilizations may involve a large number of people, as with China (“a civilization pretending to be a state”, as Lucian Pye put it), or a very small number of people, such as the Anglophone Caribbean. A civilization may include several nation states, as is the case with Western, Latin American and Arab civilizations, or only one, as is the case with Japanese civilization. Civilizations obviously blend and overlap, and may include subcivilizations. Western civilization has two major variants, European and North American, and Islam has its Arab, Turkic and Malay subdivisions. Civilizations are nonetheless meaningful entities, and while the lines between them are seldom sharp, they are real. Civilizations are dynamic; they rise and fall;

they divide and merge. And, as any student of history knows, civilizations disappear and are buried in the sands of time.

Westerners tend to think of nation states as the principal actors in global affairs. They have been that, however, for only a few centuries. The broader reaches of human history have been the history of civilizations. In *A Study of History*, Arnold Toynbee identified 21 major civilizations; only six of them exist in the contemporary world.

Civilization identity will be increasingly important in the future, and the world will be shaped in large measure by the interactions among seven or eight major civilizations. These include Western, Confucian, Japanese, Islamic, Hindu, Slavic-Orthodox, Latin American and possibly African civilization. The most important conflicts of the future will occur along the cultural fault lines separating these civilizations from one another.

Why will this be the case?

First, differences among civilizations are not only real; they are basic. Civilizations are differentiated from each other by history, language, culture, tradition and, most important, religion. The people of different civilizations have different views on the relations between God and man, the individual and the group, the citizen and the state, parents and children, husband and wife, as well as differing views of the relative importance of rights and responsibilities, liberty and authority, equality and hierarchy. These differences are the product of centuries. They will not soon disappear. They are far more fundamental than differences among political ideologies and political regimes. Differences do not necessarily mean conflict, and conflict does not necessarily mean violence. Over the centuries, however, differences among civilizations have generated the most prolonged and the most violent conflicts.

Second, the world is becoming a smaller place. The interactions between peoples of different civilizations are increasing; these increasing interactions intensify civilization consciousness and awareness of differences between civilizations and commonalities within civilizations. North African immigration to France generates hostility among Frenchmen and at the same time increased receptivity to immigration by "good" European Catholic Poles. Americans react far more negatively to Japanese investment than to larger investments from Canada and European countries. Similarly, as Donald Horowitz has pointed out, "An Ibo may be ... an Owerri Ibo or an Onitsha Ibo in what was the Eastern region of Nigeria. In Lagos, he is simply an Ibo. In London, he is a Nigerian. In New York, he is an African." The interactions among peoples of different civilizations enhance the civilization-consciousness of people that, in turn, invigorates differences and animosities stretching or thought to stretch back deep into history.

Third, the processes of economic modernization and social change throughout the world are separating people from longstanding local identities. They also weaken the nation state as a source of identity. In much of the world religion has moved in to fill this gap, often in the form of movements that are labeled “fundamentalist.” Such movements are found in Western Christianity, Judaism, Buddhism and Hinduism, as well as in Islam. In most countries and most religions the people active in fundamentalist movements are young, college-educated, middle-class technicians, professionals and business persons. The “unsecularization of the world,” George Weigel has remarked, “is one of the dominant social factors of life in the late twentieth century.” The revival of religion, “*la revanche de Dieu*”, as Gilles Kepel labeled it, provides a basis for identity and commitment that transcends national boundaries and unites civilizations.

Fourth, the growth of civilization-consciousness is enhanced by the dual role of the West. On the one hand, the West is at a peak of power. At the same time, however, and perhaps as a result, a return to the roots phenomenon is occurring among non-Western civilizations. Increasingly one hears references to trends toward a turning inward and “Asianization” in Japan, the end of the Nehru legacy and the “Hinduization” of India, the failure of Western ideas of socialism and nationalism and hence “re-Islamization” of the Middle East, and now a debate over Westernization versus Russianization in Boris Yeltsin’s country. A West at the peak of its power confronts non-Wests that increasingly have the desire, the will and the resources to shape the world in non-Western ways.

In the past, the elites of non-Western societies were usually the people who were most involved with the West, had been educated at Oxford, the Sorbonne or Sandhurst, and had absorbed Western attitudes and values. At the same time, the populace in non-Western countries often remained deeply imbued with the indigenous culture. Now, however, these relationships are being reversed. A de-Westernization and indigenization of elites is occurring in many non-Western countries at the same time that Western, usually American, cultures, styles and habits become more popular among the mass of the people.

Fifth, cultural characteristics and differences are less mutable and hence less easily compromised and resolved than political and economic ones. In the former Soviet Union, communists can become democrats, the rich can become poor and the poor rich, but Russians cannot become Estonians and Azeris cannot become Armenians. In class and ideological conflicts, the key question was “Which side are you on?” and people could and did choose sides and change sides. In conflicts between civilizations, the question is “What are you?” That is a given that cannot be changed. And as we know, from Bosnia to the Caucasus to the Sudan, the wrong answer to that question can mean

a bullet in the head. Even more than ethnicity, religion discriminates sharply and exclusively among people. A person can be half-French and half-Arab and simultaneously even a citizen of two countries. It is more difficult to be half-Catholic and half-Muslim.

Finally, economic regionalism is increasing. The proportions of total trade that are intraregional rose between 1980 and 1989 from 51 percent to 59 percent in Europe, 33 percent to 37 percent in East Asia, and 32 percent to 36 percent in North America. The importance of regional economic blocs is likely to continue to increase in the future. On the one hand, successful economic regionalism will reinforce civilization-consciousness. On the other hand, economic regionalism may succeed only when it is rooted in a common civilization. The European Community rests on the shared foundation of European culture and Western Christianity. The success of the North American Free Trade Area depends on the convergence now underway of Mexican, Canadian and American cultures. Japan, in contrast, faces difficulties in creating a comparable economic entity in East Asia because Japan is a society and civilization unique to itself. However strong the trade and investment links Japan may develop with other East Asian countries, its cultural differences with those countries inhibit and perhaps preclude its promoting regional economic integration like that in Europe and North America.

Common culture, in contrast, is clearly facilitating the rapid expansion of the economic relations between the People's Republic of China and Hong Kong, Taiwan, Singapore and the overseas Chinese communities in other Asian countries. With the Cold War over, cultural commonalities increasingly overcome ideological differences, and mainland China and Taiwan move closer together. If cultural commonality is a prerequisite for economic integration, the principal East Asian economic bloc of the future is likely to be centered on China. This bloc is, in fact, already coming into existence.

Despite the current Japanese dominance of the region, the Chinese-based economy of Asia is rapidly emerging as a new epicenter for industry, commerce and finance. This strategic area contains substantial amounts of technology and manufacturing capability (Taiwan), outstanding entrepreneurial, marketing and services acumen (Hong Kong), a fine communications network (Singapore), a tremendous pool of financial capital (all three), and very large endowments of land, resources and labor (mainland China). From Guangzhou to Singapore, from Kuala Lumpur to Manila, this influential network – often based on extensions of the traditional clans – has been described as the backbone of the East Asian economy.

Culture and religion also form the basis of the Economic Cooperation Organization, which brings together ten non-Arab Muslim countries: Iran, Pakistan, Turkey, Azerbaijan, Kazakhstan, Kyrgyzstan, Turkmenistan,

Tadjikistan, Uzbekistan and Afghanistan. One impetus to the revival and expansion of this organization, founded originally in the 1960s by Turkey, Pakistan and Iran, is the realization by the leaders of several of these countries that they had no chance of admission to the European Community. Similarly, Caricom, the Central American Common Market and Mercosur rest on common cultural foundations. Efforts to build a broader Caribbean-Central American economic entity bridging the Anglo-Latin divide, however, have to date failed.

As people define their identity in ethnic and religious terms, they are likely to see an “us” versus “them” relation existing between themselves and people of different ethnicity or religion. The end of ideologically defined states in Eastern Europe and the former Soviet Union permits traditional ethnic identities and animosities to come to the fore. Differences in culture and religion create differences over policy issues, ranging from human rights to immigration to trade and commerce to the environment. Geographical propinquity gives rise to conflicting territorial claims from Bosnia to Mindanao. Most important, the efforts of the West to promote its values of democracy and liberalism to universal values, to maintain its military predominance and to advance its economic interests engender countering responses from other civilizations. Decreasingly able to mobilize support and form coalitions on the basis of ideology, governments and groups will increasingly attempt to mobilize support by appealing to common religion and civilization identity.

The clash of civilizations thus occurs at two levels. At the micro-level, adjacent groups along the fault lines between civilizations struggle, often violently, over the control of territory and each other. At the macro-level, states from different civilizations compete for relative military and economic power, struggle over the control of international institutions and third parties, and competitively promote their particular political and religious values.

The fault lines between civilizations are replacing the political and ideological boundaries of the Cold War as the flash points for crisis and bloodshed. The Cold War began when the Iron Curtain divided Europe politically and ideologically. The Cold War ended with the end of the Iron Curtain. As the ideological division of Europe has disappeared, the cultural division of Europe between Western Christianity, on the one hand, and Orthodox Christianity and Islam, on the other, has reemerged. The most significant dividing line in Europe, as William Wallace has suggested, may well be the eastern boundary of Western Christianity in the year 1500. This line runs along what are now the boundaries between Finland and Russia and between the Baltic states and Russia, cuts through Belarus and Ukraine separating the more Catholic western Ukraine from Orthodox eastern

Ukraine, swings westward separating Transylvania from the rest of Romania, and then goes through Yugoslavia almost exactly along the line now separating Croatia and Slovenia from the rest of Yugoslavia. In the Balkans this line, of course, coincides with the historic boundary between the Hapsburg and Ottoman empires. The peoples to the north and west of this line are Protestant or Catholic; they shared the common experiences of European history -- feudalism, the Renaissance, the Reformation, the Enlightenment, the French Revolution, the Industrial Revolution; they are generally economically better off than the peoples to the east; and they may now look forward to increasing involvement in a common European economy and to the consolidation of democratic political systems. The peoples to the east and south of this line are Orthodox or Muslim; they historically belonged to the Ottoman or Tsarist empires and were only lightly touched by the shaping events in the rest of Europe; they are generally less advanced economically; they seem much less likely to develop stable democratic political systems. The Velvet Curtain of culture has replaced the Iron Curtain of ideology as the most significant dividing line in Europe. As the events in Yugoslavia show, it is not only a line of difference; it is also at times a line of bloody conflict.

Conflict along the fault line between Western and Islamic civilizations has been going on for 1,300 years. After the founding of Islam, the Arab and Moorish surge west and north only ended at Tours in 732. From the eleventh to the thirteenth century the Crusaders attempted with temporary success to bring Christianity and Christian rule to the Holy Land. From the fourteenth to the seventeenth century, the Ottoman Turks reversed the balance, extended their sway over the Middle East and the Balkans, captured Constantinople, and twice laid siege to Vienna. In the nineteenth and early twentieth centuries as Ottoman power declined Britain, France, and Italy established Western control over most of North Africa and the Middle East.

After World War II, the West, in turn, began to retreat; the colonial empires disappeared; first Arab nationalism and then Islamic fundamentalism manifested themselves; the West became heavily dependent on the Persian Gulf countries for its energy; the oil-rich Muslim countries became money-rich and, when they wished to, weapons-rich. Several wars occurred between

Arabs and Israel (created by the West). France fought a bloody and ruthless war in Algeria for most of the 1950s; British and French forces invaded Egypt in 1956; American forces returned to Lebanon, attacked Libya, and engaged in various military encounters with Iran; Arab and Islamic terrorists, supported by at least three Middle Eastern governments, employed the weapon of the weak and bombed Western planes and installations and seized Western hostages. This warfare between Arabs and the West culminated in 1990, when the United States sent a massive army to the Persian Gulf to defend some Arab countries against aggression by another. In its aftermath

NATO planning is increasingly directed to potential threats and instability along its “southern tier.”

This centuries-old military interaction between the West and Islam is unlikely to decline. It could become more virulent. The Gulf War left some Arabs feeling proud that Saddam Hussein had attacked Israel and stood up to the West. It also left many feeling humiliated and resentful of the West’s military presence in the Persian Gulf, the West’s overwhelming military dominance, and their apparent inability to shape their own destiny. Many Arab countries, in addition to the oil exporters, are reaching levels of economic and social development where autocratic forms of government become inappropriate and efforts to introduce democracy become stronger. Some openings in Arab political systems have already occurred. The principal beneficiaries of these openings have been Islamist movements. In the Arab world, in short, Western democracy strengthens anti-Western political forces. This may be a passing phenomenon, but it surely complicates relations between Islamic countries and the West.

Those relations are also complicated by demography. The spectacular population growth in Arab countries, particularly in North Africa, has led to increased migration to Western Europe. The movement within Western Europe toward minimizing internal boundaries has sharpened political sensitivities with respect to this development. In Italy, France and Germany, racism is increasingly open, and political reactions and violence against Arab and Turkish migrants have become more intense and more widespread since 1990.

On both sides the interaction between Islam and the West is seen as a clash of civilizations. The West’s “next confrontation”, observes M. J. Akbar, an Indian Muslim author, “is definitely going to come from the Muslim world. It is in the sweep of the Islamic nations from the Meghreb to Pakistan that the struggle for a new world order will begin.” Bernard Lewis comes to a regular conclusion:

“We are facing a need and a movement far transcending the level of issues and policies and the governments that pursue them. This is no less than a clash of civilizations – the perhaps irrational but surely historic reaction of an ancient rival against our Judeo-Christian heritage, our secular present, and the worldwide expansion of both.”

Historically, the other great antagonistic interaction of Arab Islamic civilization has been with the pagan, animist, and now increasingly Christian black peoples to the south. In the past, this antagonism was epitomized in the image of Arab slave dealers and black slaves. It has been reflected in the ongoing civil war in the Sudan between Arabs and blacks, the fighting in Chad between Libyan-supported insurgents and the government, the tensions between Orthodox Christians and Muslims in the Horn of Africa, and the

political conflicts, recurring riots and communal violence between Muslims and Christians in Nigeria. The modernization of Africa and the spread of Christianity in Nigeria. The modernization of Africa and the spread of Christianity are likely to enhance the probability of violence along this fault line. Symptomatic of the intensification of this conflict was the Pope John Paul II's speech in Khartoum in February 1993 attacking the actions of the Sudan's Islamist government against the Christian minority there.

On the northern border of Islam, conflict has increasingly erupted between Orthodox and Muslim peoples, including the carnage of Bosnia and Sarajevo, the simmering violence between Serb and Albanian, the tenuous relation between Bulgarians and their Turkish minority, the violence between Ossetians and Ingush, the unremitting slaughter of each other by Armenians and Azeris, the tense relations between Russians and Muslims in Central Asia, and the deployment of Russian troops to protect Russian interests in the Caucasus and Central Asia. Religion reinforces the revival of ethnic identities and restimulates Russian fears about the security of their southern borders. This concern is well captured by Archie Roosevelt:

“Much of Russian history concerns the struggle between Slavs and the Turkish peoples on their borders, which dates back to the foundation of the Russian state more than a thousand years ago. In the Slavs’ millennium-long confrontation with their eastern neighbors lies the key to an understanding not only of Russian history, but Russian character. To understand Russian realities today one has to have a concept of the great Turkic ethnic group that has preoccupied Russians through the centuries.”

The conflict of civilizations is deeply rooted elsewhere in Asia. The historic clash between Muslim and Hindu in the subcontinent manifests itself now not only is the rivalry between Pakistan and India but also in intensifying religious strife within India between increasingly militant Hindu groups and India's substantial Muslim minority. The destruction of the Ayodhya mosque in December 1992 brought to the fore the issue of whether India will remain a secular democratic state or become a Hindu one. In East Asia, China has outstanding territorial disputes with most of its neighbors. It has pursued a ruthless policy toward the Buddhist people of Tibet, and it is pursuing an increasingly ruthless policy toward its Turkic-Muslim minority. With the Cold War over, the underlying differences between China and the United States have reasserted themselves in areas such as human rights, trade and weapons proliferation. These differences are unlikely to moderate. A “new cold war”, Deng Xiaoping reportedly asserted in 1991, is under way between China and America.

The same phrase has been applied to the increasingly difficult relations between Japan and the United States. Here cultural difference exacerbates

economic conflict. People on each side allege racism on the other, but at least on the American side the antipathies are not racial but cultural. The basic values, attitudes, behavioral patterns of the two societies could hardly be more different. The economic issues between the United States and Europe are no less serious than those between the United States and Japan, but they do not have the same political salience and emotional intensity because the differences between American culture and European culture are so much less than those between American civilization and Japanese civilization.

The interactions between civilizations vary greatly in the extent to which they are likely to be characterized by violence. Economic competition clearly predominates between the American and European subcivilizations of the West and between both of them and Japan. On the Eurasian continent, however, the proliferation of ethnic conflict, epitomized at the extreme in “ethnic cleansing”, has not been totally random. It has been most frequent and most violent between groups belonging to different civilizations. In Eurasia the great historic fault lines between civilizations are once more aflame. This is particularly true along the boundaries of the crescent-shaped Islamic bloc of nations from the bulge of Africa to central Asia. Violence also occurs between Muslims, on the one hand, and Orthodox Serbs in the Balkans, Jews in Israel, Hindus in India, Buddhists in Burma and Catholics in the Philippines. Islam has bloody borders.

The kin-country syndrome groups or states belonging to one civilization that become involved in war with people from a different civilization naturally try to rally support from other members of their own civilization. As the post-Cold War world evolves, civilization commonality, what H.D.S. Greenway has termed the “kin-country” syndrome, is replacing political ideology and traditional balance of power considerations as the principal basis for cooperation and coalitions. It can be seen gradually emerging in the post-Cold War conflicts in the Persian Gulf, the Caucasus and Bosnia. None of these was a full-scale war between civilizations, but each involved some elements of civilization rallying, which seemed to become more important as the conflict continued and which may provide a foretaste of the future.

First, in the Gulf War one Arab state invaded another and then fought a coalition of Arab, Western and other states. While only a few Muslim governments overtly supported Saddam Hussein, many Arab elites privately cheered him on, and he was highly popular among large sections of the Arab publics. Islamic fundamentalist movements universally supported Iraq rather than the Western-backed governments of Kuwait and Saudi Arabia. Forswearing Arab nationalism, Saddam Hussein explicitly invoked an Islamic appeal. He and his supporters attempted to define the war as a war between civilizations. “It is not the world against Iraq”, as Safar Al-Hawali, dean of Islamic Studies at the Umm Al-Qura University in Mecca, put it in a widely

circulated tape. "It is the West against Islam." Ignoring the rivalry between Iran and Iraq, the chief Iranian religious leader, Ayatollah Ali Khamenei, called for a holy war against the West: "The struggle against American aggression, greed, plans and policies will be counted as a jihad, and anybody who is killed on that path is a martyr." "This is a war", King Hussein of Jordan argued, "against all Arabs and all Muslims and not against Iraq alone."

The rallying of substantial sections of Arab elites and publics behind Saddam Hussein called those Arab governments in the anti-Iraq coalition to moderate their activities and temper their public statements. Arab governments opposed or distanced themselves from subsequent Western efforts to apply pressure on Iraq, including enforcement of a no-fly zone in the summer of 1992 and the bombing of Iraq in January 1993. The Western-Soviet-Turkish-Arab anti-Iraq coalition of 1990 had by 1993 become a coalition of almost only the West and Kuwait against Iraq.

Muslims contrasted Western actions against Iraq with the West's failure to protect Bosnians against Serbs and to impose sanctions on Israel for violating U.N. resolutions. The West, they allege, was using a double standard. A world of clashing civilizations, however, is inevitably a world of double standards: people apply one standard to their kin-countries and a different standard to others.

Second, the kin-country syndrome also appeared in conflicts in the former Soviet Union. Armenian military successes in 1992 and 1993 stimulated Turkey to become increasingly supportive of its religious, ethnic and linguistic brethren in Azerbaijan. "We have a Turkish nation feeling the same sentiments as the Azerbaijanis", said one Turkish official in 1992. "We are under pressure. Our newspapers are full of the photos of atrocities and are asking us if we are still serious about pursuing our neutral policy. Maybe we should show Armenia that there's a big Turkey in the region." President Turgut Ozal agreed, remarking that Turkey should at least "scare the Armenians a little bit." Turkey, Ozal threatened again in 1993, would "show its fangs." Turkey Air Force jets flew reconnaissance flights along the Armenian border; Turkey suspended food shipments and air flights to Armenia; and Turkey and Iran announced they would not accept dismemberment of Azerbaijan. In the last years of its existence, the Soviet government supported Azerbaijan because its government was dominated by former communists. With the end of the Soviet Union, however, political considerations gave way to religious ones. Russian troops fought on the Side of the Armenians, and Azerbaijan accused the "Russian government of turning 180 degrees" toward support for Christian Armenia.

Third, with respect to the fighting in the former Yugoslavia, Western publics manifested sympathy and support for the Bosnian Muslims and the horrors they suffered at the hands of the Serbs. Relatively little concern was

expressed, however, over Croatian attacks on Muslims and participation in the dismemberment of Bosnia-Herzegovina. In the early stages of the Yugoslav breakup, Germany, in an unusual display of diplomatic initiative and muscle, induced the other 11 members of the European Community to follow its lead in recognizing Slovenia and Croatia. As a result of the pope's determination to provide strong backing to the two Catholic countries, the Vatican extended recognition even before the Community did. The United States followed the European lead. Thus the leading actors in Western civilization rallied behind its coreligionists. Subsequently Croatia was reported to be receiving substantial quantities of arms from Central European and other Western countries. Boris Yeltsin's government, on the other hand, attempted to pursue a middle course that would be sympathetic to the Orthodox Serbs but not alienate Russia from the West. Russian conservative and nationalist groups, however, including many legislators, attacked the government for not being more forthcoming in its support for the Serbs. By early 1993 several hundred Russians apparently were serving with the Serbian forces, and reports circulated of Russian arms being supplied to Serbia.

Islamic governments and groups, on the other hand, castigated the West for not coming to the defense of the Bosnians. Iranian leaders urged Muslims from all countries to provide help to Bosnia; in violation of the U.N. arms embargo, Iran supplied weapons and men for the Bosnians; Iranian-supported Lebanese groups sent guerrillas to train and organize the Bosnian forces.

In 1993 up to 4,000 Muslims from over two dozen Islamic countries were reported to be fighting in Bosnia. The governments of Saudi Arabia and other countries felt under increasing pressure from fundamentalist groups in their own societies to provide more vigorous support for the Bosnians. By the end of 1992, Saudi Arabia had reportedly supplied substantial funding for weapons and supplies for the Bosnians, which significantly increased their military capabilities vis-à-vis the Serbs.

In the 1930s the Spanish Civil War provoked intervention from countries that politically were fascist, communist and democratic. In the 1990s the Yugoslav conflict is provoking intervention from countries that are Muslim, Orthodox and Western Christian. The parallel has not gone unnoticed. "The war in Bosnia-Herzegovina has become the emotional equivalent of the fight against fascism in the Spanish Civil War," one Saudi editor observed. "Those who died there are regarded as martyrs who tried to save their fellow Muslims."

Conflicts and violence will also occur between states and groups within the same civilization. Such conflicts, however, are likely to be less intense and less likely to expand than conflicts between civilizations. Common membership in a civilization reduces the probability of violence in situations

where it might otherwise occur. In 1991 and 1992 many people were alarmed by the possibility of violent conflict between Russia and Ukraine over territory, particularly Crimea, the Black Sea fleet, nuclear weapons and economic issues. If civilization is what counts, however, the likelihood of violence between Ukrainians and Russians should be low. They are two Slavic, primarily Orthodox peoples who have had close relationships with each other for centuries. As of early 1993, despite all the reasons for conflict, the leaders of the two countries were effectively negotiating and defusing the issues between the two countries. While there has been serious fighting between Muslims and Christians elsewhere in the former Soviet Union and much tension and some fighting between Western and Orthodox Christians in the Baltic states, there has been virtually no violence between Russians and Ukrainians.

Civilization rallying to date has been limited, but it has been growing, and it clearly has the potential to spread much further. As the conflicts in the Persian Gulf, the Caucasus and Bosnia continued, the positions of nations and the cleavages between them increasingly were along civilizational lines. Populist politicians, religious leaders and the media have found it a potential means of arousing mass support and of pressuring hesitant governments. In the coming years, the local conflicts most likely to escalate into major wars will be those, as in Bosnia and the Caucasus, along the fault lines between civilizations. The next world war, if there is one, will be a war between civilizations.

The West is now at an extraordinary peak of power in relation to other civilizations. In superpower opponent has disappeared from the map. Military conflict among Western states is unthinkable, and Western military power is unrivaled. Apart from Japan, the West faces no economic challenge. It dominates international economic institutions. Global political and security issues are effectively settled by a directorate of the United States, Britain and France, world economic issues by a directorate of the United States, Germany and Japan, all of which maintain extraordinarily close relations with each other to the exclusion of lesser and largely non-Western countries. Decisions made at the U.N. Security Council or in the International Monetary Fund that reflect the interests of the West are presented to the world as reflecting the desires of the world community. The very phrase "the world community" has become the euphemistic collective noun (replacing "the Free World") to give global legitimacy to actions reflecting the interests of the United States and other Western powers. Through the IMF and other international economic institutions, the West promotes its economic interests and imposes on other nations the economic policies it thinks appropriate. In any poll of non-Western peoples, the IMF undoubtedly would win the support of finance ministers and a few others, but get an overwhelmingly unfavorable

rating from just about everyone else, who would agree with Georgy Arbatov's characterization of IMF officials as "neo-Bolsheviks who love expropriating other people's money, imposing undemocratic and alien rules of economic and political conduct and stifling economic freedom."

Almost invariably Western leaders claim they are acting on behalf of "the world community." One minor lapse occurred during the run-up to the Gulf War. In an interview on "Good Morning America", Dec. 21, 1990, British Prime Minister John Major referred to the actions "the West" was taking against Saddam Hussein. He quickly corrected himself and subsequently referred to "the world community." He was, however, right when he erred.

Western domination of the U.N. Security Council and its decisions, tempered only by occasional abstention by China, produced U.N. legitimization of the West's use of force to drive Iraq out of Kuwait and its elimination of Iraq's sophisticated weapons and capacity to produce such weapons. It also produced the quite unprecedented action by the United States, Britain and France in getting the Security Council to demand that Libya hand over the Pan Am 103 bombing suspects and then to impose sanctions when Libya refused. After defeating the largest Arab army, the West did not hesitate to throw its weight around in the Arab world. The West in effect is using international institutions, military power and economic resources to run the world in ways that will maintain Western predominance, protect Western interests and promote Western political and economic values.

That at least is the way in which non-Westerners see the new world, and there is a significant element of truth in their view. Differences in power and struggles for military, economic and institutional power are thus one source of conflict between the West and other civilizations. Differences in culture, that is basic values and beliefs, are a second source of conflict. V.S. Naipaul has argued that Western civilization is the "universal civilization" that "fits all men." At a superficial level much of Western culture has indeed permeated the rest of the world. At a more basic level, however, Western concepts differ fundamentally from those prevalent in other civilizations. Western ideas of individualism, liberalism, constitutionalism, human rights, equality, liberty, the rule of law, democracy, free markets, the separation of church and state, often have little resonance in Islamic, Confucian, Japanese, Hindu, Buddhist or Orthodox cultures. Western efforts to propagate each ideas produce instead a reaction against "human rights imperialism" and a reaffirmation of indigenous values, as can be seen in the support for religious fundamentalism by the younger generation in non-Western cultures. The very notion that there could be a "universal civilization" is a Western idea, directly at odds with the particularism of most Asian societies and their emphasis on what distinguishes one people from another. Indeed, the author of a review of 100 comparative studies of values in different societies

concluded that “the values that are most important in the West are least important worldwide.” In the political realm, of course, these differences are most manifest in the efforts of the United States and other Western powers to induce other peoples to adopt Western ideas concerning democracy and human rights. Modern democratic government originated in the West. When it has developed colonialism or imposition.

The central axis of world politics in the future is likely to be, in Kishore Mahbubani’s phrase, the conflict between “the West and the Rest” and the responses of non-Western civilizations to Western power and values. Those responses generally take one or a combination of three forms. At one extreme, non-Western states can, like Burma and North Korea, attempt to pursue a course of isolation, to insulate their societies from penetration or “corruption” by the West, and, in effect, to opt out of participation in the Western-dominated global community. The costs of this course, however, are high, and few states have pursued it exclusively. A second alternative, the equivalent of “band-wagoning” in international relations theory, is to attempt to join the West and accept its values and institutions. The third alternative is to attempt to “balance” the West by developing economic and military power and cooperating with other non-Western societies against the West, while preserving indigenous values and institutions; in short, to modernize but not to Westernize.

In the future, as people differentiate themselves by civilization, countries with large numbers of people of different civilizations, such as the Soviet Union and Yugoslavia, are candidates for dismemberment. Some other countries have a fair degree of cultural homogeneity but are divided over whether their society belongs to one civilization or another. These are torn countries. Their leaders typically wish to pursue a bandwagoning strategy and to make their countries members of the West, but the history, culture and traditions of their countries are non-Western. The most obvious and prototypical torn country is Turkey. The late twentieth-century leaders of Turkey have followed in the Attaturk tradition and defined Turkey as a modern, secular, Western nation state. They allied Turkey with the West in NATO and in the Gulf War; they applied for membership in the European Community. At the same time, however, elements in Turkish society have supported an Islamic revival and have argued that Turkey is basically a Middle Eastern Muslim society. In addition, while the elite of Turkey has defined Turkey as a Western society, the elite of the West refuses to accept Turkey and such. Turkey will not become a member of the European Community, and the real reason, as President Ozal said, “is that we are Muslim and they are Christian and they don’t say that.” Having rejected Mecca, and then being rejected by Brussels, where does Turkey look? Tashkent may be the answer. The end of the Soviet Union gives Turkey the opportunity to become the

leader of a revived Turkic civilization involving seven countries from the borders of Greece to those of China. Encouraged by the West, Turkey is making strenuous efforts to carve out this new identity for itself.

During the past decade Mexico has assumed a position somewhat similar to that of Turkey. Just as Turkey abandoned its historic opposition to Europe and attempted to join Europe, Mexico has stopped defining itself by its opposition to the United States and is instead attempting to imitate the United States and to join it in the North American Free Trade Area. Mexican leaders are engaged in the great task of redefining Mexican identity and have introduced fundamental economic reforms that eventually will lead to fundamental political change. In 1991 a top adviser to President Carlos Salinas de Gortari described at length to me all the changes the Salinas government was making. When he finished, I remarked: "That's most impressive. It seems to me that basically you want to change Mexico from a Latin American country into a North American country." He looked at me with surprise and exclaimed: "Exactly! That's precisely what we are trying to do, but of course we could never say so publicly." As his remark indicates, in Mexico as in Turkey, significant elements in society resist the redefinition of their country's identity. In Turkey, European-oriented leaders have to make gestures to Islam (Ozal's pilgrimage to Mecca); so also Mexico's North American-oriented leaders have to make gestures to those who hold Mexico to be a Latin American country (Salinas' Ibero-American Guadalajara summit).

Historically Turkey has been the most profoundly torn country. For the United States, Mexico is the most immediate torn country. Globally the most important torn country is Russia. The question of whether Russia is part of the West or the leader of the Slavic-Orthodox civilization has been a recurring one in Russian history. That issue was obscured by the communist victory in Russia, which imported a Western ideology, adapted it to Russian conditions and then challenged the West in the name of that ideology. The dominance of communism shut off the historic debate over Westernization versus Russification. With communism discredited Russians once again face that question.

President Yeltsin is adopting Western principles and goals and seeking to make Russia a "normal" country and a part of the West. Yet both the Russian elite and the Russian public are divided on this issue. Among the more moderate dissenters, Sergei Stankevich argues that Russia should reject the "Atlanticist" course, which would lead it "to become European, to become a part of the world economy in rapid and organized fashion, to become the eighth member of the Seven, and to particular emphasis on Germany and the United States as the two dominant members of the Atlantic alliance." While also rejecting an exclusively Eurasian policy, Stankevich nonetheless

argues that Russia should give priority to the protection of Russians in other countries, emphasize its Turkic and Muslim connections, and promote “an appreciable redistribution of our resources, our options, our ties, and our interests in favor of Asia, of the eastern direction.” People of this persuasion criticize Yeltsin for subordinating Russia’s interests to those of the West, for reducing Russian military strength, for failing to support traditional friends such as Serbia, and for pushing economic and political reform in ways injurious to the Russian people. Indicative of this trend is the new popularity of the ideas of Petr Savitsky, who in the 1920s argued that Russia was a unique Eurasian civilization. More extreme dissidents voice much more blatantly nationalist, anti-Western and anti-Semitic views, and urge Russia to redevelop its military strength and to establish closer ties with China and Muslim countries. The people of Russia areas divided as the elite. An opinion survey in European Russia in the spring of 1992 revealed that 40 percent of the public had positive attitudes toward the West and 36 percent had negative attitudes. As it has been for much of its history, Russia in the early 1990s is truly a torn country.

To redefine its civilization identity, a torn country must meet three requirements. First, its political and economic elite has to be generally supportive of and enthusiastic about the move. Second, its public has to be willing to acquiesce in the redefinition. Third, the dominant groups in the recipient civilization have to be willing to embrace the convert. All three requirements in large part exist with respect to Mexico. The first two in large part exist with respect to Turkey. It is not clear that any of them exist with respect to Russia’s joining the West. The conflict between liberal democracy and Marxism-Leninism was between ideologies which, despite their major differences, ostensibly shared ultimate goals of freedom, equality and prosperity. A traditional, authoritarian, nationalist Russia could have quite different goals. A Western democrat could carry on an intellectual debate with a Soviet Marxist. It would be virtually impossible for him to do that with a Russian traditionalist. If, as the Russians stop behaving like Marxists, they reject liberal democracy and begin behaving like Russians but not like Westerners, the relations between Russia and the West could again become distant and conflictual.

Owen Harries has pointed out that Australia is trying (unwisely in his view) to become a torn country in reverse. Although it has been a full member not only of the West but also of the ABCA military and intelligence core of the West, its current leaders are in effect proposing that it defect from the West, redefine itself as an Asian country and cultivate close ties with its neighbors. Australia’s future, they argue, is with the dynamic economies of East Asia. But, as I have suggested, close economic cooperation normally requires a common cultural base. In addition, none of the three conditions

necessary for a torn country to join another civilization is likely to exist in Australia's case.

The obstacles to non-Western countries joining the West vary considerably. They are least for Latin American and East European countries. They are greater for the Orthodox countries of the former Soviet Union. They are still greater for Muslim, Confucian, Hindu and Buddhist societies. Japan has established a unique position for itself as an associate member of the West: it is in the West in some respects but clearly not of the West in important dimensions. Those countries that for reason of culture and power do not wish to, or cannot, join the West compete with the West by developing their own economic, military and political power. They do this by promoting their internal development and by cooperating with other non-Western countries. The most prominent form of this cooperation is the Confucian-Islamic connection that has emerged to challenge Western interests, values and power.

Almost without exception, Western countries are reducing their military power; under Yeltsin's leadership so also is Russia. China, North Korea and several Middle Eastern states, however, are significantly expanding their military capabilities. They are doing this by the import of arms from Western and non-Western sources and by the development of indigenous arms industries. One result is the emergence of what Charles Krauthammer has called "Weapon States", and the Weapon States are not Western states. Another result is the redefinition of arms control, which is a Western concept and a Western goal. During the Cold War the primary purpose of arms control was to establish a stable military balance between the United States and its allies and the Soviet Union and its allies. In the post-Cold War world the primary objective of arms control is to prevent the development by non-Western societies of military capabilities that could threaten Western interests. The West attempts to do this through international agreements, economic pressure and controls on the transfer of arms and weapons technologies.

The conflict between the West and the Confucian-Islamic states focuses largely, although not exclusively, on nuclear, chemical and biological weapons, ballistic missiles and other sophisticated means for delivering them, and the guidance, intelligence and other electronic capabilities for achieving that goal. The West promotes nonproliferation as a universal norm and nonproliferation treaties and inspections as means of realizing that norm. It also threatens a variety of sanctions against those who promote the spread of sophisticated weapons and proposes some benefits for those who do not. The attention of the West focuses, naturally on nations that are actually or potentially hostile to the West.

The non-Western nations, on the other hand, assert their right to acquire and to deploy whatever weapons they think necessary for their security.

They also have absorbed, to the full, the truth of the response of the Indian defense minister when asked what lesson he learned from the Gulf War: "Don't fight the United States unless you have nuclear weapons." Nuclear weapons, chemical weapons and missiles are viewed, probably erroneously, as the potential equalizer of superior Western conventional power. China, of course, already has nuclear weapons; Pakistan and India have the capability to deploy them. North Korea, Iran, Iraq, Libya and Algeria appear to be attempting to acquire them. Atop Iranian official has declared that all Muslim states should acquire nuclear weapons, and in 1988 the president of Iran reportedly issued a directive calling for development of "offensive and defensive chemical, biological and radiological weapons."

Centrally important to the development of counter-West military capabilities is the sustained expansion of China's military power and its means to create military power. Buoyed by spectacular economic development, China is rapidly increasing its military spending and vigorously moving forward with the modernization of its armed forces. It is purchasing weapons from the former Soviet states; it is developing long-range missiles; in 1992 it tested a one-megaton nuclear device. It is developing power-projection capabilities, acquiring aerial refueling technology, and trying to purchase an aircraft carrier. Its military buildup and assertion of sovereignty over the South China Sea are provoking a multilateral regional arms race in East Asia. China is also a major exporter of arms and weapons technology. It has exported materials to Libya and Iraq that could be used to manufacture nuclear weapons and nerve gas. It has helped Algeria build a reactor suitable for nuclear weapons research and production. China has sold to Iran nuclear technology that American officials believe could only be used to create weapons and apparently has shipped components of 300-mile-range missiles to Pakistan. North Korea has had a nuclear weapons program under way for some while and has sold advanced missiles and missile technology to Syria and Iran. The flow of weapons and weapons technology is generally from East Asia to the Middle East. There is, however, some movement in the reverse direction; China has received Stinger missiles from Pakistan.

A Confucian-Islamic military connection has thus come into being, designed to promote acquisition by its members of the weapons and weapons technologies needed to counter the military powers of the West. It may or may not last. At present, however, it is, as Dave McCurdy has said, "a renegades' mutual support pact, run by the proliferators and their backers." A new form of arms competition is thus occurring between Islamic-Confucian states and the West. In an old-fashioned arms race, each side developed its own arms to balance or to achieve superiority against the other side. In this new form of arms competition, one side is developing its arms and the other side is

attempting not to balance but to limit and prevent that arms build-up while at the same time reducing its own military capabilities.

This article does not argue that civilization identities will replace all other identities, that nation states will disappear, that each civilization will become a single coherent political entity, that groups within a civilization will not conflict with and even fight each other. This paper does set forth the hypotheses that differences between civilizations are real and important; civilization-consciousness is increasing; conflict between civilizations will supplant ideological and other forms of conflict as the dominant global form of conflict; international relations, historically a game played out within Western civilization, will increasingly be de-Westernized and become a game in which non-Western civilizations are actors and not simply objects; successful political, security and economic international institutions are more likely to develop within civilizations than across civilizations; conflicts between groups in different civilizations will be more frequent, more sustained and more violent than conflicts between groups in the same civilization; violent conflicts between groups in different civilizations are the most likely and most dangerous source of escalation that could lead to global wars; the paramount axis of world politics will be the relations between “the West and the Rest”; the elites in some torn non-Western countries will try to make their countries part of the West, but in most cases face major obstacles to accomplishing this; a central focus of conflict for the immediate future will be between the West and several Islamic-Confucian states.

This is not to advocate the desirability of conflicts between civilizations. It is to set forth descriptive hypotheses as to what the future may be like. If these are plausible hypotheses, however, it is necessary to consider their implications for Western policy. These implications should be divided between short-term advantage and long-term accommodation. In the short term it is clearly in the interest of the West to promote greater cooperation and unity within its own civilization, particularly between its European and North American components; to incorporate into the West societies in Eastern Europe and Latin America whose cultures are close to those of the West; to promote and maintain cooperative relations with Russia and Japan; to prevent escalation of local inter-civilization conflicts into major inter-civilization wars; to limit the expansion of the military strength of Confucian and Islamic states; to moderate the reduction of counter military capabilities and maintain military superiority in East and Southwest Asia; to exploit differences and conflicts among Confucian and Islamic states; to support in other civilizations groups sympathetic to Western values and interests; to strengthen international institutions that reflect and legitimate Western interests and values and to promote the involvement of non-Western states in those institutions.

In the longer term other measures would be called for. Western civilization is both Western and modern. Non-Western civilizations have attempted to become modern without becoming Western. To date only Japan has fully succeeded in this quest. Non-Western civilization will continue to attempt to acquire the wealth, technology, skills, machines and weapons that are part of being modern. They will also attempt to reconcile this modernity with their traditional culture and values. Their economic and military strength relative to the West will increase. Hence the West will increasingly have to accommodate these non-Western modern civilizations whose power approaches that of the West but whose values and interests differ significantly from those of the West. This will require the West to maintain the economic and military power necessary to protect its interests in relation to these civilizations. It will also, however, require the West to develop a more profound understanding of the basic religious and philosophical assumptions underlying other civilizations and the ways in which people in those civilizations see their interests. It will require an effort to identify elements of commonality between Western and other civilizations. For the relevant future, there will be no universal civilization, but instead a world of different civilizations, each of which will have to learn to coexist with the others.

Bassam Tibi

THE TOTALITARIANISM OF JIHADIST ISLAMISM AND ITS CHALLENGE TO EUROPE AND TO ISLAM

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When reading the majority of texts that comprise the vast literature that has been published by self-proclaimed pundits on political Islam, it is easy to miss the fact that a new movement has arisen. Further, this literature fails to explain in a satisfactory manner the fact that the ideology which drives it is based on a particular interpretation of Islam, and that it is thus a politicised religious faith, not a secular one. The only book in which political Islam is addressed as a form of totalitarianism is the one by Paul Berman, *Terror and Liberalism* (2003). The author is, however, not an expert, cannot read Islamic sources, and therefore relies on the selective use of one or two secondary sources, thus failing to grasp the phenomenon. One of the reasons for such shortcomings is the fact that most of those who seek to inform us about the 'jihadist threat' – and Berman is typical of this scholarship – not only lack the language skills to read the sources produced by the ideologues of political Islam, but also lack knowledge about the cultural dimension of the movement. This new totalitarian movement is in many ways a novelty in the history of politics since it has its roots in two parallel and related phenomena: first, the culturalisation of politics which leads to politics being conceptualised as a cultural system (a view pioneered by Clifford Geertz); and second the return of the sacred, or 're-enchantment' of the world, as a reaction to its intensive secularisation resulting from globalisation.

The analysis of political ideologies that are based on religions, and that can exert appeal as a political religion as a consequence of this, involves a social science understanding of the role of religion played by world politics, especially after the bi-polar system of the Cold War has given way to a multi-polar world. In a project conducted at the Hannah Arendt Institute for the application of totalitarianism to the study of political religions, I proposed the distinction between secular ideologies that act as a substitute for religion, and religious ideologies based on genuine religious faith, which is the case in religious fundamentalism. Another project on 'Political Religion', carried out at the University of Basel, has made clearer the point that new approaches to politics become necessary once a religious faith becomes clothed in a political garb. Drawing on the authoritative sources of political Islam, this

article suggests that the great variety of organisations inspired by Islamist ideology are to be conceptualised both as political religions and as political movements. The unique quality of political Islam lies in the fact that it is based on a transnational religion. The ‘religionisation’ of politics in this case – as a politicisation of the Islamic religion – represents the return of the importance of the sacred on an international scale. Political Islam presents a civilisational-cultural ‘awakening’ that is framed as a ‘revolt against the West’, a conceptualisation of its mission which makes it necessary to distinguish between Islam as a faith and Islamism as a political ideology. In describing this political ideology as ‘totalitarian’ this article is following the tradition of analysis pioneered by Hannah Arendt, who distinguished between totalitarianism as an ideology, as a movement and as a political rule. Thus Islamism is discussed here on the levels of movement, political system and ideology. Among the basic features common to all forms of totalitarianism is the goal of imposing norms of belief and behaviour on all aspects of life, thus also denying any separation between the private and the public sphere. As a form of totalitarianism, Islamism plans to subordinate civil society to the comprehensive state apparatus directed by a totalising Shari’ah. It also contains anti-Semitism, one of the components that Arendt identified as a fundamental feature of totalitarian ideologies.

For jihadists, the resort to terror is not an end of itself, rather it is a means employed in the service of what Sayyid Qutb called a ‘world revolution of jihad’, an idea that aims at establishing an order of *Hakimiyyat Allah* [God’s rule] as the precondition to remaking the world. The new order will first be established within the world of Islam (i.e. ‘the Islamic state’) and then expanded to become a new world system of governance. Given these ambitions, any approach that focuses solely on Islamism as a form of terrorism will fail to grasp its nature both as a totalitarian ideology and as a movement that bases itself on a form of political religion. Jihadism is not only a threat to international security, but equally to open society in general, be it in the world of Islam or in the West. Certainly, it is inconceivable that the Islamic world order that it aspires to inaugurate could ever materialise in the foreseeable future. Nevertheless, the mobilising potential of the new political religion contributes to creating disorder in the world of Islam, in the Muslim diaspora of Europe and across the globe in general. For all these reasons, it is appropriate to study the many component organisations of the contemporary Islamist movement as a totalitarian, transnational movement based on political religion in the sense we have outlined.

The phenomenon of Islamism combines a totalising movement and the ideology of political religion. The jihadism that adopts terrorism as its most recent military strategy is only one branch of Islamism. This jihadism presents a new pattern for warfare, one that is no longer waged between

organised state armies. In this context, Martin van Creveld coined the term ‘low intensity war’, and Kalevi Holsti speaks of a ‘war of the third kind’. Both allude to the way jihadist terrorism follows the pattern of an irregular war fought by non-state actors, members of an organisation that does not respect any internationally agreed rules of engagement or conduct. If this violence were not based on an ideology articulated in religious–cultural terms, then one would be inclined to view its perpetrators as simple criminals violating the law; and hence to be countered only through strategies of professional policing. This would be wrong because jihadist Islamists are men acting as ‘true believers’ in a totalitarian movement. A closer look at the jihadist organisations that form one component of the Islamist movement shows that they are the product of the twin process of the religionisation of politics and the politicisation of religion. This observation reveals to us how the ideological dynamics of Islamism differ from those of sacralised political ideologies, such as communism or fascism.

In the context of the jihadisation of Islam, such movements adopt the strategies of irregular warfare, and of the ‘Shari’ahisation’ of Islam that promotes a totalitarian order – both of which can only be rationalised by a selective reading of Islamic tradition and theology – consequently, political religion becomes an essential concomitant of the way jihadism operates as a political movement. Not only does the ideology of contemporary jihadism deviate significantly from the tradition of classical Islamic jihad, but also the traditional Shari’ah differs essentially from the one advocated by political Islam. Both are ‘invented traditions’ that encourage the emergence of an international movement operating as a transnational religion with global networks. The overarching goal is to construct a divinely ordained order whose task it is to remake the world in a totalitarian, but sacred, spirit. At this preliminary stage of analysis it is important to stress that it would be wrong to infer from references to the political character of jihadism that it has nothing to do with Islam. The central issue, however, is not whether there is a scriptural Islamic basis for militant Islamism. What is important is to recognise that jihadists perceive themselves as ‘True Believers’. For this reason jihadist Islamists excommunicate all fellow Muslims from the Islamic community of the *umma* if their views are not shared. In jihadist Islamism the *umma* is reconfigured to become what Benedict Andersen calls an ‘imagined community’ fighting jihad for an Islamic world order. The argument that jihadism is much more than mere terrorism is also corroborated by the fact that, while they use violence without observing international conventions on ethical rules of conduct, they are also engaged in a war of ideas and worldviews. It follows that the role played by ideology in jihadism not only needs to be taken seriously for grasping its complex nature as a form of politicised religion, but also that scholarship needs to distinguish Islamism

from spiritual Islam in this ongoing war of ideas. This must be stressed if the present analysis is not to be open to the charge of Islamophobia.

For ethical and analytical reasons the distinction we have drawn between Islam and Islamism is essential for the present inquiry. Because reformed Islam can be made compatible with democracy, it is imperative to emphasise that the claim that political Islam is a totalitarian ideology can only apply to it in its manifestations as a political religion, and does not refer to the relationship between Islamic spiritual beliefs and the ideology of jihadism. In fact the defence of open society against the totalitarian idea of jihadism is a task that in principle could be carried out jointly in a 'Muslim-western' alliance that ensures that the 'war on terror' is not a war on Islam and on its people, thus avoiding the charge of Islamophobia. However, in distinguishing between a liberal Islam and a totalitarian one, it is important to stress that the democratic Islam envisaged here has nothing to do with the 'Liberal Islam' presented by Charles Kurzman in his recent reader on this topic. One of the alleged 'Muslim liberals' whom he cites is Mufti Yussuf al-Qaradawi, well-known for his incitements to jihad against the West, as well as other Islamists involved in turning Islam into a form of jihadism, thus replacing democratic Islam by a political religion with a totalitarian agenda. Bearing in mind such distinctions, totalitarian Islamism can be seen as a mainstream opposition to western democratic institutions carried out by a minority, which, despite its small membership, constitutes a highly efficient movement based on the complex social networks of a transnational religion. The expansion of the European Union and the impact of global migration have provided this movement with a safe haven for transnational terrorist networks in Europe. Further, the civil rights extended to the Islamists have allowed them to turn Europe into the battlefield of Islamism.

The historical roots of contemporary Islamism, as well as of the violence that connects 'religion and terror' in political Islam, can be traced to the totalitarian 'Society of Muslim Brothers' established in 1928 in Cairo. Also called the 'Movement of the Muslim Brothers', this was the very first movement of Islamic fundamentalism. In the past decades this 'Brotherhood' has developed into an international movement claiming to represent the Islamic diaspora in Europe. The founder of this movement, Hasan al-Banna, published in c. 1930 his *Risalat al-Djihad* [Essay on Jihad]. This text and other essays document the first formulation of the new totalitarian jihadist ideology. The view of the grandson of al-Banna, the Swiss born Tareq Ramadan, suggesting that there is a continuity within the Islamic revival stretching from al-Afghani in the nineteenth century to al-Banna in the twentieth century is utterly wrong. Unlike al-Banna, the revivalist al-Afghani has nothing to do with political Islam.

The fact that the major sources of Muslim indoctrination into intellectual terrorism can be traced back to the ‘Movement of the Muslim Brotherhood’ is corroborated in several catechisms and pamphlets authored by Sayyid Qutb. A pioneer of Islamism, Qutb continues to be its most influential ideologue across the globe. His work is also translated – by underground networks – into a number of Islamic languages. Certainly, the precursor of contemporary jihadism is al-Banna, the grandfather of Tareq Ramadan, but the idea of ‘jihad as a permanent Islamic world revolution’ in the pursuit of establishing global *Hakimiyyat Allah* stems from Qutb. This movement and its ideology pose a major threat to the secularity of western society established by the Westphalian system in the seventeenth century. The totalitarian form of jihadism represented by the ‘Society of the Muslim Brotherhood’ views as its primary task the destruction of this system. The agenda of this movement goes far beyond ‘religious extremism’; it pursues the goal of imposing a totalitarian Islamic government throughout the world. Despite the current moderation in its rhetoric in its home-country, Egypt, the Muslim Brotherhood continues to operate as a totalitarian movement, and it is not merely the advocate of an ‘Islam without Fear’, as some would like to believe. Thanks to its profound impact on the Muslims of the diaspora, the jihadist Islam of the Brotherhood has become Europe’s dilemma.

Though the Muslim Brotherhood is in a minority, this new totalitarian movement has been very successful. With the assistance of Madrassas and faith schools, both in the world of Islam and in its diaspora in Europe, it has managed to spread its ideology and the worldview that underpins it. Its radical religious-Islamist ideology makes it possible for the movement to adopt indoctrination as a proactive policy of recruitment. The rationale is as follows: first teach jihadism and then conduct recruitment campaigns which aim to mobilise converts for the creation of a new totalitarian order. Following this strategy in the war of ideas, the Muslim Brotherhood has been able to win the hearts and souls of many young Muslims by indoctrinating them to accept the principles of a new totalitarianism. As stated, the foremost authority of the totalitarian ideology of global jihad based on an Islamist interpretation of Islamic doctrines is Sayyid Qutb, a figure who continues to be seen as the *rector spiritus* of Islamism. His call for a world revolution exerts considerable appeal, and predates by a few decades al-Qaeda and its own form of internationalism. However, it is the emergence of a post-Cold War, post-bipolar political situation that has enabled jihadist internationalism, which has existed ever since the birth of the Muslim Brotherhood in 1928, to thrive. The ultimate goal is the establishment of a global Islamicate, i.e. a *Dar al-Islam*, that will embrace the entire globe. It is this projected totalitarian order, the substance of the ideology of jihadism, that signals the return

of the sacred in the guise of political religion, one whose implications for international security need to be evaluated.

Unlike earlier, secular forms of totalitarianism, the new variety is based on the return of the sacred in the form of a political religion within the framework of the culturation of political processes. Another factor is the ascendance in world politics of actors without allegiance to particular states who operate from within local movements acting globally, jihadist terrorism being a prime example. The phenomenon is of concern to international studies now that the transnational context of politicised religion has become of one of the major issues of international affairs. In order to conceptualise this new phenomenon, I propose to adapt Hannah Arendt's theory of the totalitarianism by combining it with a view of jihadism as the fusion of a movement with the vision of a 'political order', in the tradition of Hedley Bull's work on International Relations. This tradition sees order as the pivotal subject of world politics. Such an order can either be democratic or totalitarian. The order which the Muslim Brotherhood envisions, the *Nizam Islami*, is essentially a totalitarian one. The source for the idea that civilisations rather than nations are the basic units of world politics is not Samuel Huntington, but rather Sayyid Qutb. In his book *al-Islam wa Mushkilat al-Hadorah* [Islam and the Problems of Civilisations], Qutb presents his vision of a world ruled by Islam and triumphing over its enemies, 'the Zionists and the Crusaders', its sovereignty legitimated by *Hakimiyyat Allah* and its society based on 'Shari'ah, the Islamic way of life and its worldview', both of which are seen by Qutb as valid for the entire world. Two visions of the ideal world order conflict here: the Kantian schema for world peace based on the existing Westphalian order being is challenged by the call for a *Pax Islamica* that can be traced back to the political Islam of the Muslim Brotherhood. Its politicisation of religion is accompanied by a religionisation of politics. This new totalitarian ideology can also be seen as a variety of religious fundamentalism, all species of which present their concept of order as a formula for remaking the world. Qutb's prescription of a *Hakimiyyat Allah* is the core element of the new ideology, and its movement fights for an ultimate divine political order to be installed as the new totalitarianism.

Two elements in Hannah Arendt's theory of totalitarianism in particular, the movement and the system of rule, are relevant when conceptualising the phenomenon of religious fundamentalism which, in its Islamist permutation, combines 'Medieval theology and modern politics' in a totalitarian manner. This gives the Islamic worldview a new shape through an invented tradition that 'religionises' politics. It is derived from the ideology and the worldview of the movement and society of the Muslim Brotherhood, which acts today as a form of transnational religion encompassing the world of Islam including its diaspora in Europe. It is interesting to note that during the furore that

followed Pope Benedict XVI's Regensburg Address on ecclesiastical history that took place in September 2006, this movement appeared in the theatre of events as a global player making concrete demands, as if it constituted a state.

Having established the theme of the present study and outlined the origins of the new totalitarianism bent on establishing the order of *Hakimiyyat Allah* in the name of Islam, it is necessary to address the thorny issue of Islamophobia. It is not only for the sake of scholarly analysis that it is important to break taboos, even though we are venturing into a conceptual minefield; it is necessary also to refute accusations of Orientalism and Islamophobia, charges often made for propagandistic purposes. In Europe following the attacks on 11 September, and more so after the assaults on Madrid, the Islamist execution of van Gogh in Amsterdam, and the Islamic uprising in the suburbs of Paris, it has become in a way easier to characterise jihadist Islamism as a threat to what Karl Popper called 'the open society', and to condemn totalitarianism from an Enlightenment humanist standpoint without being defamed. I do not overlook the concomitant need to avoid feeding prejudices against Islam. However, though I state this, I must add a warning. It is a fact that Islamists are constructing a putative Islamophobia by associating any suggestions that Islamism is a totalitarian ideology with an alleged demonisation of Islam. Therefore, the principles of an enlightened critique of Islamists needs to be established without losing sight of the way, as the ideology is currently positioned, Islamists can use such a critique as grist to their own mill.

The present analysis focuses on Europe and deals with jihadism in a European context. In so doing, one inevitably faces two extremes of reaction: on the one hand, the well-known and fashionable accusation made against any critique of Islam; and on the other the Islamist attacks on the West. Cultural relativist scholars do not share the view of political Islam presented in this article, and they fail to see that the new religious absolutism of Islam represents a new political religion that heralds a totalitarian threat to the open society. There is yet another extreme position which ascribes all evils to 'militant Islam' in such a way that Islam itself becomes equated with totalitarianism. The present analysis dissociates itself from each of these extremes. Rather, it aims only to cast light on a complex phenomenon, the ideology of jihadist Islamism, and to highlight the political agenda intrinsic to Islamic nostalgia for its cultural past. In fact, the nostalgia of the Qutb tradition summons up collective memories so as to legitimate a claim for Islam's right to rule the world again. Islamists interpret this as fulfilling the religious duty to jihad of every true Muslim. This is the *return* of history, and not the end of it.

The reinterpretation of the classical Islamic jihad by Qutb is the core issue in totalitarian political Islam. He states: 'The overall and comprehensive

revolution of Islam prescribes fighting jihad as a duty on all Muslims for establishing the centrality of Allah (*Rabbawiyya*) and his rule (*Hakimiyya*) on all earth ... Therefore, jihad is an idea of world revolution (*thawrah alamiyyah*) ... In Islam jihad is a permanent fight’.

Those who refuse to see the links between the political religion of Islamism and the related interpretation of Islam promulgated by al-Banna, Qutb and the ‘Movement of the Muslim Brothers’ have to distinguish between on the one hand the cynical, instrumental use of religion, and on the other a sincere and true belief in a ‘divine agenda’ based on orthodox religious doctrines presented as the religion of Islam. Understanding this distinction is crucial to grasping the current historical phenomenon of religiously legitimated totalitarianism embodied in Islamism. In the mind of its perpetrators, terrorism serves the cause of ‘remaking the world’, but is not in itself the goal of the movement. In fact, terrorism is directed against the existing order of the state as one of the infidels to be replaced by a world order based on divine tenets. The order of the state, as well as of the world, is the concern of the new totalitarianism, which takes the form of a ‘revolt against the West.’”

The connection between religion and civilisation was recognised clearly by Raymond Aron, who addressed this subject in terms of the ‘heterogeneity of civilisations’. A civilisational dimension was also acknowledged by Qutb himself. In addition, 2006 saw the celebrations of the 600th anniversary of the death of the great Muslim philosopher Ibn Khaldun in Granada, a figure who established the ‘science of civilisations’ [*ilm al-umram*]. Without referring to either Aron or to the founder of the science of civilisations, Ibn Khaldun, Samuel Huntington speaks of a ‘clash between civilisations’. His thesis has to be placed in the conceptual framework suggested by Hedley Bull, who exposed the fallacy of the so-called global village when he stated that: “it is also clear that the shrinking of the globe, while it has brought societies to a degree of mutual awareness and interaction they have not had before, does not in itself create a unity of outlook and has not in fact done so ... Humanity is becoming simultaneously more unified and more fragmented.”

Without buying into any Huntingtonian ‘clash’ thesis, I propose to see the conflict between civilisations to which he refers as one that can be peacefully solved through cross-cultural ‘bridging’, though the religionisation of politics (e.g. the Islamisation of politics in Palestine) makes this far more difficult. The core phenomenon underlying the issue is a simultaneous process of structural globalisation and cultural fragmentation. European political and economic expansion led to a process of structural remapping, one that has contributed to the structural mapping of the entire world according to the norms of the civilisation of the West. However, this globalisation was not accompanied by the universalisation of western values. It is thus necessary to

distinguish between the *globalisation* of structures and the *universalisation* of values. The globalisation of structures coexists with cultural fragmentation, and therefore with it comes the lack of universally valid and accepted norms and values.

The new challenges to the West stem from new challengers, non-state actors who in their revolt against western values call for a radical process of de-westernisation. In so doing, they draw on religion, though in the guise of a political agenda, so as to legitimise the political order they envision with ideological foundations based on a set of religious tenets. Political issues are negotiable, but not religious ones. It is disturbing to see democracy identified exclusively with the West and Islam with *Hakimiyyat Allah* [God's rule], not only in the mind of Huntington, but in Islamism itself, because its ideology also depicts the competition between democracy and totalitarian rule as a clash of civilisations. Only an enlightened Islamic education in democracy could avert an ultimate conflict, but this is a most difficult undertaking in an age of Islamism. Following Qutb, one can see that on a higher level – i.e. in a conflict fought on the level of world politics as envisaged by Qutb – Islamism aspires towards a political order of *Hakimiyyat Allah* not only operating within the jurisdiction of an Islamic state, but ultimately within a new world order. This is not only a political alternative to democracy known as '*Nizam Islami* [Islamic order]', but also an alternative to the vision of a post-bipolar democratic peace that has emerged since the end of the Cold War.

Thus the Islamist drive to reverse trends towards secularising the world has introduced a new vision of totalitarianism into world politics. This issue assumes the character of a civilisational conflict in world politics because processes of secularisation and those of de-secularisation are related to rival civilisational worldviews underpinning conflicting political visions for the world. These contrasting perspectives are embedded in a competition between a totalitarian order based on a globalised Shari'ah and a democracy that sees itself as the role model for the whole world. In line with Qutb and Mawdudi, the leading Islamist al-Qaradawi, a figure who is often presented to the western audience as an example of 'liberal Islam', dismisses democracy and discards it as an imported solution (*hal mustawrad*) alien to Islam. This figure has become the global Imam of incitement to revolt against the West on al-Jazeera television.

It is intriguing to see the totalitarian Islamist movements active in the European diaspora. Fleeing the persecution in the world of Islam, Islamists find a refuge in the West and make full use of the very values that they dismiss. Jean-François Revel sees in this form of multiculturalism a 'Democracy against Itself'. In defending the open society against its enemies, the reader is reminded of the two levels of order in the strategy of Islamism: first, the replacement of secular regimes in the world of Islam itself by the

Nizam [system] of *Hakimiyyat Allah* [God's rule]; second, and building on this premise, the establishment of a global *Pax Islamica* via an Islamic '*thawra al-alamiyya*' (world revolution), as envisioned by Qutb. In Europe itself, while combating the new ideology of totalitarianism imported via migration and transnational movements, the choice is between the Europeanisation of Islam and the Islamisation of Europe. In the foreign policy relations of Europe, both with the world of Islam and with the wider world, Europeans need not only to support pro-democracy movements, but also to understand the ambiguity of the Islamists. Despite their deep contempt for western democracy, Islamists make full use of western democratic rights for establishing the tactics to be adopted by their movements within the continent itself. Is it justified to provide the new totalitarianism with protection in the name of democracy in Europe? In its foreign policy, the European Union claims to support democratisation in neighbouring countries, yet continues to lack a consistent strategy for dealing with totalitarian Islamists within its own borders. Most European politicians fail to recognise the degree to which Islamism is prepared to use Europe as a theatre of war.

Mark Juergensmeyer claims that a competition between religious and secular orders underlies 'The New Cold War' being fought by jihadists, and that this is a 'Terror in the Mind of God'. Prior to the broadening of the scope of jihadist activities from the domestic level of the state to an international level, the Islamic revolution in Iran, despite its sectarian Shi'i character, created a precedent for such a development. It also provided an incentive to Islamist terrorism. In fact, terrorism has served as an instrument of foreign policy for the exportation of Iran's Islamic revolution. This development in Iran led a few scholars to study Islam as the basis for a foreign policy that is legitimised by a politicised, transnational Islamist religion, one bent on resolving the basic issue, namely: 'Who will provide the primary definition of the world order, the West or Islam?' The resulting competition has given rise to what I have called elsewhere the 'new world, a phrase that refers not only to the concrete threat, but also to its totalitarian character. This destabilisation in world politics, the 'religionisation of politics', has dedicated itself to combating 'secularism in International Relations'.

This analysis parts company from the one offered by Samuel P. Huntington, even if it had the merit of focusing attention on civilisation as a basic unit of political power. In my contribution to the book by the former President of Germany, Roman Herzog, published under the title *Preventing the Clash of Civilisations*, I expose empirical gaps not only in Huntington's knowledge of Islam, but also in his history of civilisation. This illustrates the need for western social scientists to have a greater knowledge of Islam and its emergence as a 'defensive culture' in world affairs. In particular these scholars need to learn to distinguish between Islam as a faith, and its politicisation

into Islamism. Another problem is posed by those politically correct scholars who not only demonise Huntington, but also silence free speech on the issue of civilisational conflict. Certainly Huntington has contaminated the term 'civilisation', but to claim that he was trying to 'substitute to the Soviet Union' with Islam is based on a critique of his work driven by conspiracy theory. The new transnational totalitarian ideology and movement are real enough. The political background to re-imagining the *umma* and the rise of Islamist internationalism in the world of Islam is the crisis of the nominally secular nation-states in the Middle East.

Islamist efforts at 'de-westernisation', not properly understood in the West, can be seen as aspiring towards a 'post-secular society', something acknowledged by Juergen Habermas. However, Habermas fails to recognise that the competition between secular and divine orders is inherently connected to the problem of the presence of two worldviews that are diametrically opposed to one another. Consequently, the ideologies of neo-absolutism and of relativism clash with one another even though they arise from the same context.

The new totalitarianism is expressed in the concept of *din-wa-dawla* [unity of religion and state], an idea that challenges the validity of the secular democratic nation-state in the world of Islam, and in its place offers the alternative of *Hakimiyyat Allah* [God's rule]. It also goes beyond this concern with the Islamic world by claiming that it will found an Islamic form of global politics that embraces the whole of humanity. Again, in the intellectual tradition of the philosophical approach to International Relations presented in the work of Raymond Aron and Hedley Bull, Islamism is interpreted by this paper as an expression of an Islamic revival taking place on a political, cultural and religious level. At stake is not just a political but a *civilisational* challenge to the secular world order, one which legitimates itself as a way of combating an alleged 'Judeo-Christian conspiracy' believed to be directed against Islam itself. In other words, the Islamist 'revolt against the West' is also one against 'the rule of the world by Jews'.

This is a well-known theme in traditional European anti-Semitism. In fact, there is a latent contradiction in Islamism between the pursuit of de-westernisation and the adoption of the European tradition of anti-Semitism. This contradiction is resolved by inventing an alliance between 'Jews and Crusaders' which introduces into the revolt against the West a new combination of anti-Americanism and Judeophobia, an idea expressed in the ideology of contemporary Islamist anti-Semitism. In relating both essential segments of Islamism to one another, i.e. the idea of *Hakimiyyat Allah* [God's rule] to the idea of Jewish conspiracy against Islam, jihadism corresponds fully to Hanan Arendt's theory of totalitarianism. Therefore, it is wrong to use terms such as 'fanatism', 'terrorism' and 'extremism' for describing jihadist

Islamism, because these terms fail to capture its full dimensions. Jihadist Islamism is the ideology of a transnational contemporary movement which has assumed the form of a new totalitarianism. Again, it must be stressed that to dismiss the study of the jihadist threat of Islamism to the world order as an expression of 'Islamophobia' would be intellectually dishonest. It is jihadism and not Islam itself that is at issue here. The indiscriminate reference to Edward Said's formula of 'covering Islam' for denouncing western media has served as a pretext for rejecting any critical approach out of hand.

Islamist totalitarianism promotes Islam in a self-congratulatory manner as a religion for peace, but this is model for peace that is dependent on the extension of *Hakimiyyat Allah* [God's rule] over the whole of humanity. The clear implication of this view is that there can be no world peace without the global domination of Islam. This is the articulation of a religion-based internationalism that aspires to the creation of a new international order based on totalitarian tenets of a total Shari'ahisation of Islam. It is this ideology of jihadist internationalism that has been adopted by al-Qaeda and ideologically cognate movements, and which must be criticised in the spirit of cultural diversity and religious pluralism. The doctrine of Islamic dominance precludes the embrace of pluralism by Islamists. Not only does this emerge from their sentiment of superiority, but also from the closely connected religious doctrine of a civilisational 'revolt against the West'. In the course of the post-bipolar crisis of international order, these internationalist ideas (e.g. Qutb) and related claims have been able to acquire the power of mobilising myths in the Islamic world. The end of the Cold War bipolar system has opened up Pandora's box for politicised religions.

To sum up, the most relevant features of Islam in the context of International Relations are the degree to which it represents a 'revolt against the West' made up of an alleged alliance between 'Jews and Crusaders', and its rejection of the secular order in Europe instituted by the Westphalian synthesis. The rejection is legitimised by Islamism through the ideology of *Hakimiyyat Allah* [God's rule]. This concept of order is presented as a way of overcoming the perceived state of crisis in the secular nation-state, and is valid for the whole of humanity. It must be stressed that 'the *Nizam Islami* [Islamic system]' is a totalitarian political project of Islamism not even acceptable to all Muslims, especially to those committed to freedom and democracy. Only a few jihadists yearn for the traditional order of the caliphate of *sunna*, which is not acceptable to the *shi'a*. Most exponents of political Islam restrict themselves, however, to the notion of *Nizam Islami*. This system is not a vision of peace, and clearly poses a threat to non-Muslims, who, according to the Shari'ah, would be discriminated against as *dhimmi*, i.e. tolerated minorities. This is a violation of the human rights of non-Muslims, and not, as Islamists claim, a variety of tolerance; in a totalitarian, Shari'ahised Islamic state, and

especially in an Islamist world order, non-Muslims would suffer. Even though this vision is not a realistic possibility, the jihadist call for an Islamic world order has serious practical consequences because it acts as a mobilising ideology with considerable appeal to socially disadvantaged Muslims. This undermines the peaceful coexistence of Muslims and non-Muslims. Therefore, the new totalitarianism poses specific threats to security.

The new totalitarianism of Islamism is not only a challenge to the policing of security threats, but also to traditional approaches to security studies as they can no longer provide adequate perspectives for studying the changed post-bipolar world of the twenty-first century. There have been a few promising attempts to revise current approaches, such as the theory proposed by Barry Buzan, which broadened the perspective on this issue by looking at security in a context that extends beyond conventional military wisdom. However, we were still at the beginning of the process of rethinking strategies when the events of 11 September 2001 reminded us in no uncertain terms that security studies would have to deal with the terrorism committed by politicised religion from a new angle, one that considers not just the organised military force deployed by states, but also the role played by culture and religion, factors not even acknowledged in Buzan's innovative study. In its immediate aftermath, many Europeans comforted themselves with the thought that 9/11 was a settling of old scores with the USA and that it did not concern them, but subsequent events between 2004 and 2006 – especially the acts of violence in Madrid, Amsterdam, London and Paris, alongside bitter Muslim reaction to the Danish cartoon and the speech made by the Pope – demonstrate that Europeans are not just part of the game but major players.

This article has set out to criticise the prevalent preoccupation of the West with Islamist terrorism. By studying the totalitarian dynamics of jihadism, it is possible to see this ideology instead as a declaration of war on the existing world order by warriors who consider themselves to be non-state actors. The threat to international security is thus inseparably linked to a concept of order based on a world religion. The jihadists believe it is possible to mobilise their fellow religionists, numbering one-fifth of the world population (1.6 billion of about 6 billion people of world population), whom they re-imagine as an *umma*, the historical subject of their world revolution. In the name of this transnational community constituted by the *umma*, al-Qaeda has declared jihad as war, not only on the West, but also on those Muslims who do not join in with the goal of establishing a totalitarian order. Can it succeed?

The means it has adopted for its struggle – as argued in earlier parts of this article – is an irregular war which takes the form of sporadic acts of terrorism. This is no longer the classical jihad of Islam. In the process of the politicisation of Islam, a totalitarian ideology has emerged that disregards the cultural and religious diversity in the world, as well as the heterogeneity

of Islamic civilisation itself. The differences between Sunnite and Shi'ite Muslims have led to an internecine Islamic war, as the case of Iraq reveals all too clearly, while Islamism also threatens Muslims who form part of the diaspora of Islam in Europe. Given their cultural diversity, Muslims need to embrace pluralism both within Islam and in the world at large. In attempting to impose the original Arab Sunni pattern of Islam on all humanity, Islamists ignore religious and cultural diversity both throughout the world of Islam and in the wider world. Jihadists insist on essentialising Islam by reducing it to the single monolithic entity, an idea epitomised by the rhetoric of a clash between civilisations. However, Islam cannot behave like a monolith; even Sunni jihadist political Islamist movements are diverse. However, within Islamist internationalism diverse Islamist groups adhere to similar concepts of political order based on a common politicisation of their religion, and on their common understanding of Shari'ah [divine law]. It is not Islam, but the Islamist totalitarian movement which has grown up within a plural Islam that poses the challenge to world security by fighting an irregular war against the West.

This challenge was not sufficiently understood during the Iraq War of 2003, which was justified by the 'security threat' posed by the regime of Saddam Hussein as leader of the 'Republic of Fear'. However, the jihadist war is being carried out by non-state actors, not by Iraq as a state. Therefore, the removal from power of Hussein in Iraq had no effect on these groups at all. Far from weakening them, the war and its aftermath have provided an enormous boost to jihadism and the appeal of its ideology. This is an empirical fact that continues to be true even after the killing of Zarqawi.

The challenge of jihadist Islamism to security is its 'revolt against the West', and this civilisational perspective must be made central to any assessment of the risks it poses. In Iraq, for instance, the USA views the removal of Hussein as a liberation while Iraqis themselves condemn US presence as a military occupation of crusaders. At this point war can no longer be understood here simply as a military conflict between states, but a conflict of world-views. In my earlier book, *The War of Civilisations* (1995), and in the project run by the German Council for Foreign Affairs referred to earlier, I considered the role played by particular sets of norms and values in the analysis of security, and coined the term 'civilisational conflict'. According to this approach, conflict revolves around the normatively different understanding of five points of particular issue: (1) the state, (2) law, (3) religion, (4) war/peace and (5) knowledge. Alternative ideas of civilisation differ over these areas of issue, and if these differences become politicised then disparities in the ways these five fields are conceptualised can give rise to conflict. The 'war of civilisations' started out as a war of ideas revolving around values and world views which affected the resulting conflict on all three levels: domestic,

regional and international. On 11 September this kind of war assumed an overtly military shape. It follows that Jihadism contributes to the militarisation of conflicts between civilisations, and in this capacity it creates a security concern. Though the West is militarily strong, the irregular war of terrorism, the weapon of the weak, cannot be defeated by conventional military force. Israel has won all inter-state wars, but not the irregular war of the Islamist Intifada ongoing in Palestine since September 2000.

These reflections underline the need for a new security approach to deal with the growing threats on two levels: first, conflicts of values which have political implications, but cannot be settled by military means; and second, the irregular use of force which jihadists believe is being deployed in the 'mind of God'. The event of 11 September, as well as the ensuing jihadist attacks in Europe and worldwide, have revealed how interrelated these two levels are. The jihad-terrorist attacks by al-Qaeda against New York and Washington in 2001 succeeded in militarising a conflict of values between Islamic and western civilisation over the ideal 'order'. Their actions were not those of what Edward Said called a 'crazed gang'. Instead they were acts of irregular war carried out by jihadists that turned a conflict between civilisational world views into a military conflict, a war whose goal is to realise state the totalitarian order of *Hakimmiyyat Allah*. 'Gangs' do not involve themselves in international affairs. The western world order is based on 'notions of territorial boundaries, market economies, private religiosity, and the priority of individual rights', while the Islamist one is promoted on the grounds of *Hakimmiyyat Allah*, and hence on the 'universal mission of a transtribal community called to build a social order founded on pure monotheism natural to humanity'.

This analysis leads to three central observations. *First, the problem of political order* – jihadist Islamism is a powerful variety of the politicisation of religion. It not only expresses cultural differences in order to raise them to the level of military conflict, but also revives traditional worldviews in a way that widens the sense of a gap between civilisations. Religious fundamentalism is a global phenomenon which can be found in almost all world religions, all of which share a family resemblance. Islamism is a very specific variant of fundamentalism when it comes to the issue of international order because it seeks to impose a global totalitarian order through military means, and these ideals cannot be controlled by conventional approaches to security.

Second, holy terror and irregular war – not all Islamists fight for their goals in institutions via political strategies, as the AKP of Turkey does. Among them we also find those who resort to violence, within the framework of terrorism, as a way to enforce their concept of order. Jihadism combines 'holy terror' with irregular war.

Third, 'Islamic fundamentalism' – in this article, the terms 'political Islam', 'Islamism' and 'Islamic fundamentalism' have been used interchangeably. This is unusual, because some dispute the application of the concept fundamentalism to Islam because of its value-laden connotations. However, this is misleading. Though open to abuse, 'fundamentalism' is still a scholarly analytical concept for studying the politicisation of religion. By using the term Islamism as an alternative to fundamentalism, scholars are unwittingly contributing to the stereotyping of Islam by implicitly seeing it as the only example of the politicisation of religion. In contrast, I argue that 'Islamism' is one variant of religious fundamentalism, a phenomenon that does not only occur in Islam. It is jihadism, the military dimension of this phenomenon, that is specifically Islamic and requires the threat it poses to the West to be assessed within the concept of 'new frontiers of security', which departs from traditional concept of security dominated by military thinking.

To sum up, Islamist jihadism is not only an ideology of religious extremism, but also a new concept of warfare and of political order. In its aspiration for a new world order – a claim revived after the end of the Cold War – Islamism embodies the foremost totalitarian movement of the twenty-first century – a movement based on politicised religion. This movement, a combination of Islamist ideology with jihadism, is the only one in the world that does not restrict its goal of establishing a divine order to a territorialised civilisation – as is the case of Hindu fundamentalism, for instance. Jihadist Islamism seeks to globalise Islam. The related challenges to international security cannot be grasped within the framework of the old state-centred approach. In previous conflicts with enemy states, North Atlantic Treaty Organisation (NATO) forces have been able to overpower foes, as they did the Serbian army in 1999, with regular armed forces. The same point applies to the effort to oust Saddam in the Iraq war between March and April 2003. In contrast, neither the acts of revenge committed by the religious-ethnic UÇK irregulars against the Christian Serbs and Macedonians, nor the irregular war against coalition troops in Iraq and in Afghanistan, could be checked by conventional forces. The victories over the Taliban and over Saddam cannot be repeated against the jihadists. Non-state totalitarianism cannot be countered by state armies, since it is a global movement.

The Islamist pursuit of an Islamic world order is much more than either terrorism or religious extremism. It is a movement represented by a variety of political organisations that use the same patterns of mobilisation within the framework of the totalitarian order of *Hakimiyyat Allah*, an idea that plans to convert the entire globe into the *Dar al-Islam* (house of Islam). Despite originating in the world of Islam, the movement of jihadist internationalism has been able to establish itself within the Islamic diaspora community in Europe itself, making the European Union a key battlefield. In making such

assertions it is essential to distinguish Islam and Islamism, not only to protect ordinary Muslims from persecution, but also to counter jihadists who want to recruit from within the Muslim diaspora. In Europe, Europeans need to learn how to live with Islam and engage in its Europeanisation in terms of a politics of inclusion and integration. This concept is relevant both for Muslim immigrants and for Turkey in its bid to join the EU. It is also relevant to EU and national policies to promote the inclusion of Muslim immigrant communities, policies vital to issues of integration and security (the German record on this issue is a very poor one). The social exclusion of young Muslim immigrants makes them susceptible to the totalitarian ideology of Islamism. This makes them easy prey to jihad-Islamists. The multiculturalism of post-modern cultural relativism also opens the gate for Islamists to Europe. It is this combination of a lack of integration and the 'anything goes' ideology of multiculturalism which smoothes the way for Islamic fundamentalists to establish safe havens for their networking.

In Europe and throughout the world, democratic civil society is the alternative to all totalitarianisms. To limit Islamist activities in Europe, the alternative to multiculturalism that needs to be pursued is cultural pluralism, because it combines the acceptance of diversity with the binding communal commitment to the core values of democracy and civil society. The Europeanisation of Islam so that it becomes a Euro-Islam is one of the most promising strategies for averting the continued 'religionisation' of its politics into a source of tensions and conflict. Another tactic in the efforts to counter jihad terrorism is to engage in a war of ideas instead of 'tolerating the intolerable', even if such a strategy 'verges on the politically incorrect'. It belongs to the legacy of Karl Popper not only to defend the open society, but also to refuse to tolerate in the name of tolerance the intolerable, i.e. any form of totalitarianism.

The instruments needed to combat Islamist totalitarianism both in the world of Islam and in Europe are multifaceted. In this contribution I have been at pains to analyse and shed light on the challenge posed by jihadist Islamist totalitarian ideology to the open society of the West. However, it should not be forgotten that political Islam is primarily a challenge to Muslims, forcing them to confront the perceived threat to their religious faith and community, and also to come to terms with the reality of cultural modernity.

The final conclusion is that there are two issues posed by Islamism: first, the new totalitarianism at large in the world of Islam; and second, its impact on Europe due to the effects of global migration. The solution for Europe lies in Europeanising Islam in order to counter efforts to Islamise Europe. Since Islam is now an integral part of Europe, the call for a Euro-Islam presents a democratic solution to the problem of Islamism. In the world of Islam itself

the options are either to succumb to the new totalitarianism or alternatively to prepare the way for the reforms needed for Islam to embrace of secular democracy within the framework of an open liberal Islam – though not the one proposed by Kurzman. This would open the way for Muslims to join the rest of the world within the framework of democratic peace. The introduction of real democracy to the world of Islam would help Muslims to come to terms with the rest of the world and to be inoculated against the illusions of a global Islamisation. In the ongoing war of ideas, Islamists argue that ‘Islam is a religion of peace’. However, their jihadist internationalism is not a contribution to world peace, but a new variety of terrorist totalitarian movement, one that alienates Muslims from the rest of humanity. While Muslims are being challenged to dissociate themselves from totalitarian global jihad, a European-led democratisation of the European Union’s sphere of influence is the best policy for countering Islamist totalitarian ideology, and to break the deadlock of the ‘unsuccessful integration’ of Muslims in Europe. In short, Islamist jihadism – both as an ideology and as a movement – poses a civilisational challenge to Europe’s secular democracy and to Muslims themselves.

Michael Walzer

FIVE REGIMES OF TOLERATION

Source: Michael Walzer, *On Toleration*, Yale University Press,
New Haven and London 1997, pp. 14-36.

The oldest arrangements are those of the great multinational empires – beginning for our purposes, with Persia, Ptolemaic Egypt, and Rome. Here the various groups are constituted as autonomous or semi-autonomous communities that are political or legal as well as cultural or religious in character, and that rule themselves across a considerable range of their activities. The groups have no choice but to coexist with one another, for their interactions are governed by imperial bureaucrats in accordance with an imperial code, like the Roman *jus gentium*, which is designed to maintain some minimal fairness, as fairness is understood in the imperial center. Ordinarily, however, the bureaucrats don't interfere in the internal life of the autonomous communities for the sake of fairness or anything else – so long as taxes are paid and peace maintained. Hence they can be said to tolerate the different ways of life, and the imperial regime can be called a regime of toleration, whether or not the members of the different communities are tolerant of one another.

Under imperial rule, the members will, willy nilly, manifest tolerance in (most of) their everyday interactions, and some of them, perhaps, will learn to accept difference and come to stand somewhere on the continuum that I have described. But the survival of the different communities doesn't depend on this acceptance. It depends only on official toleration, which is sustained, mostly, for the sake of peace – though individual officials have been variously motivated, a few of them famously curious about difference or even enthusiastic in its defense. These imperial bureaucrats are often accused of following a policy of “divide and rule”, and sometimes indeed that is their policy. But it has to be remembered that they are not the authors of the divisions they exploit and that the people they rule may well want to be divided and ruled, if only for the sake of peace.

Imperial rule is historically the most successful way of incorporating difference and facilitating (requiring is more accurate) peaceful coexistence. But it isn't, or at least it never has been, a liberal or democratic way. Whatever the character of the different “autonomies”, the incorporating regime is autocratic. I don't want to idealize this autocracy; it can be brutally repressive

for the sake of maintaining its conquests – as the histories of Babylonia and Israel, Rome and Carthage, Spain and the Aztecs, and Russia and the Tatars amply demonstrate. But settled imperial rule is often tolerant – tolerant precisely because it is everywhere autocratic (not bound by the interests or prejudices of any of the conquered groups, equally distant from all of them). Roman pro-consuls in Egypt or British regents in India, for all their of their governances’ prejudice and endemic corruption, ruled more evenhandedly than any local prince or tyrant was likely to do – in fact, more evenhandedly than local majorities today are likely to do.

Imperial autonomy tends to lock individuals into their communities and therefore into a singular ethnic or religious identity. It tolerates groups and their authority structures and customary practices, not (except in a few cosmopolitan centers and capital cities) free-floating men and women. The incorporated communities are not voluntary associations; they have not, historically, cultivated liberal values. Though there is some movement of individuals across their boundaries (converts and apostates, for example), the communities are mostly closed, enforcing one or another version of religious orthodoxy and sustaining a traditional way of life. So long as they are protected against the more severe forms of persecution and allowed to manage their own affairs, communities of this sort have extraordinary staying power. But they can be very severe toward deviant individuals, who are conceived as threats to their cohesiveness and sometimes to their very survival.

So lonely dissidents and heretics, cultural vagabonds, intermarried couples, and their children will flee to the imperial capital, which is likely to become as a result a fairly tolerant and liberal place (think of Rome, Baghdad, and imperial Vienna, or, better, Budapest) – and the only place where social space is measured to an individual fit. Everyone else, including all the free spirits and potential dissidents who are unable to move because of economic constraint or familial responsibility, will live in homogeneous neighborhoods or districts, subject to the discipline of their own communities. They are tolerated collectively there, but they will not be welcome or even safe as individuals across whatever line separates them from the others. They can mix comfortably only in neutral space – the market, say, or the imperial courts and prisons. Still, they live most of the time in peace, one group alongside the other, respectful of cultural as well as geographic boundaries.

Ancient Alexandria provides a useful example of what we might think of as the imperial version of multiculturalism. The city was roughly one-third Greek, one-third Jewish, and one-third Egyptian, and during the years of Ptolemaic rule, the coexistence of these three communities seems to have been remarkably peaceful. Later on, Roman officials intermittently favored their Greek subjects, perhaps on grounds of cultural affinity, or

perhaps because of their superior political organization (only the Greeks were formally citizens), and this relaxation of imperial neutrality produced periods of bloody conflict in the city. Messianic movements among Alexandria's Jews, partly in response to Roman hostility, eventually brought multicultural coexistence to a bitter end. But the centuries of peace suggest the better possibilities of the imperial regime. It is interesting to note that though the communities remained legally and socially distinct, there was significant commercial and intellectual interaction among them – hence the Hellenistic version of Judaism that was produced, under the influence of Greek philosophers, by Alexandrian writers like Philo. The achievement is unimaginable except in this imperial setting.

The millet system of the Ottomans suggests another version of the imperial regime of toleration, one that was more fully developed and longer lasting. In this case, the self-governing communities were purely religious in character, and because the Ottomans were themselves Muslim, they were by no means neutral among religions. The established religion of the empire was Islam, but three other religious communities – Greek Orthodox, Armenian Orthodox, and Jewish – were permitted to form autonomous organizations. These three were equal among themselves, without regard to their relative numerical strength. They were subject to the same restrictions vis-a-vis Muslims with regard to dress, proselytizing, and intermarriage, for example – and were allowed the same legal control over their own members. The minority millets (the word means religious community) were subdivided along ethnic, linguistic, and regional lines, and some differences of religious practice were thereby incorporated into the system. But members had no rights of conscience or of association against their own community (and everyone had to be a member somewhere). There was, however, further toleration at the margins: thus, Karaite sectarians within Judaism were accorded fiscal independence, though not full millet status, by the Ottomans in the sixteenth century. Basically, again, the empire was accommodative toward groups but not toward individuals – unless the groups themselves opted for liberalism (as a Protestant millet, established late in the Ottoman period, apparently did.)

Today, all this is gone (the Soviet Union was the last of the empires): the autonomous institutions, the carefully preserved boundaries, the ethnically marked identity cards, the cosmopolitan capital cities, and the far-flung bureaucracies. Autonomy did not mean much at the end (which is one reason, perhaps, for imperial decline); its scope was greatly reduced by the effect of modern ideas about sovereignty and by totalizing ideologies uncongenial to the accommodation of difference. But ethnic and religious differences survived, and wherever they were territorially based, local agencies, which were more or less representative, retained some minimal functions and some symbolic authority. These they were able to convert very quickly, once the

empires fell, into a kind of state machine driven by nationalist ideology and aimed at sovereign power – and opposed, often enough, by established local minorities, the great beneficiaries of the imperial regime and its last and most stalwart defenders. With sovereignty, of course, comes membership in international society, which is the most tolerant of all societies but, until very recently, not so easy to get into. I shall consider international society only briefly and incidentally in this essay, but it is important to recognize that most territorially based groups would prefer to be tolerated as distinct nation-states (or religious republics) with governments, armies, and borders – coexisting with other nation-states in mutual respect or, at least, under the rule of a common (even if rarely enforced) set of laws.

International society is an anomaly here because it is obviously not a domestic regime; some would say that it is not a regime at all but rather an anarchic and lawless condition. If that were true, the condition would be one of absolute toleration: anything goes, nothing is forbidden, for no one is authorized to forbid (or permit), even if many of the participants are eager to do so. In fact, international society is not anarchic; it is a very weak regime, but it is tolerant as a regime despite the intolerance of some of the states that make it up. All the groups that achieve statehood and all the practices that they permit (within limits that I will come to in a moment) are tolerated by the society of states. Toleration is an essential feature of sovereignty and an important reason for its desirability.

Sovereignty guarantees that no one on that side of the border can interfere with what is done on this side. The people over there may be resigned, indifferent, stoical, curious, or enthusiastic with regard to practices over here, and so may be disinclined to interfere. Or perhaps they accept the reciprocal logic of sovereignty: we won't worry about your practices if you don't worry about ours. Live and let live is a relatively easy maxim when the living is done on opposite sides of a clearly marked line. Or they may be actively hostile, eager to denounce their neighbor's culture and customs, but unprepared to pay the costs of interference. Given the nature of international society, the costs are likely to be high: they involve raising an army, crossing a border, killing and being killed.

Diplomats and statesmen commonly adopt the second of these attitudes. They accept the logic of sovereignty, but they can't simply look away from persons and practices that they find intolerable. They must negotiate with tyrants and murderers and, what is more pertinent to our subject, they must accommodate the interests of countries whose dominant culture or religion condones, for example, cruelty, oppression, misogyny, racism, slavery, or torture. When diplomats shake hands or break bread with tyrants, they are, as it were, wearing gloves; the actions have no moral significance. But the bargains they strike do have moral significance: they are acts of toleration.

For the sake of peace or because they believe that cultural or religious reform must come from within, must be local work, they recognize the other country as a sovereign member of international society. They acknowledge its political independence and territorial integrity – which together constitute a much stronger version of the communal autonomy maintained in multinational empires. Diplomatic arrangements and routines give us a sense of what might be called the formality of toleration. This formality has a place, though it is less visible, in domestic life, where we often coexist with groups with which we don't have and don't want to have close social relations. The coexistence is managed by civil servants who are also domestic diplomats. Civil servants have more authority than diplomats, of course, and so the coexistence that they manage is more constrained than that of sovereign states in international society.

But sovereignty also has limits, which are fixed most clearly by the legal doctrine of humanitarian intervention. Acts or practices that “shock the conscience of humankind” are, in principle, not tolerated. Given the weak regime of international society, all that this means in practice is that any member state is entitled to use force to stop what is going on if what is going on is awful enough. The principles of political independence and territorial integrity do not protect barbarism. But no one is obligated to use force; the regime has no agents whose function it is to repress intolerable practices. Even in the face of obvious and extensive brutality, humanitarian intervention is entirely voluntary. The practices of the Khmer Rouge in Cambodia, to take an easy example, were morally and legally intolerable, and because the Vietnamese decided to invade the country and stop them, they were in fact not tolerated. But this happy coincidence between what is intolerable and what is not tolerated is uncommon. Humanitarian intolerance isn't usually sufficient to override the risks that intervention entails, and additional reasons for intervening – whether geopolitical, economic, or ideological – are only sometimes available.

One can imagine a more articulated set of limits on the toleration that comes with sovereignty: intolerable practices in sovereign states might be the occasion for economic sanctions by some or all of the members of international society. The enforcement of a partial embargo against South African apartheid is a useful if unusual example. Collective condemnation, breaks in cultural exchange, and active propaganda can also serve the purposes of humanitarian intolerance, though sanctions of this sort are rarely effective. So we can say that international society is tolerant as a matter of principle, and then more tolerant, beyond its own principles, because of the weakness of its regime.

Before I consider the nation-state as a possibly tolerant society, I want to turn briefly to a morally closer but not politically more likely heir to

the multinational empire – the consociational or bi- or trinational state. Examples like Belgium, Switzerland, Cyprus, Lebanon, and the stillborn Bosnia suggest both the range of possibility here and the imminence of disaster. Consociationalism is a heroic program because it aims to maintain imperial coexistence without the imperial bureaucrats and without the distance that made those bureaucrats more or less impartial rulers. Now the different groups are not tolerated by a single transcendent power; they have to tolerate one another and work out among themselves the terms of their coexistence.

The idea is attractive: a simple, unmediated concurrence of two or three communities (in practice, of their leaders and elites) that is freely negotiated between or among the parties. They agree to a constitutional arrangement, design institutions and divide offices, and strike a political bargain that protects their divergent interests. But the consociation is not entirely a free construction. Commonly, the communities have lived together (or, rather, alongside one another) for a very long time before they begin their formal negotiations.

Perhaps they were initially united by imperial rule; perhaps they first came together in the struggle against that rule. But all these connections are preceded by proximity: coexistence on the ground, if not in the same villages, then along a frontier only roughly defined and easily crossed. These groups have talked and traded, fought and made peace at the most local levels – but always with an eye to the police or army of some foreign ruler. Now they must look only to each other.

This isn't impossible. Success is most likely when the consociation predates the appearance of strong nationalist movements and the ideological mobilization of the different communities. It is best negotiated by the elites of the old "autonomies," who are often genuinely respectful of one another, have a common interest in stability and peace (and, obviously, in the ongoing authority of elites), and are willing to share political power. But the arrangements the elites work out, which reflect the size and economic strength of the associated communities, are dependent thereafter on the stability of their social base. The consociation is predicated, say, on the constitutionally limited dominance of one of the parties or on their rough equality. Offices are divided, quotas established for the civil service, and public funds allocated – all on the basis of this limited dominance or rough equality. Given these understandings, each group lives in relative security, in accordance with its own customs, perhaps even its own customary law, and can speak its own language not only at home but also in its own public space. The old ways are undisturbed.

It is the fear of disturbance that breaks up consociations. Social or demographic change, let's say, shifts the base, alters the balance of size

and strength, threatens the established pattern of dominance or equality, undermines the old understandings. Suddenly one of the parties looks dangerous to all the others. Mutual toleration depends on trust, not so much in each other's good will as in the institutional arrangements that guard against the effects of ill will. Now the established arrangements collapse, and the resulting insecurity makes toleration impossible. I can't live tolerantly alongside a dangerous other. What is the danger that I fear? That the consociation will be turned into an ordinary nation-state where I will be a member of the minority, looking to be tolerated by my former associates, who no longer require my toleration. Lebanon is the obvious example of this sad collapse of consociational understandings; it has guided the description I have just given. But in Lebanon something more than social change was involved. In principle, the new Lebanese demography or the new economy should have led to a renegotiation of the old arrangements, a simple redivision of offices and public funds. But the ideological transformations that came with social change made this very difficult to achieve. Nationalist and religious zeal and its inevitable concomitants, distrust and fear, turned renegotiation into civil war (and brought the Syrians in as imperial peacemakers). Against this background, consociation is clearly recognizable as a pre-ideological regime. Toleration is not out of the question once nationalism and religion are in play, and consociation may still be its morally preferred form. In practice, however, the nation-state is now the more likely regime of toleration: one group, dominant throughout the country, shaping public life and tolerating a national or religious minority – rather than two or three groups, each secure in its own place, tolerating one another.

Most of the states that make up international society are nation-states. To call them that doesn't mean that they have nationally (or ethnically or religiously) homogeneous populations. Homogeneity is rare, if not nonexistent, in the world today. It means only that a single dominant group organizes the common life in a way that reflects its own history and culture and, if things go as intended, carries the history forward and sustains the culture. It is these intentions that determine the character of public education, the symbols and ceremonies of public life, the state calendar and the holidays it enjoins. Among histories and cultures, the nation-state is not neutral; its political apparatus is an engine for national reproduction. National groups seek statehood precisely in order to control the means of reproduction. Their members may hope for much more – they may harbor ambitions that range from political expansion and domination to economic growth and domestic flourishing. But what justifies their enterprise is the human passion for survival over time.

The state these members create can nonetheless, as liberal and democratic nation-states commonly do, tolerate minorities. This toleration

takes different forms, though it rarely extends to the full autonomy of the old empires. Regional autonomy is especially difficult to implement, for then members of the dominant nation living in the region would be subjected to “alien” rule in their own country. Nor are corporatist arrangements common; the nation-state is itself a kind of cultural corporation and claims a monopoly on such arrangements within its borders.

Toleration in nation-states is commonly focused not on groups but on their individual participants, who are generally conceived stereotypically, first as citizens, then as members of this or that minority. As citizens, they have the same rights and obligations as everyone else and are expected to engage positively with the political culture of the majority; as members, they have the standard features of their “kind” and are allowed to form voluntary associations, organizations for mutual aid, private schools, cultural societies, publishing houses, and so on. They are not allowed to organize autonomously and exercise legal jurisdiction over their fellows. Minority religion, culture, and history are matters for what might be called the private collective – about which the public collective, the nation-state, is always suspicious. Any claim to act out minority culture in public is likely to produce anxiety among the majority (hence the controversy in France over the wearing of Muslim headdress in state schools). In principle, there is no coercion of individuals, but pressure to assimilate to the dominant nation, at least with regard to public practices, has been fairly common and, until recent times, fairly successful. When nineteenth-century German Jews described themselves as “German in the street, Jewish at home”, they were aspiring to a nation-state norm that made privacy a condition of toleration.

The politics of language is one key area where this norm is both enforced and challenged. For many nations, language is the key to unity. They were formed in part through a process of linguistic standardization, in the course of which regional dialects were forced to give way to the dialect of the center – though one or two sometimes managed to hold out, and thus became the focus of subnational or protonational resistance. The legacy of this history is a great reluctance to tolerate other languages in any role larger than familial communication or religious worship. Hence the majority nation commonly insists that national minorities learn and use its language in all their public transactions – when they vote, go to court, register a contract, and so on.

Minorities, if they are strong enough, and especially if they are territorially based, will seek the legitimation of their own languages in state school, legal documents, and public signage. Sometimes, one of the minority languages is in fact recognized as a second official language; more often, it is sustained only in homes, churches, and private schools (or is slowly and painfully lost). At the same time, the dominant nation watches its own language being transformed by minority use. Academies of linguists struggle to sustain

a “pure” version, or what they take to be a pure version, of the national language, but their fellow nationals are often surprisingly ready to accept minority or foreign usages. This too, I suppose, is a test of toleration.

There is less room for difference in nation-states, even liberal nation-states, than in multinational empires or consociations – far less, obviously, than in international society. Because the tolerated members of the minority group are also citizens, with rights and obligations, the practices of the group are more likely than in multinational empires to be subject to majority scrutiny. Patterns of discrimination and domination long accepted – or, at any rate, not resisted – within the group may not be acceptable after members are recognized as citizens. But there is a double effect here, with which any theory of toleration must reckon: though the nation-state is less tolerant of groups, it may well force groups to be more tolerant of individuals. This second effect is a consequence of the (partial and incomplete) transformation of the groups into voluntary associations. As internal controls weaken, minorities can hold their members only if their doctrines are persuasive, their culture attractive, their organizations serviceable, and their sense of membership liberal and *latitudinarian*. In fact, there is an alternative strategy: a rigidly sectarian closure. But this offers hope only of saving a small remnant of true believers. For larger numbers, more open and looser arrangements are necessary. All such arrangements, however, pose a common danger: that the distinctiveness of the group and of its way of life will slowly be surrendered.

Despite these difficulties, a variety of significant differences, especially religious differences, have been successfully sustained in liberal and democratic nation-states. Minorities often, in fact, do fairly well in enacting and reproducing a common culture precisely because they are under pressure from the national majority. They organize themselves, both socially and psychologically, for resistance, making their families, neighborhoods, churches, and associations into a kind of homeland whose borders they work hard to defend. Individuals, of course, drift away, pass themselves off as members of the majority, slowly assimilate to majority lifestyles, or intermarry and raise children who have no memory or knowledge of the minority culture. But for most people, these self-transformations are too difficult, too painful, or too humiliating; they cling to their own identities and to similarly identified men and women.

National (more than religious) minorities are the groups most likely to find themselves at risk. If these groups are territorially concentrated – like the Hungarians in Romania, say – they will be suspected, perhaps rightly, of hoping for a state of their own or for incorporation into a neighboring state where their ethnic relatives hold sovereign power. The arbitrary processes of state formation regularly produce minorities located in this way, groups that are subject to these suspicions and very hard to tolerate. Perhaps the

best thing to do is to pull in the borders and let them go, or to grant them a full measure of autonomy. We tolerate the others by contracting our state so that they can live in social space shaped to their own needs. Alternative solutions are more likely, of course: linguistic recognition and a very limited degree of administrative devolution are fairly common, though these are often combined with efforts to settle members of the majority in politically sensitive border regions and with periodic campaigns of assimilation.

After World War I, an effort was made to guarantee the toleration of national minorities in the new (and radically heterogeneous) “nation states” of Eastern Europe. The guarantor was the League of Nations, and the guarantee was written into a series of minority or nationality treaties. Appropriately, these treaties ascribed rights to stereotypical individuals rather than to groups. Thus the Polish Minority Treaty deals with “Polish nationals who belong to racial, religious, or linguistic minorities.” Nothing follows from such a designation about group autonomy or regional devolution or minority control of schools. Indeed, the guarantee of individual rights was itself chimerical: most of the new states asserted their sovereignty by ignoring (or annulling) the treaties and the League was unable to enforce them.

But this failed effort is well worth repeating, perhaps with a more explicit recognition of what the stereotypical minority member has in common with his or her fellows. The United Nation’s Covenant on Civil and Political Rights (1966) takes this further step: minority individuals “shall not be denied the right, in community with other members of their group, to enjoy their own culture, to possess and practice their own religion, or to use their own language.” Note that this wording still falls within the nation-state norm: no recognition is accorded to the group as a corporate body; individuals act “in community with”; only the national majority acts as a community.

In time of war, the loyalty of national minorities to the nation-state, whether or not the minorities are territorially concentrated or internationally recognized, will readily be called into doubt – even against all available evidence, as in the case of anti-Nazi German refugees in France during the first months of World War II. Once again, toleration fails when the others look dangerous, or when nationalist demagogues can make them look dangerous. The fate of Japanese-Americans a few years later makes the same point – their fellow Americans imitated, as it were, conventional nation-statehood. In fact, the Japanese were not, and are not, a national minority in the United States, at least not in the usual sense: where is the majority nation? American majorities are temporary in character and are differently constituted for different purposes and occasions (minorities are often temporary too, though race and slavery together make an exception; I shall consider the exception later on). It is a crucial feature of the nation-

state, by contrast, that its majority is permanent. Toleration in nation-states has only one source, and it moves or doesn't move in only one direction. The case of the United States suggests a very different set of arrangements.

The fifth model of coexistence and possible toleration is the immigrant society. Now the members of the different groups have left their territorial base, their homeland, behind them; they have come individually or in families, one by one, to a new land and then dispersed across it. Though they arrive in waves, responding to similar political and economic pressures, they don't arrive in organized groups. They are not colonists, consciously planning to transplant their native culture to a new place. They cluster for comfort only in relatively small numbers, always intermixed with other, similar groups in cities, states, and regions. Hence no sort immigrant society, Quebec is an obvious exception here; its original settlers did come as colonists, not as immigrants, and were then conquered by the British. Another exception must be made for the Aboriginal peoples, who were also conquered. I will focus here primarily on the immigrants.

If ethnic and religious groups are to sustain themselves, they must do so now as purely voluntary associations. This means that they are more at risk from the indifference of their own members than from the intolerance of the others. The state, once it is pried loose from the grip of the first immigrants, who imagined in every case that they were forming a nation-state of their own, is committed to none of the groups that make it up. It sustains the language of the first immigration and, subject to qualification, its political culture too, but so far as contemporary advantages go, the state is, in the current phrase (and in principle), neutral among the groups, tolerant of all of them, and autonomous in its purposes.

The state claims exclusive jurisdictional rights, regarding all its citizens as individuals rather than as members of groups. Hence the objects of toleration, strictly speaking, are individual choices and performances: acts of adhesion, participation in rituals of membership and worship, enactments of cultural difference, and so on. Individual men and women are encouraged to tolerate one another as individuals, to understand difference in each case as a personalized (rather than a stereotypical) version of group culture – which also means that the members of each group, if they are to display the virtue of tolerance, must accept each other's different culture, and many different degrees of commitment to each. So toleration takes on a radically decentralized form: everyone has to tolerate everyone else.

No group in an immigrant society is allowed to organize itself coercively, to seize control of public space, or to monopolize public resources. Every form of corporatism is ruled out. In principle, the public schools teach the history and "civics" of the state, which is conceived to have no national but only a political identity. This principle is, of course, only slowly and

imperfectly enforced. Since public schools were founded in the United States, for example, the schools have mostly taught what English-Americans conceived as their own history and culture – which extend back to Greece and Rome and include classical languages and literature. There was and still is considerable justification for this standard curriculum, even after the immigrations of the mid-nineteenth century (when Germans and Irish arrived) and the turn of the century (when Southern and Eastern European peoples came), for American political institutions are best understood against this background. In more recent times (and in the course of a third great immigration, which this time is largely non-European), efforts have been made to incorporate the history and culture of all the different groups, to ensure a kind of equal coverage and so to create “multicultural” schools. In fact, the West still dominates the curriculum almost everywhere.

Similarly the state is supposed to be perfectly indifferent to group culture or equally supportive of all the groups – encouraging, for example, a kind of general religiosity, as in those train and bus advertisements of the 1950s that urged Americans to “attend the church of your choice.” As this maxim suggests, neutrality is always a matter of degree. Some groups are in fact favored over others – in this case groups with “churches” more or less like those of the first Protestant immigrants; but the others are still tolerated. Nor is church attendance or any other culturally specific practice turned into a condition of citizenship. It is relatively easy, then, and not at all humiliating, to escape one’s own group and take on the reigning political identity (in this case, “American”).

But many people in an immigrant society prefer a hyphenated or dual identity, one differentiated along cultural or political lines. The hyphen joining Italian-American, for example, symbolizes the acceptance of “Italianness” by other Americans, the recognition that “American” is a political identity without strong or specific cultural claims. The consequence, of course, is that “Italian” is a cultural identity without political claims. That is the only form in which Italianness is tolerated, and then Italian-Americans must sustain their own culture, if they can or as long as they can, privately, through the voluntary efforts and contributions of committed men and women. And this is the case, in principle, with every cultural and religious group, not only with minorities (but, again, there is no permanent majority).

Whether groups can sustain themselves under these conditions – without autonomy, without access to state power or official recognition, and without a territorial base or the fixed opposition of a permanent majority – is a question still to be answered. Religious communities, of both sectarian and “churchly” sorts, have not done badly in the United States until now. But one reason for their relative success might be the considerable intolerance that many of them have in fact encountered; intolerance often has, as I have

already suggested, group-sustaining effects. Ethnic groups have done less well, though observers eager to write them off are almost certainly premature. These groups survive in what we might think of as a doubly hyphenated version: the culture of the group is, for example, American-Italian, which means that it takes on a heavily Americanized form and is transfigured into something quite distinct from Italian culture in the home country; and its politics is Italian-American, an ethnic adaptation of local political practices and styles. Consider the extent to which John Kennedy remained an Irish “pol”, Walter Mondale is still a Norwegian social democrat, Mario Cuomo is still an Italian Christian Democratic intellectual-in-politics, and Jesse Jackson is still a black Baptist preacher – each of them in many ways similar to, but in these ways different from, the standard Anglo-American type.

Whether these differences will survive into the next generation or the one after that is uncertain. Straightforward survival is perhaps unlikely. But that is not to say that the successors to these four exemplary figures, and to many others like them, will all be exactly alike. The forms of difference characteristic of immigrant societies are still emerging. We don’t know how “different” difference will actually be. The toleration of individual choices and personalized versions of culture and religion constitutes the maximal (or the most intensive) regime of toleration. But it is radically unclear whether the long-term effect of this maximalism will be to foster or to dissolve group life.

The fear that soon the only objects of toleration will be eccentric individuals leads some groups (or their most committed members) to seek positive support from the state – in the form, say, of subsidies and matching grants for their schools and mutual aid organizations. Given the logic of multiculturalism, state support must be provided, if it is provided at all, on equal terms to every social group. In practice, however, some groups start with more resources than others, and then are much more capable of seizing whatever opportunities the state offers. So civil society is unevenly organized, with strong and weak groups working with very different rates of success to help and hold their members. Were the state to aim at equalizing the groups, it would have to undertake a considerable redistribution of resources and commit a considerable amount of public money. Toleration is, at least potentially, infinite in its extent; but the state can underwrite group life only within some set of political and financial limits.

It will be useful here to list the successive objects of toleration in the five regimes (I don’t mean to suggest that they mark a progress; nor is the order in which I have presented them properly chronological). In the multinational empire as in international society, it is the group that is tolerated – whether its status is that of an autonomous community or of a sovereign state. Its laws, religious practices, judicial procedures, fiscal and distributive policies,

educational programs, and family arrangements are all viewed as legitimate or permissible, subject only to minimal and rarely strictly enforced (or enforceable) limits. The case is similar in the consociation, but now a new feature is added: a common citizenship more effective than that of most empires, one that at least opens up the possibility of state interference in group practices for the sake of individual rights. In democratic consociations (such as Switzerland), this possibility is fully realized, but rights will not be effectively enforced in the many other cases where democracy is weak, where the central state exists by mere sufferance of the consociated groups and is mostly focused on holding together.

Nation-state citizenship is more meaningful. Now the objects of toleration are individuals conceived both as citizens and as members of a particular minority. They are tolerated, so to speak, under their generic names. But membership in the genus (in contrast to citizenship in the state) is not required of these individuals; their groups exercise no coercive authority over them, and the state will intervene aggressively to protect them against any effort at coercion. Hence new options are made available: loose affiliation with the group, nonaffiliation with any group, or assimilation to the majority. In immigrant societies, these options are widened. Individuals are tolerated specifically as individuals under their proper names, and their choices are understood in personal rather than stereotypical terms. Now there arise personalized versions of group life, many different ways of being this or that, which other members of the group have to tolerate if only because they are tolerated by the society as a whole. Fundamentalist orthodoxy distinguishes itself by its refusal to take this general toleration as a reason for a more latitudinarian view of its own religious culture. Sometimes, its protagonists oppose the immigrant society's regime of toleration as a whole.

Amartya Sen

CULTURE AND HUMAN RIGHTS

Source: Amartya Sen, *Development as Freedom*, Oxford University Press, Oxford 1999, pp. 227-248.

The idea of human rights has gained a great deal of ground in recent years, and it has acquired something of an official status in international discourse. Weighty committees meet regularly to talk about the fulfillment and violation of human rights in different countries in the world. Certainly the *rhetoric* of human rights is much more widely accepted today – indeed much more frequently invoked – than it has ever been in the past. At least the language of national and international communication seems to reflect a shift in priorities and emphasis, compared with the prevailing dialectical style even a few decades ago. Human rights have also become an important part of the literature on development.

And yet this apparent victory of the idea and use of human rights coexists with some real skepticism, in critically demanding circles, about the depth and coherence of this approach. The suspicion is that there is something a little simple-minded about the entire conceptual structure that underlies the oratory on human rights.

What, then, appears to be the problem? I think there are three rather distinct concerns that critics tend to have about the intellectual edifice of human rights. There is, first, the worry that human rights confound consequences of legal systems, which give people certain well-defined rights, with pre-legal principles that cannot really give one a justiciable right. This is the issue of the legitimacy of the demands of human rights: How can human rights have any real status except through entitlements that are sanctioned by the state, as the ultimate legal authority? Human beings in nature are, in this view, no more born with human rights than they are born fully clothed; rights would have to be acquired through legislation, just as clothes are acquired through tailoring. There are no pre-tailoring clothes; nor any pre-legislation rights. I shall call this line of attack the *legitimacy critique*.

The second line of attack concerns the *form* that the ethics and politics of human rights takes. Rights are entitlements that require, in this view, correlated duties. If person A has a right to some x , then there has to be some agency, say B, that has a duty to provide A with x . If no such duty is recognized, then the alleged rights, in this view, cannot but be hollow. This is seen as posing a tremendous problem for taking human rights to be rights

at all. It may be all very nice, so the argument runs, to say that every human being has a right to food or to medicine, but so long as no agency-specific duties have been characterized, these rights cannot really “mean” very much. Human rights, in this understanding, are heartwarming sentiments, but they are also, strictly speaking, incoherent. Thus viewed, these claims are best seen not so much as rights, but as lumps in the throat. I shall call this the *coherence critique*.

The third line of skepticism does not take quite such a legal and institutional form, but views human rights as being in the domain of social ethics. The moral authority of human rights, in this view, is conditional on the nature of acceptable ethics. But are such ethics really universal? What if some cultures do not regard rights as particularly valuable, compared to other prepossessing virtues or qualities? The disputation of the reach of human rights has often come from such cultural critiques; perhaps the most prominent of these is based on the idea of the alleged skepticism of Asian values toward human rights. Human rights, to justify that name, demand universality, but there are no such universal values, the critics claim. I shall call this the *cultural critique*.

The legitimacy critique has a long history. It has been aired, in different forms, by many skeptics of rights-based reasoning about ethical issues. There are interesting similarities as well as differences between different variants of this criticism. There is, on the one hand, Karl Marx’s insistence that rights cannot really *precede* (rather than follow) the institution of the state. This is spelled out in his combatively forceful pamphlet “On the Jewish Question.” There are, on the other hand, the reasons that Jeremy Bentham gave for describing “natural rights” (as mentioned before) as “nonsense” and the concept of “natural and imprescriptible rights” as “nonsense on stilts.” But common to these – and many other – lines of critique is an insistence that rights must be seen in postinstitutional terms as instruments, rather than as a prior ethical entitlement. This militates, in a rather fundamental way, against the basic idea of universal human rights.

Certainly, taken as aspiring legal entities, pre-legal moral claims can hardly be seen as giving justiciable rights in courts and other institutions of enforcement. But to reject human rights on this ground is to miss the point of the exercise. The demand for legality is no more than just that – a demand – which is justified by the ethical importance of acknowledging that certain rights are appropriate entitlements of all human beings. In this sense, human rights may stand for claims, powers and immunities (and other forms of warranty associated with the concept of rights) supported by ethical judgments, which attach intrinsic importance to these warranties.

In fact, human rights may also exceed the domain of *potential*, as opposed to *actual*, legal rights. A human right can be effectively invoked in contexts

even where its *legal* enforcement would appear to be most inappropriate. The moral right of a wife to participate fully, as an equal, in serious family decisions – no matter how chauvinist her husband is – may be acknowledged by many who would nevertheless not want this requirement to be legalized and enforced by the police. The “right to respect” is another example in which legalization and attempted enforcement would be problematic, even bewildering.

Indeed, it is best to see human rights as a set of ethical claims, which must not be identified with legislated legal rights. But this normative interpretation need not obliterate the usefulness of the idea of human rights in the kind of context in which they are typically invoked. The freedoms that are associated with particular rights may be the appropriate focal point for debate. We have to judge the plausibility of human rights as a system of ethical reasoning and as the basis of political demands.

I turn now to the second critique: whether we can coherently talk about rights without specifying whose duty it is to guarantee the fulfillment of the rights. There is indeed a mainstream approach to rights that takes the view that rights can be sensibly formulated only in combination with correlated duties. A person’s right to something must, then, be coupled with another agent’s duty to provide the first person with that something. Those who insist on that binary linkage tend to be very critical, in general, of invoking the rhetoric “rights” in “human rights” without exact specification of responsible agents and their duties to bring about the fulfillment of these rights. Demands for human rights are, then, seen just as loose talk.

A question that motivates some of this skepticism is: How can we be sure that rights are realizable unless they are matched by corresponding duties? Indeed, some do not see any sense in a right unless it is balanced by what Immanuel Kant called a “perfect obligation” – a specific duty of a particular agent for the realization of that right.

It is, however, possible to resist the claim that any use of rights except with co-linked perfect obligations must lack cogency. In many legal contexts that claim may indeed have some merit, but in normative discussions rights are often championed as entitlements or powers or immunities that it would be good for people to have. Human rights are seen as rights shared by all – irrespective of citizenship – the benefits of which everyone *should* have. While it is not the specific duty of any given individual to make sure that the person has her rights fulfilled, the claims can be generally addressed to all those who are in a position to help. Indeed, Immanuel Kant himself had characterized such general demands as “imperfect obligations” and had gone on to discuss their relevance for social living. The claims are addressed generally to anyone who can help, even though no particular person or agency may be charged to bring about the fulfillment of the rights involved.

It may of course be the case that rights, thus formulated, sometimes end up unfulfilled. But it is surely possible for us to distinguish between a right that a person has which has not been fulfilled and a right that the person does not have. Ultimately, the ethical assertion of a right goes beyond the value of the corresponding freedom only to the extent that some demands are placed on others that they should try to help. While we may be able to manage well enough with the language of freedom rather than of rights (indeed it is the language of freedom that I have been mainly invoking in *Development as Freedom*), there may sometimes be a good case for suggesting – or demanding – that others help the person to achieve the freedom in question. The language of rights can supplement that of freedom.

The third line of critique is perhaps more engaging, and has certainly received more attention. Is the idea of human rights really so universal? Are there not ethics, such as in the world of Confucian cultures, that tend to focus on discipline rather than on rights, on loyalty rather than on entitlement? Insofar as human rights include claims to political liberty and civil rights, alleged tensions have been identified particularly by some Asian theorists.

The nature of Asian values has often been invoked in recent years to provide justification for authoritarian political arrangements in Asia. These justifications of authoritarianism have typically come not from independent historians but from the authorities themselves (such as governmental officers or their spokesmen) or those close to people in power, but their views are obviously consequential in governing the states and also in influencing the relation between different countries.

Are Asian values opposed – or indifferent – to basic political rights? Such generalizations are often made, but are they well grounded? In fact, generalizations about Asia are not easy, given its size. Asia is where about 60 percent of the total world population live. What can we take to be the values of so vast a region, with such diversity? There are no quintessential values that apply to this immensely large and heterogeneous population, none that separate them out as a group from people in the rest of the world.

Sometimes the advocates of “Asian values” have tended to look primarily at East Asia as the region of particular applicability. The generalization about the contrast between the West and Asia often concentrates on the land to the east of Thailand, even though there is a more ambitious claim that the rest of Asia is also rather “similar.” For example, Lee Kuan Yew outlines “the fundamental difference between Western concepts of society and government and East Asian concepts” by explaining, “when I say East Asians, I mean Korea, Japan, China, Vietnam, as distinct from Southeast Asia, which is a mix between the Sinic and the Indian, though Indian culture itself emphasizes similar values.”

In fact, however, even East Asia itself has much diversity, and there are many variations to be found among Japan and China and Korea and other parts of East Asia. Various cultural influences from within and outside the region have affected human lives over the history of this rather large territory. These influences still survive in a variety of ways. To illustrate, my copy of Houghton Mifflin's international *Almanac* describes the religion of the 124 million Japanese in the following way: 112 million Shintoist and 93 million Buddhist. Different cultural influences still color aspects of the identity of the contemporary Japanese, and the same person can be *both* Shintoist and Buddhist.

Cultures and traditions overlap over regions such as East Asia and even within countries such as Japan or China or Korea, and attempts at generalization about "Asian values" (with forceful – and often brutal – implications for masses of people in this region with diverse faiths, convictions and commitments) cannot but be extremely crude. Even the 2.8 million people of Singapore have vast variations of cultural and historical traditions. Indeed, Singapore has an admirable record in fostering intercommunity amity and friendly coexistence.

Authoritarian lines of reasoning in Asia – and more generally in non-Western societies – often receive indirect backing from modes of thought in the West itself. There is clearly a tendency in America and Europe to assume, if only implicitly, the primacy of political freedom and democracy as a fundamental and ancient feature of Western culture – one not to be easily found in Asia. It is, as it were, a contrast between the authoritarianism allegedly implicit in, say, Confucianism vis-a-vis the respect for individual liberty and autonomy allegedly deeply rooted in Western liberal culture. Western promoters of personal and political liberty in the non-Western world often see this as bringing Occidental values to Asia and Africa. The world is invited to join the club of "Western democracy" and to admire and endorse traditional "Western values."

In all this, there is a substantial tendency to extrapolate *backward* from the present. Values that European Enlightenment and other relatively recent developments have made common and widespread cannot really be seen as part of the long-run Western heritage – experienced in the West over millennia. What we do find in the writings by particular Western classical authors (for example, Aristotle) is support for selected *components* of the comprehensive notion that makes up the contemporary idea of political liberty. But support for such components can be found in many writings in Asian traditions as well.

To illustrate this point, consider the idea that personal freedom for all is important for a good society. This claim can be seen as being composed of two distinct components, to wit, (I) *the value of personal freedom*: that personal

freedom is important and should be guaranteed for those who “matter” in a good society, and (z) *equality of freedom*: everyone matters and the freedom that is guaranteed for one must be guaranteed for all. The two together entail that personal freedom should be guaranteed, on a shared basis, for all. Aristotle wrote much in support of the former proposition, but in his exclusion of women and slaves did little to defend the latter. Indeed, the championing of equality in this form is of quite recent origin. Even in a society stratified according to class and caste, freedom could be seen to be of great value for the privileged few (such as the Mandarins or the Brahmins), in much the same way freedom is valued for nonslave men in corresponding Greek conceptions of a good society.

Another useful distinction is between (I) *the value of toleration*: that there must be toleration of diverse beliefs, commitments, and actions of different people; and (z) *equality of tolerance*: the toleration that is offered to some must be reasonably offered to all (except when tolerance of some will lead to intolerance for others). Again, arguments for some tolerance can be seen plentifully in earlier Western writings, without that tolerance being supplemented by equality of tolerance. The roots of modern democratic and liberal ideas can be sought in terms of *constitutive* elements, rather than as a whole.

In doing a comparative scrutiny, the question has to be asked whether these constitutive components can be seen in Asian writings in the way they can be found in Western thought. The presence of these components must not be confused with the absence of the opposite, viz., of ideas and doctrines that clearly *do not* emphasize freedom and tolerance. Championing of order and discipline can be found in Western classics as well. Indeed, it is by no means clear to me that Confucius is more authoritarian in this respect than, say, Plato or St. Augustine. The real issue is not whether these nonfreedom perspectives are *present* in Asian traditions, but whether the freedom-oriented perspectives are *absent* there.

This is where the diversity of Asian value systems – which incorporates but transcends regional diversity – becomes quite central. An obvious example is the role of Buddhism as a form of thought. In Buddhist tradition, great importance is attached to freedom, and the part of the earlier Indian theorizing to which Buddhist thoughts relate has much room for volition and free choice. Nobility of conduct has to be achieved in freedom, and even the ideas of liberation (such as *moksha*) have this feature. The presence of these elements in Buddhist thought does not obliterate the importance for Asia of ordered discipline emphasized by Confucianism, but it would be a mistake to take Confucianism to be the only tradition in Asia – indeed even in China. Since so much of the contemporary authoritarian interpretation of Asian values concentrates on Confucianism, this diversity is particularly worth emphasizing.

Indeed, the reading of Confucianism that is now standard among authoritarian champions of Asian values does less than justice to the variety within Confucius's own teachings. Confucius did not recommend blind allegiance to the state. When Zilu asks him "how to serve a prince", Confucius replies, "Tell him the truth even if it offends him." Those in charge of censorship in Singapore or Beijing might take a very different view. Confucius is not averse to practical caution and tact, but does not forgo the recommendation to oppose a bad government. "When the [good] way prevails in the state, speak boldly and act boldly. When the state has lost the way, act boldly and speak softly."

Indeed, Confucius provides a clear pointer to the fact that the two pillars of the imagined edifice of Asian values, namely loyalty to family and obedience to the state, can be in severe conflict with each other. Many advocates of the power of "Asian values" see the role of the state as an extension of the role of the family, but as Confucius noted, there can be tension between the two. The Governor of She told Confucius, "Among my people, there is a man of unbending integrity: when his father stole a sheep, he denounced him." To this Confucius replied, "Among my people, men of integrity do things differently: a father covers up for his son, a son covers up for his father – and there is integrity in what they do."

Confucius's ideas were altogether more complex and sophisticated than the maxims that are frequently championed in his name. There is also a tendency to neglect other authors in the Chinese culture and to ignore other Asian cultures. If we turn to Indian traditions, we can, in fact, find a variety of views on freedom, tolerance, and equality. In many ways, the most interesting articulation of the need for tolerance on an egalitarian basis can be found in the writings of Emperor Ashoka, who in the third century B.C. commanded a larger Indian empire than any other Indian king (including the Mughals, and even the Raj, if we leave out the native states that the British let be). He turned his attention to public ethics and enlightened politics in a big way after being horrified by the carnage he saw in his own victorious battle against the kingdom of Kalinga (what is now Orissa). He converted to Buddhism, and not only helped to make it a world religion by sending emissaries abroad with the Buddhist message to east and west, but also covered the country with stone inscriptions describing forms of good life and the nature of good government.

The inscriptions give a special importance to tolerance of diversity. For example, the edict (now numbered XII) at Erragudi puts the issue thus:

... a man must not do reverence to his own sect or disparage that of another man without reason. Depreciation should be for specific reason only, because the sects of other people all deserve reverence for one reason or another. By

thus acting, a man exalts his own sect, and at the same time does service to the sects of other people. By acting contrariwise, a man hurts his own sect, and does disservice to the sects of other people. For he who does reverence to his own sect while disparaging the sects of others wholly from attachment to his own, with intent to enhance the splendour of his own sect, in reality by such conduct inflicts the severest injury on his own sect.

The importance of tolerance is emphasized in these edicts from the third century B.C., both for public policy by the government and as advice for behavior of citizens to one another.

On the domain and coverage of tolerance, Ashoka was a universalist, and demanded this for all, including those whom he described as “forest people”, the tribal population living in preagricultural economic formations. Ashoka’s championing of egalitarian and universal tolerance may appear un-Asian to some commentators, but his views are firmly rooted in lines of analysis already in vogue in intellectual circles in India in the preceding centuries.

It is, however, interesting to look in this context at another Indian author whose treatise on governance and political economy was also profoundly influential and important. I refer to Kautilya, the author of *Arthashastra*, which can be translated as “the economic science”, though it is at least as much concerned with practical politics as with economics. Kautilya was a contemporary of Aristotle, in the fourth century B.C., and worked as a senior minister of Emperor Chandragupta Maurya, Emperor Ashoka’s grandfather, who had established the large Maurya empire across the subcontinent.

Kautilya’s writings are often cited as a proof that freedom and tolerance were not valued in the Indian classical tradition. There are two aspects of the impressively detailed account of economics and politics to be found in *Arthashastra* that might tend to suggest such a diagnosis. First, Kautilya is a consequentialist of quite a narrow kind. While the objectives of promoting happiness of the subjects and order in the kingdom are strongly backed up by detailed policy advice, the king is seen as a benevolent autocrat, whose power, admittedly to do good, is to be maximized through good organization. Thus, *Arthashastra*, on the one hand, presents penetrating ideas and suggestions on such practical subjects as famine prevention and administrative effectiveness that remain relevant even today (more than two thousand years later), and yet, on the other hand, its author is ready to advise the king about how to get his way, if necessary, through violating the freedom of his opponents and adversaries.

Second, Kautilya seems to attach little importance to political or economic equality, and his vision of good society is strongly stratified according to lines of class and caste. Even though the objective of promoting happiness, which is given an exalted position in the hierarchy of values, applies to all,

the other objectives are clearly inegalitarian in form and content. There is the obligation to provide the less fortunate members of the society the support that they need for escaping misery and enjoying life, and Kautilya specifically identifies as the duty of the king to “provide the orphans, the aged, the infirm, the afflicted, and the helpless with maintenance”, along with providing “subsistence to helpless women when they are carrying and also to the [newborn] children they give birth to.” But that obligation to support is very far from the valuing of these people’s freedom to decide how to live – the tolerance of heterodoxy.

What, then, do we conclude from this? Certainly Kautilya is no democrat, no egalitarian, no general promoter of everyone’s freedom. And yet, when it comes to characterizing what the most favored people – the upper classes – should get, freedom figures quite prominently. Denying personal liberty to the upper classes (the so-called Arya) is seen as unacceptable. Indeed, regular penalties, some of which are heavy, are specified for the taking of such adults or children in indenture, even though the slavery of the existing slaves is seen as perfectly acceptable. To be sure, we do not find in Kautilya anything like the clear articulation that Aristotle provides of the importance of free exercise of capability. But the focusing on freedom is clear enough in Kautilya as far as the upper classes are concerned. It contrasts with the governmental duties to the lower orders, which take the paternalistic form of public attention and state assistance for the avoidance of acute deprivation and misery. However, insofar as a view of a good life emerges in all this, it is one that is entirely consistent with a freedom-valuing ethical system. The domain of that concern is, to be sure, confined to the upper groups of society, but this is not radically different from the Greek concern with free men as opposed to slaves or women. In respect to coverage, Kautilya differs from the universalist Ashoka, but not entirely from the particularist Aristotle.

I have been discussing in some detail the political ideas and practical reason presented by two forceful, but very different, expositions in India respectively in the fourth and the third century B.C., because their ideas in turn have influenced later Indian writings. But we can look at many other authors as well. Among powerful expositors and practitioners of tolerance of diversity in India must of course be counted the great Moghul emperor Akbar, who reigned between 1556 and 1605. Again, we are not dealing with a democrat, but with a powerful king who emphasized the acceptability of diverse forms of social and religious behavior, and who accepted human rights of various kinds, including freedom of worship and religious practice, that would not have been so easily tolerated in parts of Europe in Akbar’s time.

For example, as the year 1000 in the Muslim Hejira calendar was reached in 1591–1592, there was some excitement about it in Delhi and Agra (not

unlike what is happening right now as the year 2.000 in the Christian calendar approaches). Akbar issued various enactments at this juncture of history and these focused, inter alia, on religious tolerance, including the following:

No man should be interfered with on account of religion, and anyone [is] to be allowed to go over to a religion he pleased.

If a Hindu, when a child or otherwise, had been made a Muslim against his will, he is to be allowed, if he pleased, to go back to the religion of his fathers.

Again, the domain of tolerance, while religion-neutral, was not universal in other respects, including in terms of gender equality, or equality between younger and older people. The enactment went on to argue for the forcible repatriation of a young Hindu woman to her father's family if she had abandoned it in pursuit of a Muslim lover. In the choice between supporting the young lovers and the young woman's Hindu father, old Akbar's sympathies are entirely with the father. Tolerance and equality at one level are combined with intolerance and inequality at another level, but the extent of general tolerance on matters of belief and practice is quite remarkable. It may not be irrelevant to note in this context, especially in the light of the hard sell of "Western liberalism", that while Akbar was making these pronouncements, the Inquisitions were in full bloom in Europe.

Because of the experience of contemporary political battles, especially in the Middle East, Islamic civilization is often portrayed as being fundamentally intolerant and hostile to individual freedom. But the presence of diversity and variety *within* a tradition applies very much to Islam as well. In India, Akbar and most of the other Moghuls provide good examples of both theory and practice of political and religious tolerance. Similar examples can be found in other parts of the Islamic culture. The Turkish emperors were often more tolerant than their European contemporaries. Abundant examples of this can be found also in Cairo and Baghdad. Indeed, even the great Jewish scholar Maimonides, in the twelfth century, had to run away from an intolerant Europe (where he was born) and from its persecution of Jews, to the security of a tolerant and urbane Cairo and the patronage of Sultan Saladin.

Similarly, Alberuni, the Iranian mathematician, who wrote the first general book on India in the early eleventh century (aside from translating Indian mathematical treatises into Arabic), was among the earliest of anthropological theorists in the world. He noted – and protested against – the fact that "depreciation of foreigners ... is common to all nations towards each other." He devoted much of his life to fostering mutual understanding and tolerance in his eleventh century world. It is easy to multiply examples. The point to be seized is that the modern advocates of the authoritarian

view of “Asian values” base their reading on very arbitrary interpretations and extremely narrow selections of authors and traditions. The valuing of freedom is not confined to one culture only, and the Western traditions are not the only ones that prepare us for a freedom-based approach to social understanding.

The issue of democracy also has a close bearing on another cultural matter that has received some justified attention recently. This concerns the overwhelming power of Western culture and lifestyle in undermining traditional modes of living and social mores. For anyone concerned about the value of tradition and of indigenous cultural modes this is indeed a serious threat.

The contemporary world is dominated by the West, and even though the imperial authority of the erstwhile rulers of the world has declined, the dominance of the West remains as strong as ever – in some ways stronger than before, especially in cultural matters. The sun does not set on the empire of Coca-Cola or MTV.

The threat to native cultures in the globalizing world of today is, to a considerable extent, inescapable. The one solution that is not available is that of stopping globalization of trade and economies, since the forces of economic exchange and division of labor are hard to resist in a competitive world fueled by massive technological evolution that gives modern technology an economically competitive edge.

This is a problem, but not just a problem, since global trade and commerce can bring with it – as Adam Smith foresaw – greater economic prosperity for each nation. But there can be losers as well as gainers, even if in the net the aggregate figures move up rather than down. In the context of economic disparities, the appropriate response has to include concerted efforts to make the form of globalization less destructive of employment and traditional livelihood, and to achieve gradual transition. For smoothing the process of transition, there also have to be opportunities for retraining and acquiring of new skills (for people who would otherwise be displaced), in addition to providing social safety nets (in the form of social security and other supportive arrangements) for those whose interests are harmed – at least in the short run – by the globalizing changes.

This class of responses will to some extent work for the cultural side as well. Skill in computer use and the harvesting of Internet and similar facilities transform not only economic possibilities, but also the lives of the people influenced by such technical change. Again, this is not necessarily regrettable. There remain, however, two problems – one shared with the world of economics and another quite different.

First, the world of modern communication and interchange requires basic education and training. While some poor countries in the world have

made excellent progress in this area (countries in East Asia and Southeast Asia are good examples of that), others (such as those in South Asia and Africa) have tended to lag behind. Equity in cultural as well as economic opportunities can be profoundly important in a globalizing world. This is a shared challenge for the economic and the cultural world.

The second issue is quite different and distances the cultural problem from the economic predicament. When an economic adjustment takes place, few tears are shed for the superseded methods of production and for the overtaken technology. There may be some nostalgia for specialized and elegant objects (such as an ancient steam engine or an old-fashioned clock), but in general old and discarded machinery is not particularly wanted. In the case of culture, however, lost traditions may be greatly missed. The demise of old ways of living can cause anguish, and a deep sense of loss. It is a little like the extinction of older species of animals. The elimination of old species in favor of “fitter” species that are “better” able to cope and multiply can be a source of regret, and the fact that the new species are “better” in the Darwinian system of comparison need not be seen as consolation enough.

This is an issue of some seriousness, but it is up to the society to determine what, if anything, it wants to do to preserve old forms of living, perhaps even at significant economic cost. Ways of life can be preserved if the society decides to do just that, and it is a question of balancing the costs of such preservation with the value that the society attaches to the objects and the lifestyles preserved. There is, of course, no ready formula for this cost-benefit analysis, but what is crucial for a rational assessment of such choices is the ability of the people to participate in public discussions on the subject. We come back again to the perspective of capabilities: that different sections of the society (and not just the socially privileged) should be able to be active in the decisions regarding what to preserve and what to let go. There is no compulsion to preserve every departing lifestyle even at heavy cost, but there is a real need – for social justice – for people to be able to take part in these social decisions, if they so choose. This gives further reason for attaching importance to such elementary capabilities as reading and writing (through basic education), being well informed and well briefed (through free media), and having realistic chances of participating freely (through elections, referendums and the general use of civil rights). Human rights in the broadest sense are involved in this exercise as well.

On top of these basic recognitions, it is also necessary to note the fact that cross-cultural communication and appreciation need not necessarily be matters of shame and disgrace. We do have the capacity to enjoy things that have originated elsewhere, and cultural nationalism or chauvinism can be seriously debilitating as an approach to living. Rabindranath Tagore, the great Bengali poet, commented on this issue rather eloquently:

Whatever we understand and enjoy in human products instantly becomes ours, wherever they might have their origin. I am proud of my humanity when I can acknowledge the poets and artists of other countries as my own. Let me feel with unalloyed gladness that all the great glories of man are mine.

While there is some danger in ignoring uniqueness of cultures, there is also the possibility of being deceived by the presumption of ubiquitous insularity.

It is indeed possible to argue that there are more interrelations and more cross-cultural influences in the world than is typically acknowledged by those alarmed by the prospect of cultural subversion. The culturally fearful often take a very fragile view of each culture and tend to underestimate our ability to learn from elsewhere without being overwhelmed by that experience. Indeed, the rhetoric of “national tradition” can help to hide the history of outside influences on the different traditions. For example, chili may be a central part of Indian cooking as we understand it (some even see it as something of a “signature tune” of Indian cooking), but it is also a fact that chili was unknown in India until the Portuguese brought it there only a few centuries ago. (Ancient Indian culinary art used pepper, but no chili.) Today’s Indian curries are no less “Indian” for this reason.

Nor is there anything particularly shady in the fact that – given the blustering popularity of Indian food in contemporary Britain – the British Tourist Board describes curry as authentic “British fare.” A couple of summers ago I even encountered in London a marvelous description of a person’s incurable “Englishness”: she was, we were informed, “as English as daffodils or chicken tikka masala.”

The image of regional self-sufficiency in cultural matters is deeply misleading, and the value of keeping traditions pure and unpolluted is hard to sustain. Sometimes the intellectual influences from abroad may be more roundabout and many-sided. For example, some chauvinists in India have complained about the use of “Western” terminology in school curriculum, for example in modern mathematics. But the interrelations in the world of mathematics make it hard to know what is “Western” and what is not. To illustrate, consider the term “sine” used in trigonometry, which came to India straight through the British, and yet in its genesis there is a remarkable Indian component. Aryabhata, the great Indian mathematician of the fifth century, had discussed the concept of “sine” in his work, and had called it, in Sanskrit, *jya-ardha* (“half-chord”). From there the term moved on in an interesting migratory way, as Howard Eves describes:

Aryabhata called it *ardha-jya* (“half-chord”) and *jya-ardha* (“chord-half”), and then abbreviated the term by simply using *jya* (“chord”). From *jya* the

Arabs phonetically derived written as *jb*. Now *jiba*, aside from its technical significance, is a meaningless word in Arabic. Later writers who came across *jb* as an abbreviation for the meaningless word *jiba* substituted *jaib* instead, which contains the same letters, and is a good Arabic word meaning “cove” or “bay.” Still later, Gherardo of Cremona (ca. 1150), when he made his translations from the Arabic, replaced the Arabian *jaib* by its Latin equivalent, *sinus* [meaning a cove or a bay], from whence came our present word sine.

My point is not at all to argue against the unique importance of each culture, but rather to plead in favor of the need for some sophistication in understanding cross-cultural influences as well as our basic capability to enjoy products of other cultures and other lands. We must not lose our ability to understand one another and to enjoy the cultural products of different countries in the passionate advocacy of conservation and purity.

[...] I must also consider a further issue related to the question of cultural separatism, given the general approach of this book. It will not have escaped the reader that this book is informed by a belief in the ability of different people from different cultures to share many common values and to agree on some common commitments. Indeed, the overriding value of freedom as the organizing principle of this work has this feature of a strong universalist presumption.

The claim that “Asian values” are particularly indifferent to freedom, or that attaching importance to freedom is quintessentially a “Western” value, has been disputed already [...]. The point, however, is sometimes made that the tolerance of heterodoxy in matters of religion, in particular, is historically a very special “Western” phenomenon. When I published a paper in an American magazine disputing the authoritarian interpretation of “Asian values” (“Human Rights and Asian Values”, *The New Republic*, July 14 and 21, 1997), the responses that I got typically included some support for my disputation of the alleged specialness of “Asian values” (as being generally authoritarian), but then they went on to argue that the West, on the other hand, was really quite special – in terms of tolerance.

It was claimed that the tolerance of *religious* skepticism and heterodoxy was a specifically “Western” virtue. One commentator proceeded to outline his understanding that “Western tradition” is absolutely unique in its “acceptance of religious tolerance at a sufficient level that even atheism is permitted as a principled rejection of beliefs.” The commentator is certainly right to claim that religious tolerance, including the tolerance of skepticism and atheism, is a central aspect of social freedom (as John Stuart Mill also explained persuasively). The disputant went on to remark: “Where in Asian history, one asks, can Amartya Sen find anything equivalent to this remarkable history of skepticism, atheism and free thought?”

This is indeed a fine question, but the answer is not hard to find. In fact, there is some embarrassment of riches in deciding which part of Asian history to concentrate on, since the answer could come from many different components of that history. For example, in the context of India in particular, one could point to the importance of the atheistic schools of Carvaka and Lokayata, which originated well before the Christian era, and produced a durable, influential and vast atheistic literature. Aside from intellectual documents arguing for atheistic beliefs, heterodox views can be found in many orthodox documents as well. Indeed, even the ancient epic *Ramayana*, which is often cited by Hindu political activists as the holy book of the divine Rama's life, contains sharply dissenting views. For example, the *Ramayana* relates the occasion when Rama is lectured by a worldly pundit called Javali on the folly of religious beliefs: "O Rama, be wise, there exists no world but this, that is certain! Enjoy that which is present and cast behind thee that which is unpleasant."

It is also relevant to reflect on the fact that the only world religion that is firmly agnostic, viz., Buddhism, is Asian in origin. Indeed, it originated in India in the sixth century B.C., around the time when the atheistic writings of the Carvaka and Lokayata schools were particularly active. Even the Upanishads (a significant component of the Hindu scriptures that originated a little earlier – from which I have already quoted in citing Maitreyee's question) discussed, with evident respect, the view that thought and intelligence are the results of material conditions in the body, and "when they are destroyed", that is, "after death", "no intelligence remains." Skeptical schools of thought survived in Indian intellectual circles over the millennia, and even as late as the fourteenth century, Madhava Acarya (himself a good Vaishnavite Hindu), in his classic book called *Sarvadarśanasamgraha* ("Collection of All Philosophies"), devoted the entire first chapter to a serious presentation of the arguments of the Indian atheistic schools. Religious skepticism and its tolerance are not uniquely Western as a phenomenon.

References were made earlier to tolerance in general in Asian cultures (such as the Arabic, the Chinese and the Indian), and religious tolerance is a part of it, as the examples cited bring out. Examples of violations – often *extreme* violations – of tolerance are not hard to find in any culture (from medieval inquisitions to modern concentration camps in the West, and from religious slaughter to the victimizing oppression of the Taliban in the East), but voices have been persistently raised in favor of freedom – in different forms – in distinct and distant cultures. If the universalist presumptions of this book, particularly in valuing the importance of freedom, are to be rejected, the grounds for rejection must lie elsewhere.

The case *for* basic freedoms and for the associated formulations in terms of rights rests on:

- 1) their *intrinsic* importance;
- 2) their *consequential* role in providing political incentives for economic security;
- 3) their *constructive* role in the genesis of values and priorities.

The case is no different in Asia than it is anywhere else, and the dismissal of this claim on the ground of the special nature of Asian values does not survive critical scrutiny.

As it happens, the view that Asian values are quintessentially authoritarian has tended to come, in Asia, almost exclusively from spokesmen of those in power (sometimes supplemented – and reinforced – by Western statements demanding that people endorse what are seen as specifically “Western liberal values”). But foreign ministers, or government officials, or religious leaders, do not have a monopoly in interpreting local culture and values. It is important to listen to the voices of dissent in each society. Aung San Suu Kyi has no less legitimacy – indeed clearly has rather more – in interpreting what the Burmese want than have the military rulers of Myanmar, whose candidates she had defeated in open elections before being put in jail by the defeated military junta.

The recognition of diversity within different cultures is extremely important in the contemporary world. Our understanding of the presence of diversity tends to be somewhat undermined by constant bombardment with oversimple generalizations about “Western civilization”, “Asian values”, “African cultures” and so on. Many of these readings of history and civilization are not only intellectually shallow, they also add to the divisiveness of the world in which we live. The fact is that in any culture, people seem to like to argue with one another, and frequently do exactly that – given the chance. The presence of dissidents makes it problematic to take an unambiguous view of the “true nature” of local values. In fact, dissidents tend to exist in every society – often quite plentifully – and they are frequently willing to take very great risks regarding their own security. Indeed, had the dissidents not been so tenaciously present, authoritarian polities would not have had to undertake such repressive measures in practice, to supplement their intolerant beliefs. The presence of dissidents *tempts* the authoritarian ruling groups to take a repressive view of local culture and, at the same time, that presence itself *undermines* the intellectual basis of such univocal interpretation of local beliefs as homogenous thought.

Western discussion of non-Western societies is often too respectful of authority – the governor, the minister, the military junta, the religious leader. This “authoritarian bias” receives support from the fact that Western countries themselves are often represented, in international gatherings, by governmental officials and spokesmen, and they in turn seek the views of their opposite numbers from other countries. An adequate approach

of development cannot really be so centered only on those in power. The reach has to be broader, and the need for popular participation is not just sanctimonious rubbish. Indeed, the idea of development cannot be dissociated from it.

As far as the authoritarian claims about “Asian values” are concerned, it has to be recognized that values that have been championed in the past of Asian countries – in East Asia as well as elsewhere in Asia – include an enormous variety. Indeed, in many ways they are similar to substantial variations that are often seen in the history of ideas in the West also. To see Asian history in terms of a narrow category of authoritarian values does little justice to the rich varieties of thought in Asian intellectual traditions. Dubious history does nothing to vindicate dubious politics.

Richard Rorty

HUMAN RIGHTS, RATIONALITY, AND SENTIMENTALITY

Source: "University of Southern Maine":
<http://www.usm.maine.edu/bcj/issues/three/rorty.html>

In a report from Bosnia some months ago, David Rieff said "To the Serbs, the Muslims are no longer human... Muslim prisoners, lying on the ground in rows, awaiting interrogation, were driven over by a Serb guard in a small delivery van". This theme of dehumanization recurs when Rieff says.

"A Muslim man in Bosanski Petrovac... [was] forced to bite off the penis of a fellow-Muslim... If you say that a man is not human, but the man looks like you and the only way to identify this devil is to make him drop his trousers – Muslim men are circumcised and Serb men are not – it is probably only a short step, psychologically, to cutting off his prick... There has never been a campaign of ethnic cleansing from which sexual sadism has gone missing."

The moral to be drawn from Rieff's stories is that Serbian murderers and rapists do not think of themselves as violating human rights. For they are not doing these things to fellow human beings, but to *Muslims*. They are not being inhuman, but rather are discriminating between the true humans and the pseudohumans. They are making the same sort of distinction as the Crusaders made between humans and infidel dogs, and the Black Muslims make between humans and blue-eyed devils. The founder of my university was able both to own slaves and to think it self-evident that all men were endowed by their creator with certain inalienable rights. He had convinced himself that the consciousness of Blacks, like that of animals, "participate[s] more of sensation than reflection". Like the Serbs, Mr. Jefferson did not think of himself as violating *human* rights.

The Serbs take themselves to be acting in the interests of true humanity by purifying the world of pseudohumanity. In this respect, their self-image resembles that of moral philosophers who hope to cleanse the world of prejudice and superstition. This cleansing will permit us to rise above our animality by becoming, for the first time, wholly rational and thus wholly human. The Serbs, the moralists, Jefferson, and the Black Muslims all use the term "men" to mean "people like us". They think the line between humans and animals is not simply the line between featherless bipeds and all others. They think the line divides some featherless bipeds from others: There are animals walking about in humanoid form. We and those like us are paradigm

cases of humanity, but those too different from us in behavior or custom are, at best, borderline cases. As Clifford Geertz puts it, “Men’s most importunate claims to humanity are cast in the accents of group pride”.

We in the safe, rich, democracies feel about the Serbian torturers and rapists as they feel about their Muslim victims: They are more like animals than like us. But we are not doing anything to help the Muslim women who are being gang raped or the Muslim men who are being castrated, any more than we did anything in the thirties when the Nazis were amusing themselves by torturing Jews. Here in the safe countries we find ourselves saying things like “That’s how things have always been in the Balkans”, suggesting that, unlike us, those people are used to being raped and castrated. The contempt we always feel for losers – Jews in the thirties, Muslims now – combines with our disgust at the winners’ behavior to produce the semiconscious attitude: “a plague on both your houses”. We think of the Serbs or the Nazis as animals, because ravenous beasts of prey are animals. We think of the Muslims or the Jews being herded into concentration camps as animals, because cattle are animals. Neither sort of animal is very much like us, and there seems no point in human beings getting involved in quarrels between animals.

The human-animal distinction, however, is only one of the three main ways in which we paradigmatic humans distinguish ourselves from borderline cases. A second is by invoking the distinction between adults and children. Ignorant and superstitious people, we say, are like children; they will attain true humanity only if raised up by proper education. If they seem incapable of absorbing such education, that shows they are not really the same kind of being as we educable people are. Blacks, the whites in the United States and in South Africa used to say, are like children. That is why it is appropriate to address Black males, of whatever age, as “boy”. Women, men used to say, are permanently childlike; it is therefore appropriate to spend no money on their education, and to refuse them access to power.

When it comes to women, however, there are simpler ways of excluding them from true humanity: for example, using “man” as a synonym of “human being”. As feminists have pointed out, such usages reinforce the average male’s thankfulness that he was not born a woman, as well as his fear of the ultimate degradation: feminization. The extent of the latter fear is evidenced by the particular sort of sexual sadism Rieff describes. His point that such sadism is never absent from attempts to purify the species or cleanse the territory confirms Catharine MacKinnon’s claim that, for most men, being a woman does not count as a way of being human. Being a nonmale is the third main way of being nonhuman. There are several ways of being nonmale. One is to be born without a penis; another is to have one’s penis cut or bitten off; a third is to have been penetrated by a penis. Many men who have been raped are convinced that their manhood, and thus their humanity, has been

taken away. Like racists who discover they have Jewish or Black ancestry, they may commit suicide out of sheer shame, shame at no longer being the kind of featherless biped that counts as human.

Philosophers have tried to clear this mess up by spelling out what all and only the featherless bipeds have in common, thereby explaining what is essential to being human. Plato argued that there is a big difference between us and the animals, a difference worthy of respect and cultivation. He thought that human beings have a special added ingredient which puts them in a different ontological category than the brutes. Respect for this ingredient provides a reason for people to be nice to each other. Anti-Platonists like Nietzsche reply that attempts to get people to stop murdering, raping, and castrating each other are, in the long run, doomed to fail - for the real truth about human nature is that we are a uniquely nasty and dangerous kind of animal. When contemporary admirers of Plato claim that all featherless bipeds – even the stupid and childlike, even the women, even the sodomized – have the same inalienable rights, admirers of Nietzsche reply that the very idea of “inalienable human rights” is, like the idea of a special added ingredient, a laughably feeble attempt by the weaker members of the species to fend off the stronger.

As I see it, one important intellectual advance made in our century is the steady decline in interest in the quarrel between Plato and Nietzsche. There is a growing willingness to neglect the question “What is our nature?” and to substitute the question “What can we make of ourselves?”. We are much less inclined than our ancestors were to take “theories of human nature” seriously, much less inclined to take ontology or history as a guide to life. We have come to see that the only lesson of either history or anthropology is our extraordinary malleability. We are coming to think of ourselves as the flexible, protean, self-shaping, animal rather than as the rational animal or the cruel animal.

One of the shapes we have recently assumed is that of a human rights culture. I borrow the term “human rights culture” from the Argentinian jurist and philosopher Eduardo Rabossi. In an article called “Human Rights Naturalized”, Rabossi argues that philosophers should think of this culture as a new, welcome fact of the post-Holocaust world. They should stop trying to get behind or beneath this fact, stop trying to detect and defend its so-called “philosophical presuppositions”. On Rabossi’s view, philosophers like Alan Gewirth are wrong to argue that human rights cannot depend on historical facts. “My basic point”, Rabossi says, is that “the world has changed, that the human rights phenomenon renders human rights foundationalism outmoded and irrelevant”.

Rabossi’s claim that human rights foundationalism is *outmoded* seems to me both true and important; it will be my principal topic in this lecture.

I shall be enlarging on, and defending, Rabossi's claim that the question whether human beings really have the rights enumerated in the Helsinki Declaration is not worth raising. In particular, I shall be defending the claim that nothing relevant to moral choice separates human beings from animals except historically contingent facts of the world, cultural facts.

This claim is sometimes called "cultural relativism" by those who indignantly reject it. One reason they reject it is that such relativism seems to them incompatible with the fact that our human rights culture, the culture with which we in this democracy identify ourselves, is morally superior to other cultures. I quite agree that ours is morally superior, but I do not think this superiority counts in favor of the existence of a universal human nature. It would only do so if we assumed that a moral claim is ill-founded if not backed up by knowledge of a distinctively human attribute. But it is not clear why "respect for human dignity" - our sense that the differences between Serb and Muslim, Christian and infidel, gay and straight, male and female should not matter - must presuppose the existence of any such attribute.

Traditionally, the name of the shared human attribute which supposedly "grounds" morality is "rationality". Cultural relativism is associated with irrationalism because it denies the existence of morally relevant transcultural facts. To agree with Rabossi one must, indeed, be irrationalist in that sense. But one need not be irrationalist in the sense of ceasing to make one's web of belief as coherent, and as perspicuously structured, as possible. Philosophers like myself, who think of rationality as simply the attempt at such coherence, agree with Rabossi that foundationalist projects are outmoded. We see our task as a matter of making our own culture - the human rights culture - more self-conscious and more powerful, rather than of demonstrating its superiority to other cultures by an appeal to something transcultural.

We think that the most philosophy can hope to do is summarize our culturally influenced intuitions about the right thing to do in various situations. The summary is effected by formulating a generalization from which these intuitions can be deduced, with the help of noncontroversial lemmas. That generalization is not supposed to ground our intuitions, but rather to summarize them. John Rawls's "Difference Principle" and the U.S. Supreme Court's construction, in recent decades, of a constitutional "right to privacy" are examples of this kind of summary. We see the formulation of such summarizing generalizations as increasing the predictability, and thus the power and efficiency, of our institutions, thereby heightening the sense of shared moral identity which brings us together in a moral community.

Foundationalist philosophers, such as Plato, Aquinas, and Kant, have hoped to provide independent support for such summarizing generalizations. They would like to infer these generalizations from further premises, premises capable of being known to be true independently of the truth of the moral

intuitions which have been summarized. Such premises are supposed to justify our intuitions, by providing premises from which the content of those intuitions can be deduced. I shall lump all such premises together under the label “claims to knowledge about the nature of human beings”. In this broad sense, claims to know that our moral intuitions are recollections of the Form of the Good, or that we are the disobedient children of a loving God, or that human beings differ from other kinds of animals by having dignity rather than mere value, are all claims about human nature. So are such counterclaims as that human beings are merely vehicles for selfish genes, or merely eruptions of the will to power.

To claim such knowledge is to claim to know something which, though not itself a moral intuition, can *correct* moral intuitions. It is essential to this idea of moral knowledge that a whole community might come to know that most of their most salient intuitions about the right thing to do were wrong. But now suppose we ask: *Is there this sort of knowledge?* What kind of question is that? On the traditional view, it is a philosophical question, belonging to a branch of epistemology known as “metaethics”. But on the pragmatist view which I favor, it is a question of efficiency, of how best to grab hold of history – how best to bring about the utopia sketched by the Enlightenment. If the activities of those who attempt to achieve this sort of knowledge seem of little use in actualizing this utopia, that is a reason to think there is no such knowledge. If it seems that most of the work of changing moral intuitions is being done by manipulating our feelings rather than increasing our knowledge, that will be a reason to think that there is no knowledge of the sort which philosophers like Plato, Aquinas, and Kant hoped to acquire.

This pragmatist argument against the Platonist has the same form as an argument for cutting off payment to the priests who are performing purportedly war-winning sacrifices – an argument which says that all the real work of winning the war seems to be getting done by the generals and admirals, not to mention the foot soldiers. The argument does not say: Since there seem to be no gods, there is probably no need to support the priests. It says instead: Since there is apparently no need to support the priests, there probably are no gods. We pragmatists argue from the fact that the emergence of the human rights culture seems to owe nothing to increased moral knowledge, and everything to hearing sad and sentimental stories, to the conclusion that there is probably no knowledge of the sort Plato envisaged. We go on to argue: Since no useful work seems to be done by insisting on a purportedly ahistorical human nature, there probably is no such nature, or at least nothing in that nature that is relevant to our moral choices.

In short, my doubts about the effectiveness of appeals to moral knowledge are doubts about causal efficacy, not about epistemic status. My

doubts have nothing to do with any of the theoretical questions discussed under the heading of “metaethics”, questions about the relation between facts and values, or between reason and passion, or between the cognitive and the noncognitive, or between descriptive statements and action-guiding statements. Nor do they have anything to do with questions about realism and antirealism. The difference between the moral realist and the moral antirealist seems to pragmatists to be a difference which makes no practical difference. Further, such metaethical questions presuppose the Platonic distinction between inquiry which aims at efficient problem-solving and inquiry which aims at a goal called “truth for its own sake”. That distinction collapses if one follows Dewey in thinking of all inquiry – in physics as well as in ethics – as practical problem-solving, or if one follows Peirce in seeing every belief as action-guiding.

Even after the priests have been pensioned off, however, the memories of certain priests may still be cherished by the community – especially the memories of their prophecies. We remain profoundly grateful to philosophers like Plato and Kant, not because they discovered truths but because they prophesied cosmopolitan utopias – utopias most of whose details they may have got wrong, but utopias we might never have struggled to reach had we not heard their prophecies. As long as our ability to know, and in particular to discuss the question “What is man?” seemed the most important thing about us human beings, people like Plato and Kant accompanied utopian prophecies with claims to know something deep and important – something about the parts of the soul, or the transcendental status of the common moral consciousness. But this ability, and those questions, have, in the course of the last two hundred years, come to seem much less important. Rabossi summarizes this cultural sea change in his claim that human rights foundationalism is outmoded. In the remainder of this lecture, I shall take up the questions: *Why* has knowledge become much less important to our self-image than it was two hundred years ago? Why does the attempt to found culture on nature, and moral obligation on knowledge of transcultural universals, seem so much less important to us than it seemed in the Enlightenment? Why is there so little resonance, and so little point, in asking whether human beings in fact have the rights listed in the Helsinki Declaration? Why, in short, has moral philosophy become such an inconspicuous part of our culture?

A simple answer is that between Kant’s time and ours Darwin argued most of the intellectuals out of the view that human beings contain a special added ingredient. He convinced most of us that we were exceptionally talented animals, animals clever enough to take charge of our own future evolution. I think this answer is right as far as it goes, but it leads to a further question: Why did Darwin succeed, relatively speaking, so very easily? Why

did he not cause the creative philosophical ferment caused by Galileo and Newton?

The revival by the New Science of the seventeenth century of a Democritean-Lucretian corpuscularian picture of nature scared Kant into inventing transcendental philosophy, inventing a brand-new kind of knowledge, which could demote the corpuscularian world picture to the status of “appearance”. Kant’s example encouraged the idea that the philosopher, as an expert on the nature and limits of knowledge, can serve as supreme cultural arbiter. By the time of Darwin, however, this idea was already beginning to seem quaint. The historicism which dominated the intellectual world of the early nineteenth century had created an antiessentialist mood. So when Darwin came along, he fitted into the evolutionary niche which Herder and Hegel had begun to colonize. Intellectuals who populate this niche look to the future rather than to eternity. They prefer new ideas about how change can be effected to stable criteria for determining the desirability of change. They are the ones who think both Plato and Nietzsche outmoded.

The best explanation of both Darwin’s relatively easy triumph, and our own increasing willingness to substitute hope for knowledge, is that the nineteenth and twentieth centuries saw, among the Europeans and Americans, an extraordinary increase in wealth, literacy, and leisure. This increase made possible an unprecedented acceleration in the rate of moral progress. Such events as the French Revolution and the ending of the trans-Atlantic slave trade prompted nineteenth-century intellectuals in the rich democracies to say: It is enough for us to know that we live in an age in which human beings can make things much better for ourselves. We do not need to dig behind this historical fact to nonhistorical facts about what we really are.

In the two centuries since the French Revolution, we have learned that human beings are far more malleable than Plato or Kant had dreamed. The more we are impressed by this malleability, the less interested we become in questions about our ahistorical nature. The more we see a chance to recreate ourselves, the more we read Darwin not as offering one more theory about what we really are but as providing reasons why we need not ask what we really are. Nowadays, to say that we are clever animals is not to say something philosophical and pessimistic but something political and hopeful, namely: If we can work together, we can make ourselves into whatever we are clever and courageous enough to imagine ourselves becoming. This sets aside Kant’s question “What is Man?” and substitutes the question “What sort of world can we prepare for our great-grandchildren?”

The question “What is Man?” in the sense of “What is the deep ahistorical nature of human beings?” owed its popularity to the standard answer to that question: We are the *rational* animal, the one which can know as well as merely feel. The residual popularity of this answer accounts for the residual

popularity of Kant's astonishing claim that sentimentality has nothing to do with morality, that there is something distinctively and transculturally human called "the sense of moral obligation" which has nothing to do with love, friendship, trust, or social solidarity. As long as we believe *that*, people like Rabossi are going to have a tough time convincing us that human rights foundationalism is an outmoded project.

To overcome this idea of a *sui generis* sense of moral obligation, it would help to stop answering the question "What makes us different from the other animals?" by saying "We can know, and they can merely feel". We should substitute "We can feel *for each other* to a much greater extent than they can". This substitution would let us disentangle Christ's suggestion that love matters more than knowledge from the neo-Platonic suggestion that knowledge of the truth will make us free. For as long as we think that there is an ahistorical power which makes for righteousness – a power called truth, or rationality – we shall not be able to put foundationalism behind us.

The best, and probably the only, argument for putting foundationalism behind us is the one I have already suggested: It would be more efficient to do so, because it would let us concentrate our energies on manipulating sentiments, on sentimental education. That sort of education sufficiently acquaints people of different kinds with one another so that they are less tempted to think of those different from themselves as only quasi-human. The goal of this manipulation of sentiment is to expand the reference of the terms "our kind of people" and "people like us".

All I can do to supplement this argument from increased efficiency is to offer a suggestion about how Plato managed to convince us that knowledge of universal truths mattered as much as he thought it did. Plato thought that the philosopher's task was to answer questions like "Why should I be moral? Why is it rational to be moral? Why is it in my interest to be moral? Why is it in the interest of human beings as such to be moral?". He thought this because he believed the best way to deal with people like Thrasymachus and Callicles was to demonstrate to them that they had an interest of which they were unaware, an interest in being rational, in acquiring self-knowledge. Plato thereby saddled us with a distinction between the true and the false self. That distinction was, by the time of Kant, transmuted into a distinction between categorical, rigid, moral obligation and flexible, empirically determinable, self-interest. Contemporary moral philosophy is still lumbered with this opposition between self-interest and morality, an opposition which makes it hard to realize that my pride in being a part of the human rights culture is no more external to my self than my desire for financial success.

It would have been better if Plato had decided, as Aristotle was to decide, that there was nothing much to be done with people like Thrasymachus and Callicles, and that the problem was how to avoid having children who would

be like Thrasymachus and Callicles. By insisting that he could reeducate people who had matured without acquiring appropriate moral sentiments by invoking a higher power than sentiment, the power of reason, Plato got moral philosophy off on the wrong foot. He led moral philosophers to concentrate on the rather rare figure of the psychopath, the person who has no concern for any human being other than himself. Moral philosophy has systematically neglected the much more common case: the person whose treatment of a rather narrow range of featherless bipeds is morally impeccable, but who remains indifferent to the suffering of those outside this range, the ones he or she thinks of as pseudohumans.

Plato set things up so that moral philosophers think they have failed unless they convince the rational egotist that he should not be an egotist – convince him by telling him about his true, unfortunately neglected, self. But the rational egotist is not the problem. The problem is the gallant and honorable Serb who sees Muslims as circumcised dogs. It is the brave soldier and good comrade who loves and is loved by his mates, but who thinks of women as dangerous, malevolent whores and bitches.

Plato thought that the way to get people to be nicer to each other was to point out what they all had in common – rationality. But it does little good to point out, to the people I have just described, that many Muslims and women are good at mathematics or engineering or jurisprudence. Resentful young Nazi toughs were quite aware that many Jews were clever and learned, but this only added to the pleasure they took in beating them up. Nor does it do much good to get such people to read Kant, and agree that one should not treat rational agents simply as means. For everything turns on who counts as a fellow human being, as a rational agent in the only relevant sense – the sense in which rational agency is synonymous with membership in *our* moral community.

For most white people, until very recently, most Black people did not so count. For most Christians, up until the seventeenth century or so, most heathen did not so count. For the Nazis, Jews did not so count. For most males in countries in which the average annual income is under four thousand dollars, most females still do not so count. Whenever tribal and national rivalries become important, members of rival tribes and nations will not so count. Kant's account of the respect due to rational agents tells you that you should extend the respect you feel for people like yourself to all featherless bipeds. This is an excellent suggestion, a good formula for secularizing the Christian doctrine of the brotherhood of man. But it has never been backed up by an argument based on neutral premises, and it never will be. Outside the circle of post-Enlightenment European culture, the circle of relatively safe and secure people who have been manipulating each others' sentiments for two hundred years, most people are simply unable to understand why

membership in a biological species is supposed to suffice for membership in a moral community. This is not because they are insufficiently rational. It is, typically, because they live in a world in which it would be just too risky – indeed, would often be insanely dangerous – to let one’s sense of moral community stretch beyond one’s family, clan, or tribe.

To get whites to be nicer to Blacks, males to females, Serbs to Muslims, or straights to gays, to help our species link up into what Rabossi calls a “planetary community” dominated by a culture of human rights, it is of no use whatever to say, with Kant: Notice that what you have in common, your humanity, is more important than these trivial differences. For the people we are trying to convince will rejoin that they notice nothing of the sort. Such people are *morally* offended by the suggestion that they should treat someone who is not kin as if he were a brother, or a nigger as if he were white, or a queer as if he were normal, or an infidel as if she were a believer. They are offended by the suggestion that they treat people whom they do not think of as human as if they were human. When utilitarians tell them that all pleasures and pains felt by members of our biological species are equally relevant to moral deliberation, or when Kantians tell them that the ability to engage in such deliberation is sufficient for membership in the moral community, they are incredulous. They rejoin that these philosophers seem oblivious to blatantly obvious moral distinctions, distinctions any decent person will draw.

This rejoinder is not just a rhetorical device, nor is it in any way irrational. It is heartfelt. The identity of these people, the people whom we should like to convince to join our Eurocentric human rights culture, is bound up with their sense of who they are *not*. Most people – especially people relatively untouched by the European Enlightenment – simply do not think of themselves as, first and foremost, a human being. Instead, they think of themselves as being a certain *good* sort of human being – a sort defined by explicit opposition to a particularly bad sort. It is crucial for their sense of who they are that they are *not* an infidel, *not* a queer, *not* a woman, *not* an untouchable. Just insofar as they are impoverished, and as their lives are perpetually at risk, they have little else than pride in not being what they are not to sustain their self-respect. Starting with the days when the term “human being” was synonymous with “member of our tribe”, we have always thought of human beings in terms of paradigm members of the species. We have contrasted *us*, the *real* humans, with rudimentary, or perverted, or deformed examples of humanity.

We Eurocentric intellectuals like to suggest that we, the paradigm humans, have overcome this primitive parochialism by using that paradigmatic human faculty, reason. So we say that failure to concur with us is due to “prejudice”. Our use of these terms in this way may make us nod in agreement when

Colin McGinn tells us, in the introduction to his recent book, that learning to tell right from wrong is not as hard as learning French. The only obstacles to agreeing with his moral views, McGinn explains, are “prejudice, vested interest and laziness”.

One can see what McGinn means: If, like many of us, you teach students who have been brought up in the shadow of the Holocaust, brought up believing that prejudice against racial or religious groups is a terrible thing, it is not very hard to convert them to standard liberal views about abortion, gay rights, and the like. You may even get them to stop eating animals. All you have to do is convince them that all the arguments on the other side appeal to “morally irrelevant” considerations. You do this by manipulating their sentiments in such a way that they imagine themselves in the shoes of the despised and oppressed. Such students are already so nice that they are eager to define their identity in nonexclusionary terms. The only people they have trouble being nice to are the ones they consider irrational – the religious fundamentalist, the smirking rapist, or the swaggering skinhead.

Producing generations of nice, tolerant, well-off, secure, other-respecting students of this sort in all parts of the world is just what is needed – indeed *all* that is needed – to achieve an Enlightenment utopia. The more youngsters like this we can raise, the stronger and more global our human rights culture will become. But it is not a good idea to encourage these students to label “irrational” the intolerant people they have trouble tolerating. For that Platonic-Kantian epithet suggests that, with only a little more effort, the good and rational part of these other people’s souls could have triumphed over the bad and irrational part. It suggests that we good people know something these bad people do not know, and that it is probably their own silly fault that they do not know it. All they have to do, after all, is to think a little harder, be a little more self-conscious, a little more rational.

But the bad people’s beliefs are not more or less “irrational” than the belief that race, religion, gender, and sexual preference are all morally irrelevant – that these are all trumped by membership in the biological species. As used by moral philosophers like McGinn, the term “irrational behavior” means no more than “behavior of which we disapprove so strongly that our spade is turned when asked *why* we disapprove of it”. It would be better to teach our students that these bad people are no less rational, no less clearheaded, no more prejudiced, than we good people who respect otherness. The bad people’s problem is that they were not so lucky in the circumstances of their upbringing as we were. Instead of treating as irrational all those people out there who are trying to find and kill Salman Rushdie, we should treat them as deprived.

Foundationalists think of these people as deprived of truth, of moral knowledge. But it would be better – more specific, more suggestive of possible

remedies – to think of them as deprived of two more concrete things: security and sympathy. By “security” I mean conditions of life sufficiently risk-free as to make one’s difference from others inessential to one’s self-respect, one’s sense of worth. These conditions have been enjoyed by Americans and Europeans – the people who dreamed up the human rights culture – much more than they have been enjoyed by anyone else. By “sympathy” I mean the sort of reaction that the Athenians had more of after seeing Aeschylus’ *The Persians* than before, the sort that white Americans had more of after reading *Uncle Tom’s Cabin* than before, the sort that we have more of after watching TV programs about the genocide in Bosnia. Security and sympathy go together, for the same reasons that peace and economic productivity go together. The tougher things are, the more you have to be afraid of, the more dangerous your situation, the less you can afford the time or effort to think about what things might be like for people with whom you do not immediately identify. Sentimental education only works on people who can relax long enough to listen.

If Rabossi and I are right in thinking human rights foundationalism outmoded, then Hume is a better advisor than Kant about how we intellectuals can hasten the coming of the Enlightenment utopia for which both men yearned. Among contemporary philosophers, the best advisor seems to me to be Annette Baier. Baier describes Hume as “the woman’s moral philosopher” because Hume held that “corrected (sometimes rule-corrected) sympathy, not law-discerning reason, is the fundamental moral capacity”. Baier would like us to get rid of both the Platonic idea that we have a true self, and the Kantian idea that it is rational to be moral. In aid of this project, she suggests that we think of “trust” rather than “obligation” as the fundamental moral notion. This substitution would mean thinking of the spread of the human rights culture not as a matter of our becoming more aware of the requirements of the moral law, but rather as what Baier calls “a progress of sentiments”. This progress consists in an increasing ability to see the similarities between ourselves and people very unlike us as outweighing the differences. It is the result of what I have been calling “sentimental education”. The relevant similarities are not a matter of sharing a deep true self which instantiates true humanity, but are such little, superficial, similarities as cherishing our parents and our children – similarities that do not interestingly distinguish us from many nonhuman animals.

To accept Baier’s suggestions, however, we should have to overcome our sense that sentiment is too weak a force, and that something stronger is required. This idea that reason is “stronger” than sentiment, that only an insistence on the unconditionality of moral obligation has the power to change human beings for the better, is very persistent. I think that this persistence is due mainly to a semiconscious realization that, if we hand our

hopes for moral progress over to sentiment, we are in effect handing them over to *condescension*. For we shall be relying on those who have the power to change things – people like the rich New England abolitionists, or rich bleeding hearts like Robert Owen and Friedrich Engels – rather than on something that has power over *them*. We shall have to accept the fact that the fate of the women of Bosnia depends on whether TV journalists manage to do for them what Harriet Beecher Stowe did for black slaves, whether these journalists can make us, the audience back in the safe countries, feel that these women are more like us, more like real human beings, than we had realized.

To rely on the suggestions of sentiment rather than on the commands of reason is to think of powerful people gradually ceasing to oppress others, or ceasing to countenance the oppression of others, out of mere niceness, rather than out of obedience to the moral law. But it is revolting to think that our only hope for a decent society consists in softening the self-satisfied hearts of a leisure class. We want moral progress to burst up from below, rather than waiting patiently upon condescension from the top. The residual popularity of Kantian ideas of “unconditional moral obligation” – obligation imposed by deep ahistorical noncontingent forces – seems to me almost entirely due to our abhorrence for the idea that the people on top hold the future in their hands, that everything depends on them, that there is nothing more powerful to which we can appeal against them.

Like everyone else, I too should prefer a bottom-up way of achieving utopia, a quick reversal of fortune which will make the last first. But I do not think this is how utopia will in fact come into being. Nor do I think that our preference for this way lends any support to the idea that the Enlightenment project lies in the depths of every human soul. So why does this preference make us resist the thought that sentimentality may be the best weapon we have? I think Nietzsche gave the right answer to this question: We resist out of resentment. We *resent* the idea that we shall have to wait for the strong to turn their piggy little eyes to the suffering of the weak. We desperately hope that there is something stronger and more powerful that will *hurt* the strong if they do *not* – if not a vengeful God, then a vengeful aroused proletariat, or, at least, a vengeful superego, or, at the very least, the offended majesty of Kant’s tribunal of pure practical reason. The desperate hope for a noncontingent and powerful ally is, according to Nietzsche, the common core of Platonism, of religious insistence on divine omnipotence, and of Kantian moral philosophy.

Nietzsche was, I think, right on the button when he offered this diagnosis. What Santayana called “supernaturalism”, the confusion of ideals and power, is all that lies behind the Kantian claim that it is not only nicer, but more rational, to include strangers within our moral community than to exclude

them from it. If we agree with Nietzsche and Santayana on this point, however, we do not thereby acquire any reason to turn our backs on the Enlightenment project, as Nietzsche did. Nor do we acquire any reason to be sardonically pessimistic about the chances of this project, in the manner of admirers of Nietzsche like Santayana, Ortega, Heidegger, Strauss, and Foucault.

For even though Nietzsche was absolutely right to see Kant's insistence on unconditionality as an expression of resentment, he was absolutely wrong to treat Christianity, and the age of the democratic revolutions, as signs of human degeneration. He and Kant, alas, shared something with each other which neither shared with Harriet Beecher Stowe – something which Iris Murdoch has called “dryness” and which Jacques Derrida has called “phallogocentrism”. The common element in the thought of both men was a desire for purity. This sort of purity consists in being not only autonomous, in command of oneself, but also in having the kind of self-conscious self-sufficiency which Sartre describes as the perfect synthesis of the in-itself and the for-itself. This synthesis could only be attained, Sartre pointed out, if one could rid oneself of everything sticky, slimy, wet, sentimental, and womanish.

Although this desire for virile purity links Plato to Kant, the desire to bring as many different kinds of people as possible into a cosmopolis links Kant to Stowe. Kant is, in the history of moral thinking, a transitional stage between the hopeless attempt to convict Thrasymachus of irrationality and the hopeful attempt to see every new featherless biped who comes along as one of us. Kant's mistake was to think that the only way to have a modest, damped-down, nonfanatical version of Christian brotherhood after letting go of the Christian faith was to revive the themes of pre-Christian philosophical thought. He wanted to make knowledge of a core self do what can be done only by the continual refreshment and re-creation of the self, through interaction with selves as unlike itself as possible.

Kant performed the sort of awkward balancing act required in transitional periods. His project mediated between a dying rationalist tradition and a vision of a new, democratic world, the world of what Rabossi calls “the human rights phenomenon”. With the advent of this phenomenon, Kant's balancing act has become outmoded and irrelevant. We are now in a good position to put aside the last vestiges of the ideas that human beings are distinguished by the capacity to know rather than by the capacities for friendship and intermarriage, distinguished by rigorous rationality rather than by flexible sentimentality. If we do so, we shall have dropped the idea that assured knowledge of a truth about what we have in common is a prerequisite for moral education, as well as the idea of a specifically moral motivation. If we do all these things, we shall see Kant's *Foundations of the Metaphysics of Morals*

as a placeholder for *Uncle Tom's Cabin* – a concession to the expectations of an intellectual epoch in which the quest for quasi-scientific knowledge seemed the only possible response to religious exclusionism.

Unfortunately, many philosophers, especially in the English-speaking world, are still trying to hold on to the Platonic insistence that the principal duty of human beings is to *know*. That insistence was the lifeline to which Kant and Hegel thought we had to cling. Just as German philosophers in the period between Kant and Hegel saw themselves as saving “reason” from Hume, many English-speaking philosophers now see themselves saving reason from Derrida. But with the wisdom of hindsight, and with Baier’s help, we have learned to read Hume not as a dangerously frivolous iconoclast but as the wettest, most flexible, least phallogocentric thinker of the Enlightenment. Someday, I suspect, our descendants may wish that Derrida’s contemporaries had been able to read him not as a frivolous iconoclast, but rather as a sentimental educator, another of “the women’s moral philosophers”.

If one follows Baier’s advice one will not see it as the moral educator’s task to answer the rational egotist’s question “Why should I be moral?” but rather to answer the much more frequently posed question “Why should I care about a stranger, a person who is no kin to me, a person whose habits I find disgusting?”. The traditional answer to the latter question is “Because kinship and custom are morally irrelevant, irrelevant to the obligations imposed by the recognition of membership in the same species”. This has never been very convincing, since it begs the question at issue: whether mere species membership is, in fact, a sufficient surrogate for closer kinship. Furthermore, that answer leaves one wide open to Nietzsche’s discomfiting rejoinder: *That* universalistic notion, Nietzsche will sneer, would only have crossed the mind of a slave – or, perhaps, the mind of an intellectual, a priest whose self-esteem and livelihood both depend on getting the rest of us to accept a sacred, unarguable, unchallengeable paradox.

A better sort of answer is the sort of long, sad, sentimental story which begins “Because this is what it is like to be in her situation – to be far from home, among strangers”, or “Because she might become your daughter-in-law”, or “Because her mother would grieve for her”. Such stories, repeated and varied over the centuries, have induced us, the rich, safe, powerful, people, to tolerate, and even to cherish, powerless people – people whose appearance or habits or beliefs at first seemed an insult to our own moral identity, our sense of the limits of permissible human variation.

To people who, like Plato and Kant, believe in a philosophically ascertainable truth about what it is to be a human being, the good work remains incomplete as long as we have not answered the question “Yes, but am I under a *moral obligation* to her?”. To people like Hume and Baier, it is a mark of intellectual immaturity to raise that question. But we shall go on

asking that question as long as we agree with Plato that it is our ability to know that makes us human.

Plato wrote quite a long time ago, in a time when we intellectuals had to pretend to be successors to the priests, had to pretend to know something rather esoteric. Hume did his best to josh us out of that pretense. Baier, who seems to me both the most original and the most useful of contemporary moral philosophers, is still trying to josh us out of it. I think Baier may eventually succeed, for she has the history of the last two hundred years of moral progress on her side. These two centuries are most easily understood not as a period of deepening understanding of the nature of rationality or of morality, but rather as one in which there occurred an astonishingly rapid progress of sentiments, in which it has become much easier for us to be moved to action by sad and sentimental stories.

This progress has brought us to a moment in human history in which it is plausible for Rabossi to say that the human rights phenomenon is a “fact of the world”. This phenomenon may be just a blip. But it may mark the beginning of a time in which gang rape brings forth as strong a response when it happens to women as when it happens to men, or when it happens to foreigners as when it happens to people like us.

Michael Ignatieff

HUMAN RIGHTS AS IDOLATRY

Source: M. Ignatieff, *Human Rights as Politics and Idolatry*. The Tanner Lectures on Human Values, Princeton University 2000, pp. 320-349.

Fifty years after its proclamation, the Universal Declaration of Human Rights has become the sacred text of what Elie Wiesel has called a “world-wide secular religion”. UN Secretary General Kofi Annan has called the Declaration the “yardstick by which we measure human progress”. Nobel Laureate Nadine Gordimer has described it as “the essential document, the touchstone, the creed of humanity that surely sums up all other creeds directing human behavior.” Human rights has become the major article of faith of a secular culture that fears it believes in nothing else. It has become the lingua franca of global moral thought, as English has become the lingua franca of the global economy.

The question I want to ask about this rhetoric is this: if human rights is a set of beliefs, what does it mean to believe in it? Is it a belief like a faith? Is it a belief like a hope? Or is it something else entirely?

Human rights is misunderstood, I shall argue, if it is seen as a “secular religion”. It is not a creed; it is not a metaphysics. To make it so it to turn it into a species of idolatry: humanism worshipping itself. Elevating the moral and metaphysical claims made on behalf of human rights may be intended to increase its universal appeal. In fact, it has the opposite effect, raising doubts among religious and non-Western groups who do not happen to be in need of Western secular creeds.

It may be tempting to relate the idea of human right to propositions like the following: that human beings have an innate or natural dignity, that they have a natural and intrinsic self-worth, that they are sacred. The problem with these propositions is that they are not clear and they are controversial. They are not clear because they confuse what we wish men and women to be with what we empirically know them to be. On occasion, men and women, for example, behave with inspiring dignity. But that is not the same thing as saying that all human beings have an innate dignity or even a capacity to display it. Because these ideas about dignity, worth ought to be, they are controversial, and because they are controversial they are likely to fragment commitment to the practical responsibilities entailed by human rights instead of strengthening them. Moreover, they are controversial because each version of them must make metaphysical claims about human nature that

are intrinsically contestable. Some people will have no difficulty thinking human beings are sacred, because they happen to believe in the existence of God the Father and believe He created Mankind in His likeness. People who do not believe in God must either reject that human beings are sacred or believe they are sacred on the basis of a secular use of religious metaphor that a religious person will find unconvincing. Foundational claims of this sort divide, and these divisions cannot be resolved in the way humans usually resolve their arguments, by means of discussion and compromise. Far better. I would argue, to forego these kinds of foundational arguments altogether and seek to build support for human rights on the basis of what such rights actually do for human beings.

While the foundations for human rights belief may be contestable, the prudential grounds for believing in human rights protection are much more secure. People may not agree why we have rights, but they can agree that they need them. Such grounding as modern human rights requires. I would argue, is based on what history tells us: that human beings are at risk of their lives if they lack agency; that agency itself requires protection in internationally agreed standards; that these standards should entitle individuals to oppose and resist unjust laws and orders within their own states; and, finally, that when all other remedies have been exhausted, these individuals have the right to appeal to other peoples, nations, and international organizations for assistance in defending their rights. These facts may have been demonstrated most clearly in the catastrophic history of Europe in the twentieth century, but there is no reason in principle why non-European peoples cannot draw the same conclusions from them or why in ages to come the memory of the Holocaust and other such crimes will not move future generations to support the universal application of human rights norms.

A prudential – and historical – justification for human rights need nor make appeal to a philosophical anthropology of human nature. Nor should it seek its ultimate court of appeal in an articulation of the human good. Human rights are an account of what is right, not an account of what is good. People may enjoy full human rights protection and still believe that they lack essential features of a good life. If this is so, shared belief in human rights ought to be compatible with diverging attitudes to what constitutes a good life. A universal regime of human rights protection ought to be compatible with moral pluralism. That is it should be possible to maintain regimes of human rights protection in a wide variety of civilizations, cultures, and religions, each of which happens to disagree with the other as to what a good human life should be. Another way of putting the same thought is that people from different cultures may continue to disagree about what is good, but nevertheless agree about what is insufferably, unarguably wrong.

The universal commitments implied by human rights can only be compatible with a wide variety of ways of living if the universalism implied is self-consciously minimalist. Human rights can command universal assent only as a decidedly “thin” theory of what is right, a definition of the minimal enough to command universal assent. No authority whose power is directly challenged by human rights advocacy must be to ward the victim, and the test of legitimacy – and hence of universality – is what might be termed the victim’s consent. If victims do freely seek human rights protection, rights language applies. The objections of those who engage in oppression can be heard – as to facts about whether oppression is or is not occurring. If victims should count more than the claims of oppressors. [...], victims cannot enjoy unlimited rights in the definition of what constitutes an abuse. A human rights abuse is something more than an inconvenience and raising human rights claims is something more than drawing attention to yourself and your people and engaging in a competitive battle for recognition. Seeking human right redress is distinct from seeking recognition. It is about protecting an essential exercise of human agency. Hence, while it is the victim’s claim of abuse that sets a human rights process moving a victim remains under an obligation to prove that such an abuse [...] occurred, and it must be an abuse, not just an inconvenience.

In these lectures my definition of “minimal” will be focused on agency. By agency, I mean more or less what Isaiah Berlin meant by “negative liberty”, the capacity of each individual to achieve rational intentions without let or hindrance. By rational, I do not necessarily mean sensible or estimable, merely those intentions that do not involve obvious harm to other human beings. Human rights is a language of individual empowerment, and empowerment for individuals is desirable because when individuals have agency they can protect themselves against injustice. Equally, when individuals have agency they can define for themselves what they wish to live and die for. In this sense, to emphasize agency is to empower individuals, but also to impose limits on human rights claims themselves. To protect human agency necessarily requires us to protect all individuals right to chose the good life as they see fit. The usual criticism of this sort of individualism is that it imposes a Western conception of the individual on other cultures. My claim is the reverse that moral individualism protects cultural diversity, for an individualist position must respect the diverse ways individuals choose to have their lives. In this way of thinking, human rights is only a systematic agenda of “negative liberty”, a tool-kit against oppression, a tool-kit that individual agents must be free to use as they see fit within the broader fame of cultural and religious beliefs that they live by.

Why should this “minimalist” justification for human rights be necessary? Why should it matter that we find a way to reconcile human rights

universalism with cultural and moral pluralism? Since 1945 human rights universalism with cultural and moral pluralism? Since 1945 human rights language has become a source of power and authority. Inevitably, power invites challenge. Human rights doctrine is now so powerful but also so confused, so unthinkingly imperialist in its claims that it has begun to invite serious intellectual attack on the legitimacy of its standards and claims to universality are justified, or whether it is just another cunning exercise in Western moral imperialism.

There are three distinct sources of the cultural challenge to the universality of human rights. Two come from outside the West: one from resurgent Islam, the second from East Asia; and the third from within the West itself. Each of these is independent of the others; but taken together, they have raised substantial question about the cross-cultural validity and hence legitimacy of human rights norms.

The challenge from Islam has been there from the beginning. When the Universal Declaration was being drafted in 1947, the Saudi Arabian delegation raised particular objection to Article 16, relating to free marriage choice, and Article 18, relating to freedom of religion. On the question of marriage, the Saudi delegate to the committee examining the draft of the Universal Declaration made an argument that has resonated ever since through Islamic encounters with Western human rights:

“The authors of the draft declaration had, for the most part, taken into consideration only the standards recognized by western civilization and had ignored more ancient civilizations which were past the experimental stage, and the institutions of which, for example, marriage had proved their wisdom through the centuries. It was not for the Committee to proclaim the superiority of one civilization over all other or to establish uniform standards for all other or to establish uniform standards for all countries of the world.”

This was simultaneously a defence of the Islamic faith from Western secular standards and a defence of patriarchal authority. The Saudi delegate in effect argued that exchange and control of women is the very *raison d'être* of traditional cultures and that the restriction of female choice in marriage is central to the maintenance of patriarchal property relations. On the basis of these objections to Articles 16 and 18, the Saudi delegation refused to ratify the Declaration.

There have been recurrent attempts, including Islamic Declarations of Human Rights, to reconcile Islamic and Western traditions by putting more emphasis on family duty and religious devotion and by drawing on distinctively Islamic traditions of religious and ethnic toleration. But these attempts at syncretic fusion between Islam and the West have never been

entirely successful agreement is reached by actually trading away what is vital to each side. The resulting consensus is bland and unconvincing.

Since the 1970s the Islamic relation to human rights has grown more hostile. Ever since the Islamic Revolution in Iran rose up against the failed and tyrannical modernization of the shah, Islamic figures have questioned the universal writ of Western human rights norms. They have pointed out that the Western separation of church and state, secular and religious authority, is alien to the jurisprudence and political thought of the Islamic tradition. The freedoms articulated in Articles 18 and 19 of the Universal Declaration make no sense within the theocratic bias of Islamic political thought. Likewise the right to marry and found family, to freely choose one's partner, is a direct challenge to the forces in Islamic society that enforce the family choice of spouse, polygamy, and the keeping of women in pudrah. In Islamic eyes, universalizing rights discourse implies a sovereign and discrete individual, which is blasphemous from the perspective of the Holy Koran.

In assessing this challenge, the West has made the mistake of assuming that fundamentalism and Islam are synonymous. Islam of course speaks in many voices and variants, some more anti-Western than others, some more theocratic than others. National contexts may be much more important in defining local Islamic reactions to Western values than broad theological principles in the religion as a whole. Where Islamic societies have managed to modernize, create a middle-class, and enter the global economy – Egypt and Tunisia being examples – a constituency in favor of basic human rights can emerge. Egypt, for instance, is in the process of passing legislation to give women the right to divorce; and although dialogue with Egypt's religious authorities has been difficult and the law has made compromises with Islamic conceptions of female duty that human rights activists may find objectionable, women's rights will be substantially enhanced by the new legislation. In Algeria, where a secularizing elite who rode to power after a bloody anticolonial revolution, led by Islamic militants, has taken an anti-Western, anti-human rights direction. And in Afghanistan, where the state itself has collapsed and Western arms transfers have only aggravated the nation's decline, the Taliban movement has arisen explicitly rejecting all Western human rights standards. Again the critical variant is not Islam itself – a protean, many-featured religion – but the faceful course of Western policy and economic globalization itself.

But there is another Western reaction to the Islamic challenge that is equally ill-conceived. There is a style of cultural relativism that concedes too much to the Islamic challenge and in the process trades, away the universality of human rights standards. For the last twenty years, an influential current in Western political opinion has faced the challenge to the universality of human rights language by maintaining, in the words of Adamantia Pollis

and Peter Schwab. That human rights are a “Western construct of limited applicability” a twentieth-century fiction, dependent on the rights traditions of America, Britain, and France and therefore inapplicable in cultures that do not share this historical matrix of liberal individualism.

This current of thought has complicated intellectual origins: the Marxist critique of the rights of man, the anthropological critique of the arrogance of late nineteenth century bourgeois imperialism, and the postmodernist critique of the universalizing pretension of European Enlightenment thought. All of these tendencies have come together in a critique of Western intellectual hegemony as expressed in the language of human rights. Human rights is seen as an exercise in the cunning of Western reason: no longer able to dominate the world through direct imperial role, Western reason masks its own will to power in the impartial, universalizing language of human rights and seeks to impose its own narrow agenda on a plethora of world cultures who do not actually share the West’s conception of individuality, selfhood, agency, or freedom. This postmodernist relativism began as an intellectual fashion in Western campuses, but it has seeped slowly into Western human rights practice, causing all activists to pause and consider the intellectual warrant for the universality they once took for granted.

This challenge within has been amplified by a challenge from without: the critique of Western human rights standards by some political leaders in the tiger economies of East Asia. While the Islamic challenge to human rights can be explained in part by the failure of Islamic societies to benefit from the global economy, the Asian challenge is a response to Asia’s staggering economic success. Malaysia’s leaders, for example, feel confident enough to reject Western ideas of democracy and individual rights in favor of an Asian route to development and prosperity – which depends on authoritarian government and authoritarian family structures – because Malaysia has enjoyed such demonstrable economic success in the 1980s and 1990s. The same can be said about Singapore, which combined political authoritarianism with market capitalism in a spectacularly successful synthesis. Singapore’s Lee Kuan Yew has been quoted as saying that Asians have “little doubt that a society with communitarian values where the interest of society take precedence over that of the individual suits them better than the individualism of America”. The Singaporean model cites rising divorce and crime rates in the West in order to argue that Western individualism is subversive of the order necessary for the enjoyment of rights themselves. An “Asian model” puts community and family ahead of individual rights and order ahead of democracy and individual freedom. In reality, of course, there is no single Asian model: each of these societies has modernized in different ways, within different political traditions, and within differing degrees of political and market freedom. Yet it has proven useful for Asian

authoritarians to argue that they represent a civilizational challenge to the hegemony of Western models.

Let it be conceded at once that these three separate challenges to the universality of human rights discourse – two from without, one from within the Western tradition – have had a productive impact. They have forced human rights activists to question their assumptions, to rethink the history of their commitments, and to realize just how complicated intercultural dialogue on rights questions actually becomes when all cultures enter the dialogue on grounds of moral and intellectual equality.

Having said this, however, I would argue that Western defenders of human rights have traded too much away. In the desire to find common ground with Islamic and Asian positions and to purge their own discourse of the imperial legacies uncovered by the postmodernist critique, Western defenders of human rights norms risk compromising the very universality they ought to be defending. They also risk rewriting their own history.

Many traditions not just Western ones, were represented at the drafting – the Chinese, Middle Eastern Christian, but also Marxist Hindu, Latin American, Islamic – and the drafting committee members explicitly construed their task not as a simple ratification of Western convictions, but as an attempt to define a delimited range of moral universals from within their very different religious, political, ethnic, and philosophic backgrounds. This helps to explain why the document makes no reference to God in its preamble. The Communist delegations would have vetoed any such reference and the competing religious traditions could not have agreed on the wording of the terms that would make human rights derive from our common existence as God's creatures. Hence the secular ground of the document is not a sign of European cultural domination so much as a pragmatic common denominator designed to make agreement possible across the range of divergent cultural and political viewpoints.

It remains true of course that Western inspirations – and Western drafters – played the predominant role in the drafting of the document. Even so, their mood in 1947 was anything but triumphalist. They were aware, first of all, that the age of colonial emancipation was at hand. Indian independence was proclaimed while the language of the Declaration was being finalised. Although the Declaration does not specifically endorse self-determination, its drafters clearly foresaw the coming tide of struggles for national independence. Because it does proclaim the right of people to self-government and freedom of speech and religion, it also concedes the right of colonial peoples to construe moral universals in a language rooted in their own traditions. Whatever failing the drafters of the Declaration may be accused of, unexamined Western triumphalism is not one of them. Key

drafters like Rene Cassin of France and John Humphrey of Canada knew the knell had sounded on two centuries of Western colonialism.

They also knew that the Declaration was not so much a proclamation of the superiority of European civilization as an attempt to salvage the remains of its Enlightenment heritage from the barbarism of a world war just concluded. The Universal Declaration is written in full awareness of Auschwitz and dawning awareness of Kolyma. A consciousness of European barbarism is built into the very language of the Declaration's preamble: "whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind..."

The Declaration may still be a child of the Enlightenment, but it was written when faith in the Enlightenment faced its deepest crisis of confidence. In this sense, human rights is not so much the declaration of the superiority of European civilization as a warning by Europeans that the rest of the world should not seek to reproduce its mistakes. The chief of these was the idolatry of the nation state, causing individuals to forget the higher law commanding them to disobey unjust orders. The abandonment of this moral heritage of natural law, the surrender of individual to collectivism, the drafters believed, led to the catastrophe of Nazi and Stalinist oppression. Unless the disastrous heritage of European collectivism is kept in mind, as the framing experience in the drafting of the Universal Declaration, its individualism will appear to be nothing more than the ratification of Western bourgeois capitalist prejudice. In fact, it was much more, a studied attempt to reinvent the European natural law tradition in order to safeguard individual agency against the totalitarian state.

It remains true, therefore, that the core of the Universal Declaration is the moral individualism for which it is so much reproached by non-Western societies. It is this individualism for which Western activists have become most apologetic, believing that it should be tempered by greater emphasis on social duties and responsibilities to the community. Human rights, it is argued, can only recover universal appeal if it softens its individualistic bias and puts greater emphasis on those parts of the Universal Declaration, especially Article 29, which says that "everyone has duties to the community in which alone the free and full development of his personality is possible." This desire to water down the individualism of rights discourse is driven by a desire both to make human rights more palatable to less individualistic cultures in the non-Western world and also to respond to disquiet among Western communitarians at the supposedly corrosive impact of individualistic values on Western social cohesion.

But this tack mistakes what rights actually are and misunderstands why they have proven attractive to millions of people raised in non-Western traditions. Rights are only meaningful if they confer entitlements and

immunities on individuals, they only have force and bite if they can be enforced against institutions like the family, the state, and the church. This remains true even when the rights in question are collective or group rights. Some of these rights – like the right to speak your own language or practice your own religion – are essential preconditions for the exercise of individual rights. The right to speak a language of your choice won't mean very much if the language has died out. For this reason, group rights are needed to protect individual rights. But the ultimate purpose and justification of group rights is not the protection of the group as such, but the protection of the individuals to leave a religious community if they choose.

Rights are inescapably political because they tacitly imply a conflict between a rights holder and a rights "withholder". Rights presume an individual rights holder and some authority against which the rights holder can make claims. To confuse right with aspirations, and rights conventions with syncretic syntheses of world values, is to wish away the conflicts that define the very content of rights. There will always be conflicts between individuals and groups, and rights exist to protect individuals. Rights language cannot be parsed or translated into a non-individualistic, communitarian framework. It presumes moral individualism and is nonsensical outside that assumption.

Moreover, it is precisely this individualism that renders it attractive to non-Western peoples and explains why human rights has become a global movement. Human rights is the only universally available moral vernacular that validates the claims of women and children against the oppression they experience in patriarchal and tribal societies; it is the only vernacular that enables dependent persons to perceive themselves as moral agents and to act against practices – arranged marriages, purdah, civic disenfranchisement, genital mutilation, domestic slavery, and so on – that are ratified by the weight and authority of their cultures. These agents seek our human rights protection, not because it ratifies their culture, but precisely because it legitimizes their protests against its oppression.

If this is so, then we need to rethink what it means when we say that rights are universal. Rights doctrines arouse powerful opposition because they challenge sources of power: religions, family structures, authoritarian states and tribes. It would be a hopeless task to attempt to persuade these holders of power of the universal validity of rights doctrines, since if these doctrines prevailed they would necessarily abridge and constrain their exercise of authority. Thus universality cannot imply universal assent, since in a world of unequal power, the only propositions that the powerful and powerless would agree on would be entirely toothless and anodyne ones. Rights are universal because they define the universal interests of the powerless, namely that power be exercised over them in ways that respect their autonomy as agents. In this sense, human rights is a revolutionary creed, since it makes a radical

demand of all human groups, that they serve the interests of the individuals who compose them. This then implies that human groups should be, insofar as possible, consensual, or at least that they should respect an individual's right to exit when the constraints of the group become unbearable.

The idea that groups should respect an individual's right of exit is not easy to reconcile with what groups actually are. Most human groups – the family, for example – are blood groups, based on inherited kinship or ethnic ties. People do not choose to be born into them and do not leave them easily, since these collectivities provide the frame of meaning within which individual life makes sense. This is as true in modern secular societies as it is in religious or traditional societies. Group rights doctrines exist to safeguard the collective rights – for example, to language – that make individual agency meaningful and valuable. But individual and group interests inevitably conflict. Human rights exist to adjudicate these conflicts, to define the irreducible minimum beyond which group and collective claims must not go in constraining the lives of individuals.

Even so, defending individual agency does not necessarily entail adopting Western ways of life. Believing in your right not to be tortured or abused need not mean adopting Western dress, speaking Western languages, or approving of the Western way of life. To seek human rights protection is not to change your civilization, it is merely to avail yourself of the protections of “negative liberty”.

Human rights doesn't have to delegitimize traditional culture a whole. The women in Kabul who come to Western human rights agencies seeking their protection from the Taliban militias do not want to cease being Muslim wives and mothers, they want to combine respect for their traditions with the right to an education or professional health care provided by a woman. They hope the agencies will defend them against being beaten and persecuted for claiming such rights.

The legitimacy of these claims to rights protection depends entirely on the fact that the people who are making them are the victims themselves. In Pakistan, it is local human rights groups, not international agencies, who are leading the fight to defend poor country women from “honor killings”, being burned alive when they disobey their husbands; it is local Islamic women who are criticizing the grotesque distortion of Islamic teaching that provides justification for such abuse. Human rights has gone global, but it has also gone local because it empowers the powerless, gives voice to the voiceless.

It is simply not the case, as Islamic and Asian critics contend, that human rights forces the Western way of life upon their societies. For all its individualism, human rights does not require adherents to jettison their other cultural attachments. As Jack Donnelly argues human rights “assumes that people probably are best suited and in any case are entitled, to choose

the good life for themselves.” What the Declaration does mandate is the right to choose, and specifically the right to choose, and specifically the right to *leave* when choice is denied. The global diffusion of rights language would never have occurred had these not been authentically attractive propositions to millions of people, especially women, in theocratic, traditional, or patriarchal societies.

Critics of this view of human rights diffusion would argue that it is too “volontaristic” it implies that traditional societies are free to choose the manner of their insertion into the global economy, free to choose which Western values to adapt and which to reject. In reality, these critics argue, people are not free to choose. Economic globalization steam-tools over local economies, and moral globalization – human rights – follows behind as the legitimizing ideology of global capitalism. “Given the class interest of the internationalist class carrying our this agenda”, Kenneth Anderson writes, “the claim to universalism is a sham. Universalism is more globalism and a globalism, moreover, whose key terms are established by capital”. This idea that human rights is the moral arm of global capitalism falsifies the insurgent nature of the relation between human rights activism and the global corporation. The NGO activists who devote their lives to challenging the employment practices of global giants like Nike and Shell would be astonished to discover that their human rights agenda has been serving the interests of global capital all along. Anderson conflates globalism and internationalism and mixes up two classes, the free market globalists and the human rights internationalists, whose interests and values are in conflict.

While free markets do encourage the emergence of assertively selfinterested individuals, these individuals often want human rights precisely to protect them from the indignities and indecencies of the market. Moreover, the dignity such individuals are seeking to protect is not necessarily derived from Western models. Anderson writes as if human rights is always imposed from the top down by an international elite bent on “saving the world”. He ignores the extent to which the demand for human rights is issuing from the bottom up.

The test of human rights legitimacy, therefore, is take up from the bottom, from the powerless. Instead of apologizing for the individualism of Western human rights standards, activists need to attend to another problem, which is how to create conditions in which individuals are genuinely free to avail themselves of such rights as they want. Increasing the freedom of people to exercise their rights depends on close cultural understanding of the frameworks that often constrain choice. The much debated issue of genital mutilation illustrates this point. What may appear as mutilation in Western eyes is simply the price of tribal and family belonging to women; if they fail to submit to the ritual, they no longer have a place within their

world. Choosing to exercise their rights, therefore, may result in a social ostracism that leaves them no option but to leave their tribe and make for the city. Human rights advocates have to be aware of what it really means for a woman to abandon traditional practices. But, equally, activists have a duty to inform women of the medical costs and consequences of these practices and seek, as a first step, to make them less dangerous for woman who wish to undergo them. Finally, it is for woman themselves to decide how to make the adjudication between tribal and Western wisdom. The criteria of informed consent that regulate patient choice in Western societies are equally applicable in non-Western settings, and human rights activists are under an obligation, inherent in human rights discourse itself, to respect the autonomy and decision-making power of agents. An activist's proper role is not to make the choices for the women in question but to enlarge their sense of what the choices entail. In traditional societies, harmful practices can only be abandoned when the whole community decides to do so. Otherwise, individuals who decide on their own face ostracism and worse. Consent in these cases means collective or group consent.

Sensitivity to the real constraints that limit individual freedom in different cultures is not the same thing as deferring to these cultures. It does not mean abandoning universality. It simply means facing up to a demanding intercultural dialogue in which all parties come to that table under common expectations of being treated as moral equals. Traditional society is oppressive to individuals within it not because it fails to afford a Western way of life, but because it does not accord them a right to speak and be heard. Western activists have no right to overturn traditional cultural practice, provided that practice continues to receive the assent of its members. Outsiders have the right to argue – not to insist – that all individuals within the group have a right to express their opinion about a tradition's continuance and to exit freely if they cannot give their assent. Human rights is universal not as a vernacular of cultural prescription but as a language of moral empowerment. Its role is not in defining the content of culture but in trying to enfranchise all agents so that they can freely shape that content.

Empowerment and freedom are not value-neutral terms: they have an unquestionably individualistic bias, and traditional and authoritarian societies will resist these values because they aim a dart at the very premises that keep patriarchy and authoritarianism in place. But how people use their freedom is up to them, and there is no reason to suppose that if they adopt the Western value of freedom they will give it Western content. Furthermore, it is up to victims, not outside observers, to define for themselves whether their freedom is in jeopardy. It is entirely possible that people whom Western observers might suppose are in oppressed or subordinate positions will seek to maintain the traditions and patterns of authority that keep them in this

subjection. Women are placed in such subordinate positions in many of the world's religions, including ultra Orthodox Judaism and certain forms of Islam. Some will come to resent these positions, others will not, and those who do not cannot be supposed to be trapped inside some form of false consciousness that it is the business of human rights activism to unlock. In-ded adherents may believe that the forms of participation provided by their religious tradition enable them to enjoy forms of belonging that are more valuable to them than the negative freedom of belonging that are more valuable to them than the negative freedom of private agency. What may be an abuse of human rights to a human rights activist may not be seen as such by those whom human rights activist may not be seen a such by those whom human rights activists construe to be victims. This is why consent ought to be the defining constraint of human rights interventions in all areas where human life itself or gross and irreparable physical harm is not stake.

Human rights discourse is universal precisely because it supposes that there are many differing visions of a good human life, that the West's is only one of them, and that, provided agents have a degree of freedom in the choice of that life, they should be left to give it the content that accords with their history and traditions.

To sum up at this point, Western human rights activists have surrendered too much to the cultural relativist challenge. Relativism is the invariable alibi of tyranny. There is no reason to apologize for the moral individualism at the heart of human rights discourse. It is precisely this that makes it attractive to dependent groups suffering exploration or oppression. There is no reason, either, to think of freedom as a uniquely Western values on them. For it contradicts the meaning of freedom itself to attempt to define for others the use they make of it.

The best way to face the cultural challenge to human rights coming from Asia, Islam, and Western postmodernism – is to admit its truth: rights discourse is individualistic. But that is precisely why it has proven an effective remedy against tyranny, and why it ha proven attractive to people from very differing cultures. The others advantage of liberal individualism is that it is a distinctly “thin” theory of the human good: it defines and proscribes the “negative”, i.e., those restraints and injustices that make any human life, however conceived, impossible, at the same time, it does not prescribe the “positive” range of good lives that human beings can lead Human rights is morally universal because it says that all human beings need certain specific freedoms “from”, it does not go on to define what their freedom “to” should consist in. In this sense it is a less prescriptive universalism than many world religions: it articulates standards of human decency without violating tights of cultural autonomy.

Certainly, as Will Kymlicka and many others have pointed out there are some conditions of life – the right to speak a language, for example – that cannot be protected by individual rights alone. A linguistic minority needs to have the right to educate its children in the language in order for the linguistic community to survive and it can only do this if the larger community recognizes its collective right to do balanced with individual rights guarantees, so that individuals do not end up being denied substantive freedoms for the sake of the group. This is not an easy matter, as any English-speaking Montrealer with experience of Quebec language legislation will tell you. But it can be done, provided individuals are not forced to educate their children in a manner that is not freely chosen. Even granting therefore, that groups need collective rights in order to protect shared inheritances, these rights themselves risk becoming a source of collective tyranny unless individuals retain a right of appeal. To repeat, it is precisely the individualism of human rights that makes it a valuable bulwark against even the well-intentioned tyranny of linguistic or national groups.

The conflict over the universality of human rights norms is a political struggle. It pits traditional, religious, and authoritarian sources of power against human rights advocates, many of them indigenous to the culture itself, who challenge these sources of power in the name of those who find themselves excluded and oppressed. Those who seek human rights protection are not traitors to their culture, and they do not necessarily approve of other Western values. What they seek is protection of their rights as individuals within their own culture. Opposition to their demands invariably takes the form of a defense of the culture as a whole against intrusive forms of Western cultural imperialism, when in reality this relativist case is actually a defense of local political or patriarchal power. Human rights intervention is warranted not because traditional, patriarchal, or religious authority is primitive, backward, or uncivilized by our standards, but because it oppresses specific individuals who themselves seek protection against these abuses. The warrant for intervention derives from their demands not from ours.

Whereas the cultural crisis of human rights has been about the intercultural validity of human rights norms, the spiritual crisis of human rights concerns the ultimate metaphysical grounds for these norms. Why do human beings have rights in the first place? What is it about the human species and the human individual that entitles them to rights? If there is something special about the human person, why is this inviolability so often honored in the breach rather than in the observance? If human beings are special, why exactly do we treat each other so badly?

Human rights has become a secular article of faith. Yet the faith's metaphysical underpinnings are anything but clear. Article 1 of the Universal

Declaration cuts short all justification and simply declares: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The Universal Declaration enunciates rights; it doesn't explain why people have them.

The drafting history of the Declaration makes clear that this silence was deliberate. When Eleanor Roosevelt first convened a drafting committee in her Washington Square apartment in February 1947, a Chinese Confucian and a Lebanese Thomist got into a stubborn argument about the philosophical and metaphysical bases of rights. Mrs. Roosevelt concluded that the only way forward lay in West and East agreeing to disagree.

There is thus a deliberate silence at the heart of human rights culture. Instead of a substantive set of justifications explaining why human rights are universal, instead of reasons that go back to first principles – as in Thomas Jefferson's unforgettable preamble to the American Declaration of Independence – the Universal Declaration of Human Rights simply takes the existence of rights for granted and proceeds to their elaboration.

Pragmatic silence on ultimate questions has made it easier for a global human rights culture to emerge. As the philosopher Charles Taylor puts it, the concept of human rights "could travel better if separated from some of its underlying justifications." The Declaration's vaunted "universality" is as much a testament to what the drafters kept and of it as to what they put *in*.

The Declaration envisioned a world where, if human beings found their civil and political rights as citizens were taken away, they could still appeal for protection on the basis of their rights as human beings. Beneath the civil and political, in other words, stood the natural. But what exactly is the relationship between human rights and natural rights, or between the human and the natural? What is naturally human?

Human rights is supposed to formalize in juridical terms the natural duties of human conscience in cases where civil and political obligations either prove insufficient to prevent abuses or have disintegrated altogether. Human rights doctrines appear to assume that if the punishments and incentives of governed societies are taken away, human rights norms will remind people of the requirements of natural decency. But this assumes that the capacity to behave decently is a natural attribute. Where is the empirical evidence that this is the case? A more likely assumption is that human morality in general and human rights in particular represent a systematic attempt by human communities to correct and counteract what while we may be naturally disposed, by genetics and history, to care for those close to us – our children, our family, our immediate relations, and possibly those who share our ethnic or religious origins – we may be naturally indifferent to all, others outside this circle. Historically, human rights doctrines emerged

to counteract this tendency toward particularist and exclusivist ethnical circles of concern and care. As Avishai Margalit has put it “we need morality to overcome our natural indifference for others”.

The history immediately antecedent to the Universal Declaration of Human Rights provides abundant evidence of the natural indifference of human beings. The Holocaust showed up a the terrible insufficiency of all the supposedly natural human attributes of pity and care in situations where these duties were no longer enforced by law. Hannah Arendt argued in *Origins of Totalitarianism* that when Jewish citizens of European states were deprived of their civil and political rights, when, finally they had been stripped naked and could only appeal to their captors as plain, bare human beings, they found that their nakedness did not even awaken the pity of their tormentors. As Arendt put it “it seems that a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow man.” The Universal Declaration set out to reestablish the idea of human rights at the precise historical moment in which they had been shown to have had no foundation whatever in natural human attributes.

All that one can say about this paradox is that it defines the divided consciousness with which we have lived with the idea of human rights ever since. We defend human rights as moral universals, in full awareness that they must counteract rather than reflect natural human propensities.

So we cannot build a foundation for human rights on natural human pity or solidarity. For the idea that these propensities are natural implies that they are innate and universally distributed among individuals. The reality – as the Holocaust and countless other examples of atrocity make clear – is otherwise. We must work out a basis for belief in human rights on the basis of human beings as they are, working on assumptions about the worst we can do, instead of hopeful expectations of the best. In other words, we do not build foundations on human nature but on human history, on what we know is likely to happen when human beings do not have the protection of rights. We build on the testimony of fear, rather than on the expectations of hope. This, it seems to me, is how human rights consciousness has been built since the Holocaust. Human rights is one of the achievements of what Judith Shklar once called “the liberalism of fear”. Likewise, in 1959, Isaiah Berlin argued that in the post-Holocaust era awareness of the necessity of a moral law is no longer sustained by belief in reason but by the memory of horror. “Because these rules of natural law were flouted, we have been forced to become conscious of them”. And what, in his view, were these rules?

“We know of no court, no authority, which could, by means of some recognized process, allow men to bear false witness, or torture freely or slaughter fellow men for pleasure, we cannot conceive of getting these universal principles or rules repealed or altered.”

The Holocaust laid bare what the world looked like when pure tyranny was given free rein to exploit natural human cruelty. Without the Holocaust then, no Declaration. Because of the Holocaust demonstrates both the prudential necessity of human rights and their ultimate fragility.

If one end product of Western rationalism is the exterminatory nihilism of the Nazis, then any ethics that takes only reason for its guide is bound to be powerless when human reason begins to rationalize its own exterminatory projects. If reason rationalized the Holocaust, then only an ethics deriving its ultimate authority from a higher source than reason can prevent a Holocaust in the future. So the Holocaust accuses not just Western nihilism, but Western humanism itself and puts human rights in the dock. For human rights is a secular humanism: an ethics ungrounded in divine or ultimate sanction and based only in human prudence.

It is unsurprising, therefore, that in the wake of the Holocaust human rights should face an enduring intellectual challenge from a range of religious sources, Catholic, Protestant, and Jewish all of whom make the same essential point: that if the purpose of human use of power, then the only authority capable of doing so must lie beyond humanity itself, in some religious source of authority.

Michael Perry, a legal philosopher at Wake Forest University, argues, for example, that the idea of human rights is “ineliminably religious” Unless you think, he says that human beings are sacred, there seems no persuasive reason to believe that their dignity should be protected with rights. Only a religious conception of human beings as the handiwork of God can sustain a notion that individuals should have inviolable natural rights. Max Stackhouse, a Princeton theologian, argues that the idea of human rights has to be grounded in the idea of God, or at least the idea of “transcendent moral laws.” Human rights needs a theology in order to explain in the first place, why human beings have “the right to have rights”.

Secular humanism may indeed be putting human beings on a pedestal when they should be down in the mud where they belong. If human rights exists to define and uphold limits to the abuse of human beings, then its underlying philosophy had better define humanity as a beast in need of restraint. Instead human rights makes humanity the measure of all things, and from a religious point of view this is a form of idolatry. Humanist idolatry is dangerous for three evident reasons: first, because it puts the demands, needs, and rights of the human species above any other and therefore risks legitimizing an entirely instrumental relation to or her species; second, because it authorizes the same instrumental and exploitative relationship to nature and the environment; and finally, because it lacks the metaphysical claims necessary to limit the human use of human life, in such instances as abortion or medical experimentation.

What, exactly, is so sacred about human beings? Why, exactly, do we think that ordinary human beings, in all their radical heterogeneity of race, creed, education, and [arrainment], can be viewed as possessing the same equal and inalienable rights? If idolatry consists in elevating any purely human principle into an unquestioned absolute, surely human rights looks like an idolatry. To be sure, humanists do not literally worship human rights, but we use the language to say that there is something inviolate about the dignity of each human being. This is a worshipful attitude. What is implied in the metaphor of worship is a cultlike credulity, an inability to subject humanist premises to the same critical inquiry to which humanist rationalism subjects religious belief. The core of the charge is that humanism is simply inconsistent. It criticizes all forms of worship, except its own.

To this humanists must reply, if they wish to be consistent, that there is nothing sacred about human beings, nothing entitled to worship or ultimate respect. All that can be said about human rights is that they are necessary to protect individuals from violence and abuse and if it is asked why, the only possible answer is historical. Human rights is the language through which individuals have created a defense of their autonomy against the oppression of religion, state, family, and group.

Conceivably, other languages for the defense of human beings could be invented, but this one is what is historically available to human beings here and now. Moreover, a humanist is required to add, human rights language is not an ultimate trump card in moral argument. No human language can have such powers. Indeed, rights conflicts and their adjudication involve intensely difficult tradeoffs and compromises. This is precisely why rights are not sacred, no are those who hold them. To be a rights-bearer is not to hold some sacred inviolability, but to commit oneself to live in a community where rights conflicts are adjudicated through persuasion, rather than violence. With the idea of rights goes a commitment to respect the reasoned commitments of others and to submit disputes to adjudication. The fundamental moral commitment entailed by rights is not to respect, and certainly not to worship. It is to deliberation. The minimum condition for deliberating with another human being is not necessarily respect, merely negative toleration, a willingness to remain in the same room, listening to claims one doesn't like to hear, for the purpose of finding compromises that will keep conflicting claims from ending in irreparable harm to either side. That is what a shared commitment to human rights entails.

This reply is not likely to satisfy a religious person. From a religious perspective, to believe, as humanists do, that nothing is sacred – although what others hold to be sacred is entitled to protection – is to remove any restraining limits to the exercise of human power.

The idea of the sacred – the idea that here is some realm that is beyond human knowing or representation, some Mount Sinai forever withheld from human sight – is supposed to impose a limit on the human will to power. Even as metaphor – divorced from any metaphysical claim – the sacred connotes the idea that there must be a moral line that no human being can cross. The ideology of human rights is clearly an attempt to define that line. But from a religious point of view, any attempt to create any strictly human limit to the exercise of human power is bound to be self-defeating. Without the idea of the nonhuman divine, without the idea of the sacred and the idea of impassable limits, both to reason and power, there can be no viable protection of our species from ourselves. The dispute comes down to this the religious side believes that only if humans get down on their knees can they save themselves from their own destructiveness, a humanist believes that they will only do so if they stand up on their own two feet.

This is an old dispute, and each side has powerful historical arguments. The strongest aspect of the religious case is the empirical evidence that men and women, moved by religious conviction, have been able to stand up against tyranny when those without such convictions did not. In the Soviet labor camps, religious people, from convictions as various as Judaism and Seventh Day Adventism, gave inspiring examples of indestructible dignity. Similarly, it was religious conviction that inspired some Catholic priests and laypersons to hide Jews in wartime Poland. Finally, the black movement for civil rights in the United States is incomprehensible unless we remember the role of religious leadership, metaphors, and language in inspiring individuals to risk their lives for the right to vote. These examples carry more weight than metaphysical argument. But secularism has its heroes too. The lyric poet Anna Akhmatova's writing gave voice to the moments of all the women like herself who lost their husbands and children in the Gulag. Primo Levi, a secular Jew and a scientist, gave witness on behalf of those who perished at Auschwitz. His work is exemplary testimony to the capacity of secular reason to describe the enormity of evil. Moral courage draws its resources where it can, and both secular and religious sources have inspired heroes.

If we turn from the sources of heroism to the sources of villainy, the religious cannot claim that the fear of God has prevented humans from doing their worst. The idea that a sense of the sacred is necessary to keep humans moral stands on weak empirical grounds, to say the least. Indeed, sacred purposes have often been pressed into the service of iniquity. Religion after all is foundational doctrine, making claims that it regards as incontestable. The belief that one possesses unassailable grounds of faith has been one of the most powerful justifications for torture, forced conversion, the condemnation of heresy, and the burning of heretics. Foundational beliefs,

unmixed with humility, have been a longstanding menace to the human rights of ordinary individuals.

On the other hand, it is hard to deny the force of the religious counterargument – that the abominations of the twentieth century were an expression of secular hubris, of human power intoxicated by the means at its disposal and unrestrained by any sense of ethical limit. To the extent that history is a relevant witness in metaphysical matters, its testimony corroborates neither the believer nor the unbeliever. Before radical evil, both secular humanism and ancient belief have been either utterly helpless victims or enthusiastic accomplices.

So how are we to conclude? A humanist will point out that religions make anthropomorphic claims about the identity of their God while simultaneously claiming that He cannot be represented. This contradiction is idolatrous, but it may be a necessary idolatry: believers must worship something. Their devotions must fall upon some image or object that can give a focus to their prayers. Hence the unavoidable necessity of graven images or representations of divinity in most of the world religions. Idolatry may therefore be a necessary component on any belief. If this is true of religion, it may also be true of humanism. We may not be entitled to worship our species, but our commitment to protect it needs sustaining by some faith in our species. Such faith, needless to say, can only be conditional, reasserted in the face of the evidence that we are, upon occasion, worse than swine.

The idea of idolatry calls all believers, secular or religious, to sobriety; it asks them to subject their own enthusiasm, their overflowing sense of righteousness or correctness, to a continual scrutiny. Religious persons aware of the dangers of idolatry scrutinize their worship for signs of pride, zeal, or intolerance toward other believers; nonbelievers ought to scrutinize their beliefs for signs of Voltairian contempt for the convictions of others. Such contempt presumes that human reason is capable of assessing and dismissing the truth content of a competing form of religious belief. For both a religious and a secular person, the metaphor of idolatry acts as a restraint against both credulity and contempt. For secular unbelievers radically misread the story of Exodus if they think it is a warning merely against religious credulity. Surely it is the great mythic warning merely against religious credulity. Surely it is the great mythic warning against human fallibility, both secular and religious, our weakness for idols of our own making, our inability to cease worshipping the purely human. A humanism that worships the human, that takes pride in being human, is surely as flawed as those religious beliefs that purpose to know God's plans for humans. A humanism that is not idolatrous is a humanism that refuses to make metaphysical claims that it cannot justify; it is a humanism that justifies itself only on the grounds that we have

good reason to fear our delusional attachment to violence. In short, it is a humanism with the wisdom to respect the dire warnings of Exodus.

Yet even a humble humanism should have the courage to ask why human rights needs the idea of the sacred at all. If the idea of the sacred means that human life ought to be cherished and protected, why does such an idea need theological foundations? Why do we need an idea of God in order to believe that human beings are not free to do what they wish with other human beings; that human beings should not be beaten, tortured, coerced, indoctrinated, or in any way sacrificed against their will? These intuitions derive simply from our own experience of pain and our capacity to imagine the pain of others. Believing that humans are sacred does not necessarily strengthen these injunctions. The reverse is often true: acts of torture or persecution are frequently justified in terms of some sacred purpose. Indeed the strength of a purely secular ethics is its insistence that there are no “sacred” purposes that can ever justify the inhuman use of human beings. An antifoundational humanism may seem insecure, but it does have the advantage that it cannot justify inhumanity on foundational grounds.

A secular defense of human rights depends on the idea of moral reciprocity: that we judge human actions by the simple test of whether we would wish to be on the receiving end. And since we cannot conceive of any circumstances in which we or anyone we know would wish to be abused in mind or body, we have good reasons to believe that such practices should be outlawed. That we are capable of this thought experiment – i.e., that we possess the faculty of imagining the pain and degradation done to other human beings as if it were our own – is simply a fact about us as a species. Because we are all capable of this form of limited empathy, we all possess a conscience, and because we do, we wish to be free to make up our own minds and express those justifications. The fact that there are many humans who remain indifferent to the pain of others does not prove that they do not possess a conscience, merely that this conscience is free. This freedom is regrettable: it makes human beings capable of freely chosen acts of evil, but this freedom is constitutive of what a conscience is. Such facts about human beings – that they feel pain, that they can recognize the pain of others, and that they are free to do good and abstain from evil – provide the basis by which we believe that all human beings should be protected from cruelty. Such a minimalist conception of shared human capacities – empathy, conscience, and free will – essentially describes what is required for an individual to be an agent of any kind. Protecting such an agent from cruelty means empowerment with a core of civil and political rights. Those who insist that civil and political rights need supplementing with social and economic ones make a claim that is true – that individual rights can only be exercised effectively within a framework of collective rights provision –

but they may be obscuring the priority relation between the individual and the collective. Individual rights without collective rights may be difficult to exercise, but collective rights without individual ones means tyranny.

Moreover, rights inflation – the tendency to define anything desirable as a right – ends up eroding the legitimacy of a defensible core of rights. That defensible core ought to be those that are strictly necessary to the enjoyment of any life whatever. The claim here would be that civil and political freedoms are the necessary condition for the eventual attainment of social and economic security. Without the freedom to articulate and express political opinions, without freedom of speech and assembly, together with freedom of property, agents cannot organize themselves to struggle for social and economic security.

As Amartya Sen argues, the right to freedom of speech is not, as the Marxist tradition maintained, a lapidary bourgeois luxury, but the precondition for having any other rights at all. “No substantial famine has ever occurred”, Sen observes, “in any country with a democratic form of government and a relatively free press.” The Great Leap Forward in China, in which between 23 and 30 million people perished as a result of irrational government policies implacably pursued in the face of their obvious failure, would never have been allowed to take place in a country with the self-correcting mechanisms of a free press and political opposition. So much for the argument so often heard in Asia that a people’s “right to development”, to economic progress, should come before their right to free speech and democratic government. Such civil and political rights are both an essential motor of economic development in themselves and also a critical guarantee against coercive government schemes and projects. Freedom, to adapt the title of Sen’s latest book, is development.

Such a secular defense of human rights will necessarily leave religious thinkers unsatisfied. For them secular humanism is the contingent product of late European civilization and is unlikely to command assent in non-European and nonsecular cultures. Accordingly, a lot of effort has been expended in proving that the moral foundations of the Universal Declaration are derived from the tenets of all the world’s major religions. The Universal Declaration is then reinterpreted as the summation of the accumulating moral wisdom of the ages. Paul Gordon Lauren begins his history of the idea of human rights with an inventory of the world’s religions, concluding with the claim that “the moral worth of each person is a belief that no single civilization or people or nation or geographical area or even century can claim uniquely as its own.”

This religious syncretism is innocuous as inspirational rhetoric. But as Lauren himself concedes only Western culture turned widely shared propositions about human dignity and equality into a working doctrine of rights. This

doctrine didn't originate in Jeddah or Peking, but in Amsterdam, Siena, and London, wherever Europeans sought to defend the liberties and privileges of their cities and estates against the nobility and the emerging national state.

To point out the European origins of rights is not to endorse Western cultural imperialism. Historical priority doesn't confer moral superiority. As Jack Donnelly points out, the Declaration's historical function was not to universalize European values, but actually to put certain of them – racism, sexism, and anti-Semitism for example – under eternal ban. Non-Western foes of human rights take its proclamations of “universality” as an example of Western arrogance and insensitivity. But universality properly means consistency: the West is obliged to practice what it preaches. This puts the West, no less than the rest of the world, on permanent trial.

In the moral dispute between the “West” and the “Rest”, both sides make the mistake of assuming that the other speaks with one voice. When the non-Western world looks at human rights, it assumes – rightly – that the discourse originates in a matrix of historical traditions shared by all major Western countries. But the non-Western world should begin to notice how differently nations with the same rights traditions interpret its core principles. A common tradition does not necessarily result in common points of view on rights matters. All of the formative rights cultures of the West – the English, the French, and the American – give a different account of privacy, free speech, incitement, and the right to life. In the fifty years since the promulgation of the: Universal Declaration, these disagreements within the competing Western rights traditions have become more salient. Indeed, the moral unanimity of the West – always a myth more persuasive from the outside than from the inside – is breaking up and revealing its incorrigible heterogeneity, American rights discourse once belonged to the common European natural law tradition and to the British common law. But this sense of a common anchorage now competes with a growing sense of American moral and legal exceptionalism.

American human rights policy in the last twenty years is increasingly distinctive and paradoxical: a nation with a great national rights tradition that leads the world in denouncing the human rights violations of others but that refuses to ratify international rights conventions itself. The most important resistance to the domestic application of international rights norms comes not from rogue states outside the Western tradition or from Islam and Asian societies. It comes, in fact, from within the heart of the Western rights tradition itself, from a nation that, in linking rights to popular sovereignty, opposes international human rights oversight as an infringement on its democracy. Of all the ironies in the history of human rights since the Declaration, the one that would most astonish Eleanor Roosevelt is the degree to which her own country is now the odd one out.

In the next fifty years, we can expect to see the moral consensus that sustained the Universal Declaration in 1948 splintering still further. For all the rhetoric about common values, the distance between America and Europe on rights questions – like abortion and capital punishment – may grow, just as the distance between the West and the Rest may also increase. There is no reason to believe that economic globalization entails moral globalization. Indeed, there is some reason to think that as economies have unified their business practices, ownership, languages, and networks of communication, a countermovement has developed to safeguard the integrity of national communities, national cultures, religions, and indigenous and religious ways of life.

This does not mean the end of the human rights movement, but its belated coming of age, its recognition that we live in a plural world of cultures that have a right to equal consideration in the argument about what we can and cannot, should and should not, do to human beings. Indeed, this may be the central historical importance of human rights in the history of human progress; it has abolished the hierarchy of civilizations and cultures. As late as 1945, it was normative to think of European civilization as inherently superior to the civilizations it ruled. Many Europeans continue to believe this, but they know that they have no right to do so. More to the point, many non-Western peoples also took the civilizational superiority of their rulers for granted. They no longer have any normative reason to continue believing this. One reason why this is so is the global diffusion of human rights. It is the language that most consistently articulates the moral equality of all the individuals on the face of the earth. But to the degree that it does, it simultaneously increases the level of conflict over the meaning, application, and legitimacy of rights claims. Rights language says: all human beings belong at the table, in the essential conversation about how we should treat each other. But once this universal right to speak and be heard is granted, there is bound to be tumult. There is bound to be discord. Why? Because the European voices that once took it upon themselves to silence the babble with a peremptory ruling no longer believe in their right to do so, and those who sit with them at the table no longer grant them the right to do so. All this counts as progress, as a step toward a world imagined for millenia in different cultures and religions: a world of genuine moral equality among human beings. But if so, a world of moral equality is a world of conflict, deliberation, argument, and contention.

To repeat a point made earlier. We need to stop thinking of human rights as trumps and begin thinking of them as a language that creates the basis for deliberation. In this argument, the ground we share may actually be quite limited: not much more than the basic intuition that what is pain and humiliation for you is bound to be pain and humiliation for me. But this is already something. In such a future, shared among equals, rights are not

the universal credo of a global society, not a secular religion, but something much more limited and yet just as valuable, the shared vocabulary from which our arguments can begin and the bare human minimum from which differing ideas of human flourishing can take root.

Ken Booth

THREE TYRANNIES

Source: T. Dunne and N. J. Wheeler (eds.), *Human Rights in Global Politics*, CUP, Cambridge 1999, pp. 31-72.

A few weeks after the conference which led to this book I was in Cracow, south-east Poland, unable to sleep. My insomnia had less to do with how I thought I would feel in the morning – as a day-tourist in Auschwitz – than with the noise being made by a succession of student revellers in the street below. By a strange coincidence, one of the books I picked up to pass the time contained the poem ‘Outside Oswiecim’ by Carol Rumens, two of whose lines are quoted above.’ In a few words she gives poetic legitimisation to the point of my paper at the conference from which this chapter is derived. In her rejection of the fashionable definite article and capitalisation (*The Other*) in favour of the lower case and indefinite article (*an other*), Rumens is rejecting the politics of the concentration camp in favour of a common humanity ontology, *an other* regarding politics. It is an inclusivist rather than an exclusivist view of being human, human being. *The Other* is an alien: *an other* is all of us. Words – even small words like definite and indefinite articles – can be tyrants; they can both kill and set free. Who we are and what we might become is in a word. Whether one was inside or outside Auschwitz at a certain period, permanently, was in a word.

The purpose of this chapter is to discuss the language of human rights, and in particular three tyrannies in the way we conceive, approach and talk about human rights. The discourse of human rights is potentially crucial to human history because it is part of the language of the human species’ self-creating emancipation from natural and societal threats. There are well-known difficulties in according rights such centrality in the human story. They are neither a panacea for overcoming injustice nor do they exhaust ethical possibilities; duty and responsibility also have a place. Nevertheless, I believe that the self-interest inherent in the idea of entitlements is better calculated to encourage reciprocity. Three tyrannies and the extension of moral obligation, especially across borders, than appeals to duty and responsibility at this stage of global history.

I will label the three tyrannies around which the chapter is organised the tyranny of the present tense (‘presentism’), the tyranny of cultural essentialism (‘culturalism’) and the tyranny of scientific objectivity (‘positivism’). Together, these constitute sets of attitudes, almost an ideology, which imprison human

rights potentialities in a static, particularist and regressive discourse, reproducing prevailing patterns of power rather than the reinvention of the politics of human possibility. In place of this negative ideology – whose proponents, ironically, tend to have a self-image of sense, sensitivity and sophistication – I want to argue for a discourse of human rights embedded in the potentialities of human sociality, a politics of emancipation, and a philosophy of universality.

In this section I want specifically to address the historical implication of the ‘common sense’ view that human rights are reflections of what is often seen as the so-called human condition – a world made up of people(s) with essentially ‘tribal souls’. Human rights from this perspective derive from communitarian values; not only is this so, but it must be the case, for rights can only develop on the bedrock of the values of distinct ethical communities. This view attacks the very heart of the idea of universal human rights, asserting that – because we do not have a ‘universal ethical community’ we cannot have “universal human rights’. One counter is sociality theory. Sociality exposes and emphasises the openness of human social potential; it challenges the assertive is, with its implications both of a full knowledge of the world (‘we describe the world as it is’) and of timelessness (‘this is how it is’). The provocation to think of the present tense as a tyranny when discussing International Relations came from reading Michael Carrithers’ book, *Why Humans Have Cultures. Explaining Anthropology and Social Diversity*. He describes the problems in anthropological work caused by phrasing disclosures about societies in the present tense (what he calls the ‘ethnographic present’). This tendency, which became well established before the Second World War, came to be called ‘presentist’, and was associated with the adoption of ahistorical perspectives on societies and cultures. It was subsequently criticised for underestimating the complexity of the social world, for producing unfruitful generalisations, for disregarding the historical character of social experience, and for reducing the understanding of human relatedness across the globe. I want to argue that presentism has had a similar impact on human rights thinking, and that it should be criticised for a similar range of reasons.

Running through Carrithers’ argument is his belief that anthropologists have thought too much in terms of humans as animals with cultures, and not enough as animals with history. This has revealed itself in the tendency of anthropologists to represent cultures in the present tense, as was evident, for example, in the study of his own special interest, the ancient Hindu sect of the Jains. ‘Jains do this and Jains do that’, he reports some anthropologists as saying, a formulation which easily leads to the belief that Jains have always done this and have always done that. Carrithers’ own work has shown that this has not necessarily been the case. We can see exactly the same tendency

in the way some people talk about human rights: they look around, and observe that humans do this and humans do that – usually focusing on the nastier side of human behaviour – which then quickly leads them to the conclusion that humans have always done this and have always done that – and always will.

The tyranny of presentism, which produces and reproduces ahistorical perspectives in both Anthropology and human rights, can be countered by adopting a macro-historical approach. The latter underlines the persistence of change. Historical anthropology shows that each society reproduces itself, but not as an exact copy. We inherit scripts, but we have scope – more or less depending on who, when and where we are – to revise them. The result, in Carrithers' words, is that:

We had thought that humans were just animals with cultures... intelligent, plastic, teachable animals, passive and comfortable to the weight of tradition. Now we see that humans are also active, they are also animals with history. They are inventive and profoundly social animals, living in and through their relations with each other and acting and reacting upon each other to make new relations and new forms of life.

These brief points emphasise the mutability of human experience – plasticity, change, temporality, metamorphosis, interactivity – all related to the sociality wired into the consciousness of the human animal. It is from this perspective, thinking of humans as 'animals with history' rather than from the perspective of temporal parochialism as well as ethnocentrism, that we should contemplate the question: 'Are human rights universal?'

The best response to such a question is to refuse to start from here (this place, this time). How do we know whether human rights are universal? It is too soon in history to say. Once we start thinking along these lines, future history becomes more open; if at the same time we begin to recognise how open it was in the past – and not allow our knowledge of the historical outcome to dominate our understanding of the possibilities at the beginning – then our perspective on human rights should alter radically. The key move is to anthropologise and historicise human rights, and to see the culture of human rights as one aspect of our species' cultural evolution. To do otherwise is to be oppressed by presentism, and its twin, ethnocentrism, and so miss the potential open-endedness of politics and the freedom inherent in human consciousness.

But there is yet a more fundamental counter than macro-history to the problems of presentism and that is sociality theory. At the very beginning of his book Carrithers puts together two questions. The first is that of Socrates: 'How should one live?' The second is that of the anthropologist: 'How do we live together?' Underlying one's answers to these questions must be one's

assumptions about the capability of humans to make history, including human rights. For physical anthropologists a century ago it was race that lay at what Gananath Obeyesekere called the 'muddy bottom' of human nature. Then came culture. My own preference is what Carrithers calls a 'mutualist' view of what makes our history, which stresses sociality, defined as 'a capacity for complex social behaviour'. From this perspective, sociality trumps culture, civilisations, race and other candidates for being at die 'muddy bottom' of social behaviour.

The record of the past 2.5 million years, since the early hominids began to invent responses to the world rather than act solely through biological instinct, confirms in myriad ways that complex social behaviour is so basic as to be definable as natural. And because it is so basic, change has been an inevitable consequence. So we must agree with Carrithers that we should place 'change, not permanance, at the centre of our vision'.

Presentism produces conservatism by constraining our political imaginations, and by encouraging us to generalise from an historical moment. If, as students of International Relations, we lift our eyes above the traditional skyline of our subject ('International Relations Since 1945' or, at best, 'International Politics in the Twentieth Century') and instead look at die evolution of life on earth, what becomes immediately striking is 'the incessant mutability of human experience [and] die temporality woven into all human institutions and relationships'. Macro-history should teach us to expect radical surprises. Scholars in feudal Europe did not conceive a world organised around the political identity of nationhood, and peasants in the Age of the Divine Rights of Kings could not dream that one day they would help choose their ruler by marking an X on a ballot paper. Politically speaking, one generation's truth becomes a not-very-distant relative's historical curiosity. The rise and spread of nations, democracy and sovereignty illustrates the mutability of human experience and die temporality of institutions.

The human race, in evolutionary time, has only just begun. To try and predict whether human rights will universally strike deep roots in practice as well as theory is the equivalent of predicting who will win a race, just after its start. Furthermore, in this case, the answer must depend on the weight of future responses given to die normative question of Socrates: how should we live – in this case globally? For the past fifty years a struggle for hegemony has taken place between communitarian common sense, with its conservative power, and proponents of universalist conceptions of human rights. Since 1945 the hegemonic ideology in the discipline of International Relations has been political realism, which of course has not been comfortable with the idea of human rights, while the hegemonic idea in global power politics, since recorded time, has been communitarian not cosmopolitan. Together,

these forces have created the context in which human rights get thought about and practised.

The preceding discussion about presentism is not meant to lead to any teleological conclusion about history, such as the triumph of universal human rights. It has been a ground-clearing argument, to try to establish several points before we can talk more sensibly about human rights on a global scale. The argument has tried to show that change is the only constant in human society; that humans are capable of enormous social diversity; and that the political and intellectual hegemony to date has favoured communitarian rather than cosmopolitan versions of politics. The argument is not that a strong universal rights culture will happen, only that there are no grounds – historically or anthropologically – for saying that it will not. Sociality theory demonstrates the human potentiality for complex social relations, and it remains to be seen what this might mean, worldwide, under conditions of globalisation and the radically different material conditions of the decades ahead. Presentism is the tyranny of an ahistorical, indeed anti-historical human rights discourse, which serves traditionalist values and power structures by promoting communitarian common sense. From the perspective of historical humanity we are not destined, as a species, to be what we are; rather, we might be what we strive to become. Race is not the muddy bottom of the human story; ‘human nature’ is not a clinching argument about how we might live; ‘tribal souls’ are social constructs; communitarian philosophies are only snapshots; and cultures are the means not the mover, and so cannot be allowed to have the last word. Nevertheless, the tyranny of the present tense continues to produce the kind of communitarian common sense which can be expressed by adapting an equation of Yehezkel Dror from Strategic Studies, namely: *Is equals Was equals Will Be*. Snapshots are turned into timeless definitions of the human condition. I want to argue that the futures made possible by sociality will always trump the temporality of any communitarian political theory. Political and communitarian common sense comes and goes; sociality is me only permanent ‘is’.

The tyranny of cultures expresses itself as culturalism, by which I mean the reduction of social and political explanations to culture and to the black-boxing of cultures as exclusivist identity-referents. There have been many factors contributing to this tendency, in the worlds of politics and academic inquiry. With regard to the latter, Anthropology has historically positioned itself against the idea of universal values by its methodological localism – what Richard Wilson calls its ‘prolonged love affair with local culture’ and Jack Donnelly calls a ‘radical cultural relativism’ in which ‘culture’ becomes the supreme ethical value and ‘sole source of the validity of a moral right or rule’. There is an obvious comparison between this culture-centric outlook and state-centric perspectives in orthodox International Relations. Culturalism

is a strong form of the interrelated approaches of cultural essentialism (or reductionism), cultural determinism and cultural relativism. It turns culture – or cultures – into die trump card in any debate about human rights, or indeed world politics.

What is emphasised by culturalism is die uniqueness and exclusivity of each culture. Cultures are (more or less) carefully studied from a holistic perspective, in terms of their particular social logics, cultural rhythms and world-view. As a counter to ethnocentric generalisations, cultural relativism represented progress in Anthropology. A powerful argument developed that the particularity of each culture was such that ‘its’ values and ways of behaving (the quotation marks signify how easily we are drawn into reifying cultures) can and should be interpreted only in terms of the particular values, beliefs and rationalities of the culture concerned. The aim was to try and understand each culture ‘from the inside’, so that those who belong to particular cultures are seen as they see themselves, or wish to be seen (or, invariably, how the most powerful in particular cultures see themselves). Cultural relativism argues that each culture or society possesses its own rationality, coherence and set of values, and it is in these terms only that one can properly interpret the organisation, customs and beliefs (including ideas about human rights) of that culture or society.

In terms of the anthropology of human rights – and so the wider project of developing a human rights culture – there are three main problems with culturalism. First, it takes away the basis for comparison between cultures and societies, which has philosophical and ethical implications. Secondly, it exaggerates the self-contained nature of societies – especially modern societies and cultures – in which their unique social and ethical values are supposed to be embedded. And thirdly, it privileges traditionalism, which is often a means by which elites maintain their privileges. I will address the latter two points here, leaving the first for the final section.

Culturalism, by giving a totalising picture of specific cultures, produces a false view of the world. Inventing and black-boxing units of analysis has been a problem to which both International Relations specialists and anthropologists have been prone. Historical sociologists have tried to show International Relations specialists that the ‘state’ is a historical construct, not the ready made textbook unit many assume. Likewise, many anthropologists have tended to see and describe societies as ‘unchanging and traditional’, making assumptions about the past that have turned out to be false. Carrithers argues that we must ‘reassemble’ our pictures of human society ‘without the sharp boundaries or the unalterable tradition’. Humans are ‘conformable’ to the weight of tradition, but as ‘animals with history’ they are ‘inventive and profoundly social animals, living in and through their relations with each other and acting and reacting upon each other to make

new relations and new forms of life'. If this is the case, what constitutes the 'cultural authenticity' to which all values, including human rights, should be relative? Culturalism is tempting – as is state-centric International Relations – because it simplifies, and makes complexity easier to handle. Instead of getting into the bureaucratic politics, for example, behind a phrase such as 'France decided...', we take a short-cut instead, and make France some-one-thing. Such short-cuts are even less defensible when we come to 'cultures', for nobody speaks for cultures in the way governments presume to do for states, and cultures in the modern world are interpenetrated. We hear about 'the Islamic position' or 'Asian values', but who speaks for Islam, or Asia? Nobody does: yet at the same time many people, organisations and states do. Invariably, when it comes to cultures, it is the loudest, the most powerful or the most fundamentalist who speak, and claim authenticity. Authenticity becomes not simply a cultural matter: it becomes profoundly political.

Cultural authenticity is an important prize over which to fight, for being seen to possess it might help in any struggle for political and social power, including helping to determine whose interpretation of human rights will dominate within particular cultural regimes. Culturalism assumes there is an objective reality to cultural authenticity, but it can be shown in practice that these ostensible Archimedean points are invariably contested from within. If authentic cultural traditions and outlooks are disputed within, and human rights are supposed to be relative to the traditions and outlooks of particular cultures, to what, or whom, within that disputed culture are human rights supposed to be relative? This argument is a fundamental challenge to those who criticise universality in human rights theories and practices.

Political programmes should not be built on the basis of cultural reductionism, for what is defined as authentic in a culture is more an expression of the prevailing balance of forces, rather than the discovery of an Archimedean point. How much importance should we attach to culture as the denying referent (as opposed to nation, gender, class or other identity) when British Anglicans are split over the authenticity of women being ordained as ministers of religion? Or when Muslims disagree over the fatwa issued legitimising the murder of Salman Rushdie? Or when the British Jewish community argues over the validity of the concept of 'Jewish sperm'? Or when the Taliban in Afghanistan seem to believe that Shi'ites in Iran are dangerous liberals and modernisers? Or when some believe that were Confucius alive today – a key figure in the development of Chinese cultural traditions – he might well be jailed as a dissident? Or, when the idea of a 'Muslim woman' means different things in terms of status, role and contribution across Africa, Asia and the Middle East – not to mention Europe? Or when Malaysia extends Islamic compassion to white believers from Bosnia, but not black believers from Bangladesh? Or when Jews in

Israel argue over Zionism? Or when Muslims in Egypt disagree over whether female genital mutilation is an 'Islamic practice'? Or when Islamic feminists in Iran attack a film endorsing multiple marriages (for men)? Or when Arafat and other Islamic leaders tried to gag Palestinian women criticising domestic violence and the unequal treatment of women under local laws at the Beijing Women's Conference? Or when Afghan feminists challenge the Taliban decrees against women working? Or when some Japanese, looking back, rethink their code of honour with regard to the way they treated prisoners of war in the Second World War? Or when republican opposition to the Windsor family is seen as perfectly compatible with Britishness? Or when, in Sierra Leone, women clash over whether female genital mutilation is essential for the initiation into womanhood and so its defenders are upholders of important traditions, or whether it is brutalising and its critics are agents of the West? In all these cases the question is the same: what is doing the important work? Is it class, gender, nation, society, generation or culture? For some reason, these days, culture is privileged above all, and especially when human rights is the subject. Against those who assert that human rights must be embedded in an ethical community, I would say: which 'ethical community' – that of culture (which usually means traditionalism) or that of class, gender, nation, generation, or some other category such as the 'poor', 'the hungry', 'the oppressed' – the victims? To whom or what has human rights relativism to be relative?

The main problem with culturalism is traditionalism, the propagating of traditions to serve (conservative) power interests; this often includes special reverence for practices based in a society's religion (though we often find that revered religious traditions have even more distant pre-religious roots). Traditionalism holds that knowledge – and indeed Truth – is derived from past revelations – be they divine or otherwise – and are transmitted by tradition. Culturalism produces, or more accurately re-produces, traditionalism, and this can have several regressive consequences for the theory and practice of human rights. But to reject traditionalism is not to reject traditions. Indeed, traditionalism can be seen as the enemy of positive traditions and culture in some senses. Traditions are obviously important; they help cement societies, and they are sometimes all the wretched have to give their lives any meaning.

What concerns us are the functions that cultural practices – many of them 'invented' relatively recently but now seen as primordial – serve in society. Some of these are relatively benign, as in the narrowly 'cultural' forms of social cement discussed by Hobsbawm, such as the gorsedd of druids in Wales. On the other hand, some can be profoundly threatening. Traditionalist practices, for example, invariably translate into masculinist values hostile to women, thereby legitimising domestic violence, suttee and all those practices

of patriarchal society that led Yoko Ono to describe woman as 'the nigger of the world'. Traditionalism can equally serve class interests, through the spreading of the idea that birth is destiny, that people should know their place, and that the meek shall inherit the earth. A blatant example of class interest served by enshrining traditionalism has been the perpetuation of the caste system in India. Traditionalism was evident in the way Nazi Germany romanticised history to try and create an image of a continuous racial and national spirit, running through the heroes of the past to the Hitler regime. In a less malignant form, there was also the Major Government's 'Back to Basics' campaign in the early 1990s which aimed to create an image whereby that insecure government became seen as the true inheritor of all that had put the great in Great Britain. In such ways traditionalism is a means by which a particular political group, class, elite, gender or government seeks to achieve and maintain ascendancy. Not surprisingly, the fundamentalists of any political or religious persuasion are drawn to traditionalism as a lever in the political process. As Robert Cox said about theory, all traditionalism is for somebody or for some purpose.

Culturalism must not be allowed to tyrannise human rights – to trump all other arguments and control the agenda – for culturalism and traditionalism perpetuate certain values and power structures. At this point in history they are regressive in human rights terms, because the values and structures they perpetuate are those of patriarchy, class, religious traditionalism, ethnic values and so on. Inevitably, therefore, huge numbers of people are marginalised, both locally and globally. Against these regressive human rights forces I want now to argue the case for emancipation as the preferred discourse for human rights. This concept is controversial, and raises as many questions as it settles, but these are not good reasons for rejecting it. For one thing, such is the destiny of all our most important human concepts, such as justice or love. For another, it would be surprising if there were no controversy about what can be conceived as the politics of inventing humanity.

In a formal sense, emancipation is concerned with freedom from restraint: in Latin *emancipare* meant 'to release from slavery or tutelage'. Expressed more fully, it might be defined as the freeing of people as individuals and groups from those physical and human constraints which stop them carrying out what they would freely choose to do; this means identifying and struggling against oppressive structures or power, and creating new structures and power relationships that promise to enhance human potentialities. Originally, as implied in the Latin roots of the term, emancipation was more concerned with struggling against; historically, this meant against legal and other constraints, notably slavery and religious oppression. In the twentieth century, emancipation became not only struggle against oppression but also, more coherently) struggle for new visions of society. In this way it became

more closely identified with 'Left' politics and with the creation of a different social, human, political and international order. Emancipatory politics have been evident in the ebb and flow of historical transformation, which has involved expanding the potential for what Guy Bois called 'individual realisation'. This focus on the individual does not mean, as critics assert, that what is envisaged is an 'atomised' liberal human being. On the contrary, individual realisation is not possible except in the context of society – that is, with others. Otherwise, individuality is psychotic.

Before trying to explain what emancipation is, it is useful to stress what it is not. Here it is useful to make a distinction between 'true' and 'false' emancipation. First, true emancipation cannot be defined in some timeless fashion, as some-one-thing at the end-point of the human story; secondly, true emancipation cannot be at somebody else's expense (except, that is, at the expense of the beneficiaries of oppression, and even here I would argue that to be freed of being an oppressor is a step on the road to becoming more humane, and therefore is emancipatory); and thirdly, true emancipation cannot be considered to be synonymous with Western ways of thinking and behaving (though neither are 'Western' ways necessarily antithetical to emancipation). If emancipation is seen as timeless, at the expense of others, or simply a cloak for Westernisation, it is false emancipation.

True emancipation is not a fixed idea of what the world would be like – some distant end-point Utopia. A properly historicised conception of emancipation recognises that every emancipation creates a new margin, just as every major technological fix creates new problems (such as the new ethical problems raised by medical breakthroughs). Emancipation contains a theory of progress, but also recognises that life is one thing after another. Because emancipation must be continuously contextual, because material and other conditions change, it has to be an open and flexible vision. In terms of practical politics it is better to use the adjective, as in emancipatory policies, which implies movement, rather than the noun, emancipation, which implies a static state. The reality of emancipation is best likened to a political horizon: something to aim for, something that establishes perspective, but something that by definition can never be reached. Emancipation is not a state of being; it is the condition of becoming.

We must always be sensitive to the question 'Whose emancipation?', for any step that is at somebody's expense would constitute false emancipation. True emancipation is based on the belief that 'I cannot be emancipated until you are' – whoever the I. In practice this raises complex political calculations and trade-offs. Clearly, all oppression cannot be abolished at the same time. Different parts of the human convoy must perforce move at different speeds, but the important thing is that they are moving in the same direction, towards human flourishing and away from oppression. Thus, contingent politics have

to determine the lines of advance because emancipation cannot proceed at the same speed in all settings. So, for example, it is justifiable for women's emancipation to be sought in the West, even while the West (including the emancipating woman) benefits from a world capitalist system in which there are gross and unjustifiable inequalities. Likewise, the emancipation of South Africa from apartheid cannot be criticised on the grounds that it took the attention of anti-racists away from other struggles. Emancipation before others is not in itself the same as emancipation at the expense of others, as long as those who are emancipated use that privilege to help secure the emancipation of others (a theme developed in the final chapter).

The conception of emancipation advanced here recognises many contributions made within 'the West' in the development of ideas about human flourishing, including human rights. But we need also to recognise the dark side, and therefore eschew the idea that emancipation should simply be equated with Westernisation. Such a conclusion would be contrary to the spirit of emancipation. We may have been living through several centuries in which Western ideas about emancipation have flourished, but that does not make it an historical imperative, or politically desirable. But neither does it mean that some ideas are not to be preferred over others, even 'Western' ones. The spirit of emancipation is that there are no final answers and that nobody has a monopoly of ultimate truth (even if we conceive an omniscient god, who taught her all she knows?). There is no reason to suppose that what is taken as Western society today represents the best of all possible worlds, not least because that society does not attain its own best standards, is full of hypocrisy, and in relation to the rest of the world, many of its citizens flourish without questions in the midst of injustice.

The three points above have criticised false emancipation – as finite, exclusivist and particularist. In this next stage I want to identify the three roles of true emancipation.

We all need some grounding for knowledge, though the term 'grounding' implies very demanding requirements. My preference is for 'anchorages'. The idea of conceiving emancipation as an anchorage means that we can talk about what constitutes valid knowledge in terms of emancipatory potential. This is the view that there is no ultimate truth in the social world, only a pragmatic truth, created intersubjectively. The concept of emancipation gives us a point of reference from which we can assess and criticise where we have come from (locally and globally) and from which we can contemplate the future of the human story – convinced that 'we do not have to live like this'.

The metaphor of an anchorage implies a resting point in a dynamic process. As such it gives space for Critical Theory's concept of immanent critique, that is, the attempt to recognise better possibilities inherent in an

existing situation; and it also suggests a crossover point in a dialectic, as humans struggle from one anchorage to another, buffeted by all the material and other changes that history throws up. Without a concept of betterment, one cannot have any critical distance to assess one's existing position – or indeed think about the different ways of getting to a better state of affairs. One arrives at a notion of betterment through theorising - even fantasising – and in this way the next step is taken. The story of politics, in a sentence, has evolved from a small group considering the advantages of moving from one environment to another, perhaps from one cave to another, to the issue of the management of the global environment for the whole species. Over time, emancipation has become deeply imprinted into human consciousness. The biological instinct for survival evolved over time into a culture of reason, which in turn became the politics of emancipation.

Emancipation is therefore an historically contingent idea around which people can begin to discuss what to do next in politics. It is a basis for saying whether something is 'true' – whether claims to knowledge should be taken seriously. In this first global age, human rights constitute a crucial aspect of this discussion, for they are concerned with ideas about creating space for the self-realisation of individuals, and the invention of a more inclusive and loving humanity as a whole.

By strategic process I underline the point made earlier that emancipation is to be considered not as a static end-point, but rather as a dynamic P concept. A very useful distinction here is that of Joseph Nye, between 'end-point utopias' and 'process utopias'. This distinction-emphasises the desirability of dynamic rather than static conceptions of the future. Instead of blueprints (a worked-out model of world government for the twenty-second century, for example) when history would come to an end, the argument is that politics is about travelling hopefully. It is futile to try and overmanage the future, because of possibly radical changes in the material conditions. Consequently, the best way ahead is through benign and reformist steps calculated to make a better world somewhat more probable for future generations. As Albert Camus argued, the means one uses today shape the ends one might perhaps reach tomorrow.

As a strategic process, some would criticise the idea of emancipation, and say that the concept of progress is flawed, particularly when it comes to making judgements about the lives of others. This argument will be discussed more fully in the final section; here I want to argue that there is always one position that is more emancipatory than another – though in particular circumstances it might not be clear at the time. The transcultural judgement of history – a portentous term, but useful here – is stronger than the relativist argument. Peter Singer gives various examples of the debates about human betterment that history has judged: the struggle against

slavery; the unionising of workers against terrible working conditions; the giving to women the right to vote, be educated, hold property; the fight against Hitler; the civil rights movement in the United States in the 1960s. If we take a sufficiently long-term perspective, Singer argues, 'it is not difficult to see that on many issues, there has been a right side'. He calls it, after Henry Sidgwick, 'the point of view of the universe', and gives as examples of being on the 'right side' today: helping the poorest in developing countries; promoting the peaceful resolution of conflicts; extending ethical concern beyond our species; and protecting the environment.

The idea of progress is not fashionable in some circles, but there is positive and negative evidence suggesting that the great mass of people in the world think differently. Positively, there is the evidence of what might be called the spirit of 1989. By this I mean the global responsiveness and solidarity in relation to the savagery in Tiananmen Square (and particularly the image of the lone individual standing against a column of tanks), the ending of the Cold War (and particularly the image of ordinary people standing on the Berlin Wall, while at the same time destroying it with picks and hammers) and the surrender of apartheid in South Africa (and particularly the image of the dignified and inspirational Mandela emerging from prison and calling for reconciliation). Negatively, 'progress' is legitimised because nobody is calling for the return of mutilating cultural practices (such as foot-binding in China) or the freedom of not being able to read.

At times, critics of emancipation are not arguing against the principle so much as against Westernisation. As a reality check, we should look at what they stand for in practice, on issues such as slavery and racism. Scratch a Western relativist, and one always finds a closet believer in progress underneath. In other parts of the world what is underneath is likely to be a supporter of a local tyranny.

In the previous two points, emancipation has been identified as a philosophical anchorage and a strategic process; but politics require policies, and emancipatory ideas need to be turned into effective action. Emancipation is intimately concerned with praxis, and not simply critique: it must be attentive to real people in real places, seeking to better their conditions while at the same time changing world politics in structural ways which help improve local conditions. For a guiding idea, we can usefully turn to Critical Theory and its aim to build 'concrete Utopias' out of possibilities which are immanent in particular situations. This is process Utopias in action – 'pushing the peanut forward' as Singer describes it. On what basis can we decide what constitutes a concrete Utopia? There are two clusters of ideas that may help. One is to advance on as many fronts as possible, with policies informed by the World Order goals and principles advanced so powerfully over the years by Richard Falk and others: non-violence, humane governance,

economic justice, human rights and environmental sustainability. A second set of ideas for thinking about concrete Utopias is Etienne Balibar's notion of *egaliberte*, which recognises equality and liberty as mutually constitutive conditions for human emancipation. For Balibar *egaliberte* is therefore a 'formula for permanent revolution, for the continuous radicalisation of the Enlightenment'. This, I believe, is the spirit of true emancipation. Tactical goals based on World Order values and the principle of *egaliberte* are positive guides for emancipatory advances, locally and globally. But principles can only help so far: turning abstract concepts into concrete Utopias under specific historical conditions is another matter. Emancipation also needs clever and committed human agency.

In conclusion we can see that the answer to the question 'What is emancipation?' is both easy and difficult. Emancipation is easy because we know what it is not; it is difficult because we do not know with the same confidence what it looks like in terms of specific struggles. But the three functions of emancipation, just discussed, show that when compared with culturalism and traditionalism, it offers a theory of progress for politics, it provides a politics of hope, and it gives guidance to a politics of resistance. Emancipation is the theory and practice of inventing humanity. It is the discourse of human self-creation, and the politics of trying to bring it about. At this stage of human history, marked by the interplay of globalisation, patriarchy, world capitalism, industrialisation, population densification, environmental stress, widening disparities between haves and have-nots and so on, the growth of a universal human rights culture must be central to emancipatory policies. If sociality is the only permanent 'is', emancipation is the only permanent hope of becoming.

The first section of this chapter argued that the ability to make complex social relations lies at the muddy bottom of the human rights story, and that this sociality is the only permanent 'is'. In the present section it has been argued that emancipation should be the guiding idea for escaping the regressive human rights implications of culturalism and traditionalism: human becoming is the only permanent form of being, and emancipation is the politics of mat reality. In the final section, discussing the tyranny of objectivity, it will be argued that in this first truly global age, human rights is an essential aspect of that becoming, and that the only intelligible perspective to adopt is universalist.

The argument in this section of the chapter has two main steps. The first is to explain the attraction that scientific objectivity has had for students of Anthropology and the Social Sciences in general, and the resultant danger of positivism; in particular how the latter manifests itself in ways that strengthen the problems of culturalism by reifying what is essentially porous and changeable, and by strengthening cultural and ethical relativism – all of

which impact adversely on human rights. Secondly, a defence of universality will be mounted. I want to criticise the cultural relativist perspective on universality, and defend the latter as the only true way of thinking about human rights, by showing that such an approach is possible, desirable and logical, can avoid all the relativist criticisms, and can be based on the secure but sad fact of universal human wrongs.

Objectivity has been the gold standard of modernist Social Science. It opens up not only issues of epistemology but also controversial questions about the proper role of the academic and of how – if at all – value-laden subjects such as human rights should be approached. Just as the natural scientist is supposed to look objectively down the microscope at some specimen, and describe it with scholarly detachment, so social scientists are supposed to look down their microscopes at aspects of die human world, and describe them with comparable scientific detachment. Many students of International Relations now believe this approach, loosely called positivism, to be faulty: for one thing, ‘objectivity’ in the sense intended is thought to be unattainable, for values infuse the mind of the observer looking down the microscope at human social practices (the observer can never escape the set of theories which he or she believes); secondly, what is observed on die specimen slide -humans – are self-aware in a way natural objects are not, and so can add another dimension to the observer/observed problem; and finally, a value-free approach would not leave students of International Relations with much to discuss (we might count voting patterns in the General Assembly on human rights issues, but Would leave all the most interesting political and philosophical issues aside). Positivism expresses the naturalist fallacy in the social sciences and this expresses itself in the reproduction of the hygienic order of neo-realist International Relations. One problem of objectivity is the way that it separates the-attempting-knower and that-which-is-to-be-known in such a way as to endow the-attempting-knower with distinct authority deriving from science. But as Gaston Blanchard has put it: ‘We have only to speak of an object to think that we are being objective. But, because we chose it in the first place, the object reveals more about us than we do about it.’

So, the stakes are high, as Steve Smith has argued so forcefully, in the debate about epistemology and method. Positivism has been important, he argues, because of its role ‘in determining, in the name of science, just what counts as the subject matter of international relations.’ This in turn is important because it helps determine what counts as knowledge in the subject, who are the serious players in the discipline, and, because of the relationship between theory and practice, how things might get done in the ‘real world’ of international affairs. In short, the epistemology of human rights is a political as much as it is a philosophical issue. The ideal of objectivity, and

of positivism, can therefore be threatening to human rights in a variety of ways. What purports to be value-free/objective/apolitical/positivist analysis can merely be a cloak for status quo thinking (and therefore values). This can be seen most clearly in the relationship between positivism and crude realism, which together purported, unselfconsciously, to describe the world 'as it is' for nearly half a century after the Second World War, yet all the time did so through the ethnocentric lenses of Anglo-American, masculinist, capitalist and nationalist mind-sets (but such mind-sets were not the only ones attracted to positivism: much of the first generation of Peace Research was also heavily positivist). However, for the most part positivism has tended to be closely identified with the disciplinary dominance of realism in academic International Relations. What is of most concern here is the role positivism has played in Anthropology, and so has fed how many think about the cultural dimensions of International Relations.

McGrane has argued provocatively, but persuasively, that the rise and history of what we now call Anthropology has been grounded in 'the positivistic faith'. By this he means 'the belief that the criterion of truth and the historical progress and perfection of our scientific theories lies in their ever closer approximation to an autonomous reality'. This autonomous reality has come in the twentieth century to be identified with cultures (and particularly 'primitive cultures'). By definition, this categorisation produces units that are 'relative' to each other, constituting a global ordering of one-among-many. McGrane sees this move as 'a supreme manifestation of the Western tradition', namely the tendency of 'the Western mind to identify itself as separate from what it perceives as external to itself. Leaving aside McGrane's unhelpful reification of 'the Western mind' – how could he as a Westerner make his critique if the Western mind were so totalising? – the key argument is that culture has been invented as necessary for the praxis of Anthropology. (The 'prior and autonomous existence' of culture was necessary for modern Anthropology, we might argue, just as the prior and autonomous existence of textbook states were for realist International Relations. The disciplines of Anthropology and International Relations have therefore both shared an interest in maintaining the conditions of their own possibility, namely autonomous units of analysis – cultures and states.) 'Culture' does not emerge, in McGrane's argument, as a 'decisive and almost inescapable part of our world' until the twentieth century. Only then did difference between Europe and the non-European 'Other', between the familiar and the alien, come to be seen for the first time in terms of cultural difference/diversify. Anthropologists became identified as 'purveyors of exotica'. In the nineteenth century, McGrane argues, difference/diversity had been defined in terms of evolutionary development through progressive stages of civilisation; in the Enlightenment it had been seen in terms of the

modalities of science and ignorance; and in the Renaissance it had been between the Christian and the infernal. This argument opens up many significant issues for students of human rights, notably the relatively short time that 'culture' has been a key referent, the significance of the view that the conceptualisation of difference tells us more about ourselves than the subject conceptualised, the interest of Anthropology in the 'external' world rather than in examining its own theories, the role of academic 'disciplines' as discourses of domination, and the invention of culture as a relative concept. Anthropology invented culture for the social sciences, and in so doing played a part in what Rhoda Howard has called the 'romantic communitarianism' which now affects so many dimensions of global life and confronts students of human rights with so many problems.

Cultural relativism, as defined earlier, consists of the attempt to interpret another culture in its own terms, by careful and thorough investigation from the inside, eschewing one's own ethnocentric bias. Cultural relativism can be seen as both a by-product and characteristic error of positivism: an attempt is made to achieve objectivity by stepping outside one's own culture, but in so doing one men stands firmly inside another. At the heart of both positivism and cultural relativism is the ideal of 'scientific detachment'. It has a number of analytical uses, as suggested earlier. It is crucial, if one is to try to understand a culture and see it from inside to any meaningful degree, to try and transcend or eliminate ethnocentric bias for the period of observation. However, there are at least two major criticisms of cultural relativism which are significant in terms of human rights.

Cultural relativism tends to posit self-contained socio-cultural entities, which have developed their own unique thoughtways and systems and which are coherent and unchanging. Here is a case where an epistemological assumption – the culturalist one – has enormous ontological consequences. One of the themes of this chapter has been to challenge the hygienic order of culturalism on empirical as well as normative grounds. It is in terms of the former that William McNeill, among others, has criticised Huntington's billiard-ball model of civilisations. McNeill argues that when local habits and customs have been threatened, 'withdrawal and reaffirmation' have been the first and most elemental reactions' however, history shows that borrowing 'foreign ideas and practices' and adapting them to local use has been far more important. In his opinion, 'the net effect of successful borrowing and adaptation was to increase human wealth and power by enlarging our niche in the ecosystem. This, in fact is, and has always been, the central phenomenon of human history.' When the 'bunker mentality' dominates, McNeill argues that the result is for a people to be 'disastrously left behind'; even a civilisation as vast and successful as that of China had to face up to this fact in the last century, and has yet to recover its self-esteem.

If the very notion of 'cultures' is as problematical as the earlier argument suggests, there is a strong case for abandoning 'culture' as a political referent and instead regarding cultures as dangerous political myths, like the term 'race'. The similarity in the terms is worth elaborating, for racial classifications are as various and vague as are the referents used in discussions about human rights: to what is relativism in human rights to be relative to – states, nations, cultures, societies, civilisations, communities (national or sub national) or what? Cultures, like race, have more political purchase than scientific validity. Some scientists have identified five racial sub-species, others fifty, while yet others have argued that the concept of race has no scientific validity whatever, pointing out that the human species in genetic terms is remarkably homogeneous compared with other animals, that there is more genetic variation within one human 'race' than between that race and another, that genetic variation from one individual to another of the same race 'swamps' the average differences between racial groupings, that human diversity within Africa in terms of DNA is nearly three times that of Europe, and that 'black' races contain as much genetic variation as the rest of humanity put together. Race, then, is an idea that is the product of history and politics. Racial groupings, in the words of Chris Stringer, 'are simply the end points of old trade routes'. The fact that both race and culture are contestable terms – but not contested enough – does not prevent them from being powerful political myths – useful for some, and consequential for all.

Cultural relativism is a parent of ethical relativism. The latter, which derives from what in one sense is a laudable attempt to judge cultures in their own terms, denies the appropriateness of anyone from one culture making meaningful moral judgements about behaviour or attitudes in another – whatever the oppression, exploitation, discrimination or subordination. The relativist position is flawed when it comes to thinking about human rights for three main reasons: first, because of the radical uncertainty of the appropriate referent to which particular values are supposed to be relative – the point argued earlier; secondly, because there are no sensible lines which we can draw when faced by suffering and say 'this is nothing to do with me' – an argument to be elaborated later; and thirdly, because relativism would take away the ability to condemn human wrongs. The relativist position is confused, and also infused with moral nihilism. From an ethical relativist perspective one could not easily describe some traditional practices as 'torture not culture', or argue that beheading, amputation or prolonged stays on 'death row' are not civilised ways of dealing with criminals. Relativism, taken to its ultimate asks one not to intervene, and to leave judgement to those on the inside, who (ostensibly!) share the same values and thought-worlds. It is a form of what Callinicos calls 'ethnocentric blindness'. Power corrupts, and cultural relativism helps; no wonder tyrants dislike the light shone by

monitoring groups, inside and outside, committed to universal standards of human rights.

The corollary of the argument that cultural relativism is ethically flawed is not that the West is Best. Western liberal triumphalists need to recognise the continuing relevance of Gandhi's comment, when asked what he thought about Western civilisation: 'I think it would be a good idea'. Some in the West are in a position to criticise certain practices in other parts of the world, but what is taken to be the West in a political sense can rarely preach to the rest of the world, because while there are things that the West has got right – the abolition of hunger, the rule of law, democracy and so on – there is also plenty that is wrong, from possessive individualism to the selfish exploitation by the West of the world's resources, and many of its people. Cultural relativism is flawed, but so is the idea that any single political power knows best about everything.

Cultural relativism is flawed as an approach to politics, but cultural sensitivity must inform all we do, including how we think about universal perspectives on human rights. In the following five points I will synthesise a range of critical views about universality, from cultural relativists, post-structuralists and realists.

This criticism is based on the widespread view that those who advocate universality do so because they believe that humans share a common nature, which is identifiable. One such universalist view, often criticised, is the natural law tradition. This posits that there is a natural law which exists independently of the positive laws of polities, to which all human are subject, and which derives from nature – or god. This set of laws is discernible through reason. Such a tradition rests on an essentialist argument, as does the definition of human rights which states that human rights are the rights one has simply because one is a human. Both these views are tautologous. I want to argue that we should have human rights not because we are human, but to make us human. The only element of essentialism in this argument is that these rights should apply to our biological species.

The defence of universality here is akin to Philip Allott's social idealism, which seeks to open up the human future, free of humanly constructed 'essentialisms' and 'false necessities'. Allott's social idealism regards human society as self-constituting. Societies change, or not, as do the people who are made in them, as a result of the historical interplay of particular social, economic, political and other theories in precise settings. The key is human consciousness, and human evolution is the evolution of human consciousness. The point is that humans are not essentially born, they are socially made, and that human rights are part of what might make them at this stage of world history. We have human rights not because we are human, but because we want the species to become human.

It is not surprising at the end of the twentieth century that universalist or cosmopolitan thinking about human rights appears to be the smuggling in of Westernism. Part of the strength of relativism comes from sensitivity about the success and excess of Western imperialism. It is important to remember this history, but we should not allow guilt about historical injustices (for which we had no direct responsibility) and anxieties about cultural insensitivity, to lead us into bad arguments and worse politics – which might add yet further to the sum of human misery.

The most trivial point anybody can make about human rights is that they come from ‘somewhere’. Of course they do. Are we to take from the values-from-somewhere position that geography is therefore destiny? If so, where do we stop? How local should we go? If, for example, there is a clash between the values of the family and the values of one’s religion, or between the values of the state and the values of one’s ethnic culture, which values-from-somewhere should be privileged? Once again, the problem of the multiple and uncertain referent rears its head. So-called cultures and communities may seem bounded, but they are not gagged, and some values travel rather well. All groups, I believe, have a concept of hospitality. Hospitality is not rejected because it originated, somewhere, in a faraway cave about which we know nothing. Love, in its many varieties, also finds a place in all societies and cultures; though its precise expressions vary, we all know it when we see it, or should do. We do not reject love, just because it was invented ‘somewhere’, in humankind’s evolutionary struggles. Indeed, most people celebrate love in its varied forms, as the highest purpose in life. Equally, torture was also invented, ‘somewhere’, and is now – though it was not always – almost as universally condemned as love is valued. That a world of love is better than no love, and love is better than torture, are cultural universals. How these are expressed are details, arising from time and space. To say that human rights come from somewhere – and the West is not the only geographical expression claiming to be a parent – should never be allowed to be the end of the story: it is only a starting point for discussion of how we should live, as humans, on a global scale.

Cultural relativism has been a powerful idea in International Relations since the late 1980s as a result of the influence of a strange mix of bedfellows comprising postmodernists, liberals trying to adopt a culturally sensitive position on human rights, and civilisation realpolitikers who argue that the world has slid seamlessly from a Cold War to a ‘clash of civilisations’. The effect has been a tendency to naturalise or even valorise the relationship between cultural space, ethical communities and values. One of the problems with the communitarian perspective is that it emphasises the territoriality of values, as with geopolitical human rights blocs. This is a profoundly conservative move, embedded in ideas about sovereign spaces. If we adopt this perspective,

the chessboard of international relations – and hence the politics of human rights – will be entirely synonymous with the geography of meaning. Spatial relationships are undoubtedly of fundamental importance in human society, but geography is not destiny. Spatial ‘realities’ are frequently altered by changes in technology and sociology. A river might be impassable in one era but bridgeable in another; it might be a line that divides people or a resource that brings together an economy. The ideology that the geography of meaning is more important, more consequential, than history is redolent of the spurious ideology of geopolitics in the 1930s.

Behind the criticism of universality is concern about the relationship between the spread of ideas and associated material and political power. Expressed crudely, and adopting Mao’s famous line, the assumption seems to be that cultural power grows out of the barrel of a gun. If this argument is accepted, and ‘power’ is seen to be doing all the work, then the real choice is not between power (external) and culture (local) but simply between different sites of power, local or external. It is not always obvious why local power is necessarily to be preferred, in terms of the values it imposes on those it can reach. Clearly, there is often a direct relationship between the spread of values and the gradient of political power: the Bible followed the flag. But material and political power are not always decisive. The history of religions points elsewhere, and suggests that some ideas become powerful as a result of the power of the idea, as opposed to the material and political power of the holder. That is, power may be immanent in the idea, rather than the idea being immanent in the power. Ideas can become powerful ‘when their time has come’. Christianity spread in the Roman Empire because the powerless believed it. Likewise, Islam grew because it spoke to the poor. The cries of *Ltberte*, *Egalite*, *Fraternite* did not sweep France as a result of the material and political power of the *sansculottes*. And the idea of the equality of the sexes did not grow out of the barrel of a gun. In all these cases, whatever their subsequent history, the moral commitment of powerless people, rather than the material power of states or elites, was the decisive factor. In the beginning it was the power in the idea that moved people, not the material power pushing the idea.

The spread of a human rights culture, I believe, cannot simply be explained in power political terms – by the domination of the West. Human rights speak to the age of industrialisation, dislocation and globalisation in some fundamental sense, as being right, as other life-enhancing ideas have spoken to other people at other times. The twentieth century may have represented a period of history when for the West there seemed no limits to growth, including the spread of liberalism. Some were led to trumpet The ‘end of history’. In the next century the growth of limits may be much more evident. And it may be that under the pressure of population growth,

environmental decay and Asian power that the idea of individual freedom, so central now, will seem irresponsible. Human rights as now conceived in the West are by no means set to head the agenda through the rest of history. There are also ideas whose time has passed.

The argument that universal human rights are simply a continuation of Western imperialism by other means can be turned on its head. Peter Baehr, for example, has argued that the failure to think of applying human rights to non-Western societies reflects a 'rather paternalistic way of thinking'. Baehr writes that those who say that people in the 'developing world' are not ready for, or would not appreciate, political freedoms are not only being patronising but are also playing into the hands of repressive regimes who want to deny civil and political rights as long as there is economic underdevelopment. This view ignores the victims of repression (who rarely argue for the right of their government to repress them), and fails to recognise that the denial of such rights might also be dysfunctional in terms of achieving economic and social development.

Western opinion, and governments, often regard themselves as exemplars of human rights. In practice the West has no grounds for complacency or self-satisfaction. Not only has the job not been completed at home, but there are major hypocrisies and silences. Structuralist theorists, for example, argue that the power of the North depends upon the weakness of the South, that Northern wealth depends on the South's poverty, and that the enjoyment of its rights depends on the wrongs it inflicts. Worthies of previous eras enjoyed and trumpeted their good life while living more or less comfortably on the backs of slaves: we are no different. In this circumstance Western complacency and hypocrisy is overwhelming. There are some ethnocentric (originally Western) values for which we should not apologise, but there are plenty for which we should.

Universalism sets standards, but that need not be the same as sameness or cultural homogeneity. Just because an examination sets standards (for example, requiring certain minimum levels of grammar, logic and knowledge) it does not mean that every essay on Shakespeare has to be identical. As far as values are concerned, arguments are usually framed in the form of negative injunctions – 'Thou shall not...'. A whole series of such injunctions still allows considerable freedom in which people can express themselves. There is scope for diversity within standards. This is the nature of democracy, for example.

Furthermore, universal standards may indeed sustain diversity rather than the opposite. The spread of feminism and gay rights breaks up the universal transcultural presence of patriarchy, and without universal principles, it is difficult to see how indigenous peoples have any chance of surviving. Here, the work of Western (universalist) organisations such as Survival, for example,

is important. If left to sovereign governments, the future of indigenous peoples and their land would look even bleaker than it does today. Universal feminism allowed women's rights to develop in different countries more quickly than if there had been no transnational and transcultural feminist solidarity. And if a debate still goes on within feminism about the meaning of 'woman', this is surely of far less urgency than the daily abuses of women (a word postmodern feminists cannot avoid). The anxieties of some Western academics about 'sameness' seems a trivial and patronising concern when compared with the anxieties of women in desperate circumstances, needing a hand. If left exclusively to local patriarchal power-brokers, that hand will be the traditional fist.

The politics of cultural relativism can be expressed as 'the tolerance of diversity'. Few would oppose diversity in principle - except those, perhaps, who believe that a Disney theme park represents the best of all possible worlds. But the key question is: how much diversity should be tolerated? Even if we understand all, does it mean that we have to forgive all? Cultural relativists and postmodernists will argue against universal ideas - 'metanarratives' - while valuing tolerance as a universal. Clearly, there are no non-universalists. Even the total rejection of universal human rights is a universalist position on human rights. If we accept the argument that ideas and values are culturally specific, then presumably postmodern ideas will not travel beyond their urban Western privileged origins - or is the argument another of postmodernism's smuggled-in metanarratives? In any case) their ideas are not seen as relevant by the victims of world politics, who often look for salvation to universalist ideas such as human rights. In circumstances when there may simply be no final philosophical argument for settling whether particular universals are regressive or emancipatory, a good place to start thinking about politics is to ask the victims. Generally, the victims see universal solidarity as more of a promise than they see sameness as a threat. As a Westerner, I believe that the risk of being thought to be an imperialist in some circumstances is justified in the face of local fascism. Commenting on recent Indonesian history, Baehr has written that: 'The acceptance of the universality of human rights standards is a notion that may be uncomfortable to oppressive governments. It is, however, generally adhered to by their victims.' A general commitment to the tolerance of diversity must therefore be tempered, in order to overcome human wrongs, by a diversity of tolerance in application.

Universalist ideas, like emancipation, are sometimes criticised for denying 'the other's otherness'. If homogenisation is the fear, the record suggests that we should worry about it locally before universally. Why is the eradication of difference in the face of (local) communitarian power less worth struggling for than any eradication of difference as a result of external

‘imperialism’? Genocide, for example, is a human wrong which is more likely to take place within a sovereign entity than between sovereign entities. An approach to world politics dominated by imperial local conceptions of ‘us’ and The Other (a dominant nation in a multination state, for example) erodes diversity in the name of sovereignty. It is my belief that it is only by recognising our human sameness in an other regarding universal solidarity that we will actually protect human diversity and reduce human wrongs.

All human ideas have their dark side, and universality is no exception; but universality is not necessarily negative in its consequences, and ‘human rights’ is a shining example. An important distinction here, as with emancipation, is between ‘true’ and ‘false’ universality. False universality can appear to be Utopian (in the sense that it aims to produce a better world) but can end up being totalitarian and dangerous. Local politics can also be the latter with more likelihood of achieving success, as the history of the twentieth century attests. These warnings are important for those aspiring to universal standards, but equally the warning is for those who believe that small is always beautiful. The lesson to be drawn in both cases is the desirability of democracy within and between countries – as captured in the notion of ‘cosmopolitan democracy’. Cosmopolitan democracy, if operationalised, would be a stronger safeguard against totalitarian and dangerous sameness than the ideals of Westphalia.

It is not therefore primarily a matter of trying to settle once and for all the philosophical argument between relativism and universalism in a globally satisfying way. This is probably impossible; rather, the task is to operationalise cosmopolitan democracy. This is the idea which at the present stage of history is best calculated to produce a politics of true universalism – an inclusive multicomunity ‘multilogue’, aimed at standard-setting in ways that will reduce human wrongs, and balance a tolerance of diversity with a diversity of tolerance.

The differences between pro- and anti-universalists are often less than it appears – unless, of course, the anti- is a local regime using cultural relativist arguments as part of a ‘Keep Out’ campaign. Few people would stand aside in extremis and say they are not willing to make universal judgements when some gross human wrong is being committed. Similarly, there are limits on the numbers of those in the West who would want to impose the Western way of life universally, though the triumphalism of Western liberalism at the end of the Cold War, and of global capitalism, might suggest otherwise. For the moment, true universalism is best tested by listening to victims and trying not to offend global civil society, the nearest we have to a conscience of world society. The task is to work out a politics of true universalism, which obviously cannot simply be a Western project. It is one aspect of false universalism to believe that there is one answer, and a final answer.

To celebrate a world of difference, literally, is Utopian, totalitarian and dangerous. James Der Derian has endorsed a Nietzschean perspective on 'the very necessity of difference', looking towards a 'practical strategy to celebrate, rather than exacerbate, the anxiety, insecurity and fear of a new world order where radical otherness is ubiquitous and indomitable'. Celebrating anxiety, insecurity and fear, from the comfort of Western academe, on behalf of those anxious about being beaten up or worse, insecure about having any cash to feed their children, or fearing their total dependence on the next rainfall, strikes me as deeply patronising, immoral and unthinking. In the mid-1990s, on a visit to Britain, the new president of South Africa, Nelson Mandela, celebrated human solidarity (based on a politicised metanarrative against racism) in the cause of liberating his own country and other achievements. He said: 'One of the striking features of modern times is the number of men and women all over the globe, in all continents, who fight oppression of human rights'. In the case of South Africa the international process made an enormous difference. It created historical facts, as Mandela put it, 'in which the ordinary folk throughout the world have participated and shaped'. If this is the choice which postmodern perspectives give us, then I have no doubt at all whose politics are best calculated to lead to human security, dignity and flourishing, and I have no doubt whose spirit I would prefer to have on my side if my back was pushed to the wall: it would not be the spirit and politics of Nietzsche, but of Mandela.

As mentioned earlier one of the most powerful criticisms of universal human rights is the argument that ideas about rights derive from, and must be embedded in, particular ethical communities; and since there is no universal ethical community, the idea of universal human rights must be an ethnocentric assertion, a drive to make the local into the global. The conclusion usually derived from this argument is either that the search for human dignity has to adopt a different route to that of rights, or that universalism must be conceived very thinly, allowing local cultures considerable space in which to interpret rights in their own ways. I want to make five arguments rebutting some of these points – and I especially want to reject the conclusion.

First, the critique of universality ignores the degree of actually existing universality in terms of human rights. Donnelly, for example, has argued persuasively that there are various sorts of universality – what he calls 'international normative universality'. All states regularly proclaim their acceptance of and adherence to international human rights norms – notably the 1948 Universal Declaration of Human Rights – and charges of human rights violations are among the strongest that can be made in international relations. Even abusers of human rights feel the need to defend themselves in the currency of the human rights discourse, they do not reject it.

Secondly, the critique of universality ignores the degree of value commensurability that exists between communities. Many writers – cultural anthropologists, psychologists, sociologists of religion, social scientists and philosophers – have argued, with increasing empirical support and epistemological confidence, that human beings, ‘whatever their cultural contexts, tend to have many similar conceptions regarding rectitude, civility, right and wrong behaviour and duties and obligations towards other people’. What this tends to suggest, according to Donald Puchala, is that ‘at a fundamental level, moral behaviour is not a cultural trait but a human predilection’. It has come as a surprise to many that sociobiology, so long identified with the social spirit of the selfish gene, now has advocates who see ‘the origins of virtue’ in our biological characters. It is less surprising that a neo-Aristotelian philosopher, Martha Nussbaum, argues that humans are entitled to be allowed to flourish in a human way, and to help one another to flourish equally. Her requirements and entitlements for such flourishing closely match the Universal Declaration of Human Rights and the definition of ‘human security’ agreed upon by the UN Development Programme. Whatever the origins of human moral behaviour – nature, god, right reason, or whatever – the important point is that actual social practices suggest a considerably higher degree of value commensurability across cultures than relativists would allow.

As a general rule, culture can indeed speak unto culture. There are exceptions, of course, and some of these might utterly reject some of the premises of human rights discourse – for example, the political agents and cultural value system which sustain the caste system in India. Sometimes regressive ideas have to be opposed, as were slavery and the burning of heretics. These ideas were once respectable, supported by their political communities and cultural value systems. It is a preposterous political position to argue that the idea of universal human rights is flawed because some groups cannot conceive the notion of rights. Are victims always to be left hostage to the selfish politics of the powerful? If we had to wait until everyone was persuaded before taking any step in life, we would still be in the Dark Ages. Progress in promoting liberty, equality and fraternity cannot be held hostage by those who support, for example, a caste system with a concept of ‘untouchables’. Outsiders can best help by going with the grain of history, by helping those who want to resist to bring about reform rather than by imposing change. But in extremis, when gross abuse is taking place, and people are shouting for help, urgent choices have to be made, and sometimes the force of better argument has to be replaced by the argument of better force.

Thirdly, the critics of universality (and cosmopolitan perspectives) ignore a powerful alternative view of world politics, one that has thought in terms

of a potential world community rather than particularisms. But history is written by the winners, and in this case the winners have been communitarians. This leads us inevitably back to history – the ‘future of the human past’ as Philip Allott has put it, in a different context. It is only by looking at the human past, and rethinking it, that we can fully appreciate the potentiality for human becoming, rather than merely human being. This can be shown quite simply. Humans start learning about politics, including world politics, almost from the moment they are born. We are genderised, and then we are nationalised. We are taught, and learn, and discover politics from messages and images that are all around. (The implication of this is that what we learn we can also unlearn.) We are socialised by signs and stories telling us who is insider and who is outsider – the us and them. As a result of generations of nationalised upbringing, the great mass of people on earth believe that the national is natural, that we have tribal souls, that statist divisions are commonsensical and that concepts such as common humanity are naively Utopian. But giving ultimate loyalty to nations and states, and accepting their ultimate decision-making power, is not a primordial condition. In reality, the international system in which we now live is a recent invention. The 350-year-old states system associated with Westphalia has been in existence for only about sixteen of the 5,000 generations of tool-making humans, while the nation-state identified with the French Revolution has only been around for about eight generations. The point I am stressing is that the now powerful world political stories we have learned to live by – nations and states – are very recent inventions in historical time. They are neither natural nor primordial. This warns against drawing sweeping conclusions about what human rights ‘are’ or ‘are not’ from historical snapshots and culturalist stories.

Nationalism and state sovereignty are powerful universal ideas. One idea that has never been universally powerful, politically, but which has been influential for far longer than the modern idea of nations and states, is the story that our main identity should be common humanity rather than some part of it. Few children are cosmopolitanised as they grow up. Nevertheless, contemporary cosmopolitans can look back twenty-five centuries for intellectual and moral sustenance. The idea of a cosmic polis – the idea that we are all (potential) citizens of a universal city – can be traced in the Stoic philosophers of Greek times, the medieval idea of a united Christendom, the ideas of Dante and other writers about a worldwide empire, the Islamic vision of one umma or world community, the peace plans of the rationalist philosophers of the eighteenth and nineteenth centuries, the Enlightenment commitment to universal reason, the universalist ideals of *liberie*, *egalite* and *fraternite* released by the French Revolution, the schemes of World Federalists, imaginings of global Utopias and the rest. However, some universalist ideas, those of a totalitarian nature, have not been inclusive or humanistic and

I would reject these as false cosmopolitanism or universalism. Non-inclusive 'universalisms' privilege power over people. The rise and spread, particularly since the Second World War, of a universal human rights culture, feeds into the long tradition of ideas about a true politics of common humanity.

Fourthly, contrary to the argument that there is not a universal ethical community on which to base human rights universally, I would emphasise that there are indeed universal ethical communities; these derive from the fact that everyone on earth has multiple identities (deriving from gender, work, family position, political status and so on). Why should 'culture' have primacy? If the best answer to this is not the geography of meaning – cultural geopolitics – then we have to weigh culture alongside other identities when asking the question: to whom or to what are ethical values to be relative in any given case? And this means, surely, that an individual has the right to refuse a cultural or ethnic (or gender or whatever) identity? Should women in Afghanistan, whose life-choices have been constrained by the Taliban, identify first with the views of the Taliban or with how they think and feel as women? Should 'untouchables' in India submit to the local elite or identify with oppressed groups elsewhere? Universal human rights are supposed to be invalid because there is no universal ethical community. But there is: the ethical community of oppressed women, the ethical community of under-classes; the ethical community of those suffering from racial prejudice; the ethical community of prisoners of conscience; the universal ethical community of the hungry... and on and on. Universal human rights are solidly embedded in multiple networks of crosscutting universal ethical communities. The fundamental weakness of the critics of universality is that they take too territorial a view of the idea of human community, human political solidarity and human social affinity. Their perspective is conservative, overdisciplined by constructed sons of states and cultures.

Finally, in addition to the social, philosophical and political arguments just levelled against the critics of universalism, there is a further one, this time powerfully made by a writer who is best known for adopting anti-foundationalist positions, Richard Rorty. This is an argument that stresses the universality that derives from our common experiences as human beings. Rejecting foundationalist arguments on which to base human rights, Rorty writes that a 'better sort of answer is the sort of long, sad, sentimental story which begins "Because this is what it is like to be in her situation – to be far from home, among strangers," or "Because she might become your daughter-in-law" or "Because her mother would grieve for her." Such stories, he argues, are as good as it gets in terms of developing transcultural solidarities. There is indeed scope for 'sentimental education', what Annette Baier calls 'a progress of sentiments'. Many people can understand the stories of faraway people in faraway places. Indeed, many regard such explorations not as an

alien activity, but as a way of opening up their own mental landscapes, and so knowing themselves. It is important to recognise the universality of human sentiments, but it is hardly a strong enough position on which to base an entire theory and practice of world politics. It can only be a part. As Wilson has written, in criticising Rorty's position,

Yet one can only construct a very weak defence of actions by relying on emotions and courage alone, and eschewing all recourse to rational forms of argumentation. Rights without a metanarrative are like a car without seat-belts; on hitting the first moral bump with oncological implications, the passenger's safety is jeopardised.

The conclusion of this defence of universality is that when faced by a human wrong, there is no sensible place to draw a line and say: 'This is no concern of mine.' The very multiplicity of identities that humans share destroys the assumption of black-boxed communities of value which the anti-universalist critique depends upon. We are connected, universally, to multiple networks of ethical communities. Against this, relativism asserts a single referent, constructed by traditional territorial power structures and a totalised conception of culture. Universality is therefore possible (ethical and other communities are universal), desirable (resistance to oppression requires universal ethics, and this position is more defensible than the alternatives) and logical (there is no other sensible place to draw lines). What finally binds all this together and gives a firm anchorage for universal human rights is the universality of human wrongs. Human wrongs are everywhere; all societies find it easier to recognise and agree upon what constitute wrongs elsewhere than they do rights; wrongs are universal in a way rights are not; and a concentration on wrongs shifts subjectivity to the victims by emphasising a bottom-up conception of world politics. This has the crucial effect of humanising the powerless. In the early 1990s Rorty was much troubled by the dehumanisation taking place in the Balkan wars. Some Serbs saw Muslims as uncircumcised dogs, and some Muslims made distinctions between humans (themselves) and blue-eyed devils (their enemies). When such dehumanisation occurs it becomes possible for groups simultaneously to believe in human rights but also carry out unspeakable atrocities, because they do not think human rights are being violated when what they target is an uncircumcised dog or a devil. As ever, the relativist perspective of human wrongs gets over this and allows the victim to assert and define his or her humanity, with the help of solidarist groups elsewhere. The invention of humanity and the definition of who is human cannot be allowed to be in the hands of particularist prejudices.

In the post-positivist phase of academic International Relations it is more common to contest the simple distinction between 'facts' and 'values' than was once the case. It has been more common in philosophy, and I want to

endorse, with Mary Midgley, Geoffrey Warnock's argument: 'That it is a bad thing to be tortured and starved, humiliated or hurt is not an opinion: it is a fact. That it is better for people to be loved and attended to, rather than hated or neglected, is again a plain fact, not a matter of opinion.' Expressing it differently, Wilson states that: 'Whereas human happiness is noted for its variety, human misery is relatively uniform, leading to a notion of human frailty as the universal feature of human existence.' From these statements – which I believe represent universal social facts – I believe that universal human rights are possible, logical and desirable. They derive from our animal nature (the need for food and shelter) and from our social character and potentiality. The is of wrongs demands the should of emancipation.

We have therefore no firm grounds for saying, when confronted by gross human rights abuses – human wrongs – that 'This is no concern of mine'. On the contrary, our multiple identities give us grounds for involvement, whether one speaks as a parent, family member, neighbour, citizen, member of the human species or whatever category one can imagine. One might argue in a particular case that there is nothing one can do, or that one's priorities have to be with one's nearest and dearest, or that one's own nation must come first – or whatever – but the important point is that when faced with a human wrong – if one choose not to act – it is necessary to justify non-involvement. Kant is becoming right. He said that a 'transgression of rights in one place in the world is felt everywhere'. With the help of the media, to some degree, and global civil society, even more, people are increasingly confronted by concern, if only to the extent of having to justify nonintervention.

In sum, the argument for a universalist approach to human rights rests on the universality of human wrongs; the latter are universal social facts that derive from our animal nature and social character to date. This argument is then strengthened by two others: the existence of a universality of ethical communities – and especially those of victims – and the fact that when one is faced by a human wrong – be it a hungry child, a prisoner of conscience, a battered person in the street, a victim of torture, starvation, humiliation or hurt – there is no intelligible reason for saying 'this is not my concern'. Confronted by all our multiple identities, relativism, particularism, and forms of communitarianism are ultimately not coherent. Even if there are contingent reasons for not acting, there are none for feeling and being uninvolved.

This chapter, long as it is, leaves many loose ends. But so it must, for there is a point in the human rights issue beyond which words cannot go. Philosophising can only go so far; the conclusion is in the doing; the outcome is in local struggles and individual efforts. For people wearing academic hats it might mean doing empirical studies of particular countries or particular human rights abuses, or investigating the workings of police

and legal systems; for those with the role of activists, some of whom will also be academics, it means making choices and having the 'courage of their confusions'. This chapter has tried to give a comprehensive approach to taking such steps, based on the belief that human rights have a central role in the process of emancipation, which itself is central to human self-creation. Together, they speak to the predicament of living in the modern world, with all that this means: a situation in which human wrongs are universal, and a time when one of the great issues of the day is the task of mediating between the local and the global, when the meaning of each is in flux, as well as the relationship between them. Human rights is at the crux of all these matters, being concerned with what it is to be a human being, being human.

The Universal Declaration of Human Rights in 1948 can be seen as one of the steps towards the beginning of the end for a period of triumphant statism in world history, a period identified with the Westphalian system which had been formally inaugurated exactly 300 years earlier.

Westphalia, in its time, had represented a sort of anchorage, after the ravaging wars of religion. But the grammar of the system of state sovereignty and statism constructed from the seventeenth to the twentieth century led inexorably to the Holocaust and atomic warfare. These outcomes, evident to all in 1945, were not accidental factors in history, but the logical culminating points of an international system based on the idea that the sovereign state should represent the supreme locus of decision-making power and the highest focus of loyalty. Anarchy might be what states make of it, but humanity has not been. In the killing fields at the apogee of Westphalia – Dachau and Hiroshima – 'Hell was here'.

In 1948, with the Universal Declaration of Human Rights, the individual was potentially brought back to the centre. A building block was constructed for the possible development of a cosmopolitan democracy in a world of post-sovereign states, in ways that promised – but certainly did not guarantee – to reconcile particular and universal conceptions of humanity in universally – if not totally – satisfying ways. 1948, and what the Universal Declaration symbolises, gives us cause for hope, though not optimism, that the next 300 years will offer more space for creation of humanity on a global scale than the past 300 years, a period of limited emancipations and unlimited violences. If 1948 not let us revise the grammar of 1648, so much the worse for the world – the human and the non-human. Successful revision of statist grammar requires many things, of which a culture of human rights is one. This in turn requires an escape from the three tyrannies discussed earlier, so that we can think, talk and act with respect to human rights free of the regressive grip of common sense, traditionalism and relativism. We have no better language at present to set us free, to mediate between the local and the global and to overcome territorial conservatism in the interest of the construction of true

universalism. The development of a human rights culture is crucial, because it is one of the ways by which physical humans can try and invent social humans in ways by which physical humans can try and invent social humans in ways appropriate for our dislocated, stasis, industrialised and globalising age. Each person on earth has several identities – chosen and/or ascribed. The truly emancipatory moment will be when the universal ‘I’ totally embraces the universal ‘an other’. Human rights can educate here, because an individual’s entitlement implies an other’s duty, and because there is no more efficient way of learning how the world works than by identifying with the wrongs others suffer. If enough people can come to think and feel beyond their skins, we can continue the work begun in 1948. This is the hope of progressively leaving behind the politics of the concentration camp – the ultimate sovereign space – for a cosmopolitan democracy aimed at reinventing global human being – being human globally -based on the politics of the-I-that-is-an-other, and badged with common humanity.

Jack Donnelly

CULTURAL RELATIVISM AND UNIVERSAL HUMAN RIGHTS

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Cultural relativity is an undeniable fact; moral rules and social institutions evidence astonishing cultural and historical variability. The doctrine of cultural relativism holds that some such variations cannot be legitimately criticized by outsiders. I argue, instead, for a fundamentally universalistic approach to internationally recognized human rights.

In most recent discussions of cultures or civilizations – whether they are seen as clashing, converging, or conversing – the emphasis has been on differences, especially differences between the West and the rest. From a broad crosscultural or intercivilizational perspective, however, the most striking fact about human rights in the contemporary world is the extensive overlapping consensus on the Universal Declaration of Human Rights. Real conflicts do indeed exist over a few interpretations and modes of implementing internationally recognized human rights. Nonetheless, I argue that culture poses only a modest challenge to the contemporary normative universality of human rights.

When internal and external judgments of a practice diverge, cultural relativists give priority to the internal judgments of a society. In its most extreme form, what we can call radical cultural relativism holds that culture is the sole source of the validity of a moral right or rule. Radical universalism, by contrast, would hold that culture is irrelevant to the (universal) validity of moral rights and rules. The body of the continuum defined by these end points can be roughly divided into what we can call strong and weak cultural relativism.

Strong cultural relativism holds that culture is the principal source of the validity of a right or rule. At its furthest extreme, strong cultural relativism accepts a few basic rights with virtually universal application but allows such a wide range of variation that two entirely justifiable sets of rights might overlap only slightly.

Weak cultural relativism, which might also be called strong universalism, considers culture a secondary source of the validity of a right or rule. Universality is initially presumed, but the relativity of human nature,

communities, and rules checks potential excesses of universalism. At its furthest extreme, weak cultural relativism recognizes a comprehensive set of *prima facie* universal human rights but allows limited local variations.

We can also distinguish a qualitative dimension to relativist claims. Legitimate cultural divergences from international human rights norms might be advocated concerning the substance of lists of human rights, the interpretation of particular rights, and the form in which those rights are implemented. I will defend a weak cultural relativist (strong universalist) position that permits deviations from international human rights norms primarily at the level of form or implementation.

Beyond the obvious dangers of moral imperialism, radical universalism requires a rigid hierarchical ordering of the multiple moral communities to which we belong. The radical universalist would give absolute priority to the demands of the cosmopolitan moral community over other (“lower”) communities. Such a complete denial of national and subnational ethical autonomy, however, is rare and implausible. There is no compelling moral reason why peoples cannot accept, the nation-state, as a major locus of extrafamilial moral and political commitments. And at least certain choices of a variety of moral communities demand respect from outsiders – not uncritical acceptance, let alone emulation, but in some cases at least, tolerance.

But if human rights are based in human nature, on the fact that one is a human being, how can human rights be relative in any fundamental way? The simple answer is that human nature is itself relative. There is a sense in which this is true even biologically. For example, if marriage partners are chosen on the basis of cultural preferences for certain physical attributes, the gene pool in a community may be altered. More important, culture can significantly influence the presence and expression of many aspects of human nature by encouraging or discouraging the development or perpetuation of certain personality traits and types. Whether we stress the “unalterable” core or the variability around it – and however we judge their relative size and importance – “human nature” the realized nature of real human beings, is as much a social project as a natural given.

But if human nature were infinitely variable, or if all moral values were determined solely by culture (as radical cultural relativism holds), there could be no human rights (rights that one has “simply as a human being”) because the concept “human being” would have no specificity or moral significance. As we saw in the case of Hindu India, some societies have not even recognized “human being” as a descriptive category. The very names of many cultures mean simply “the people” (e.g., Hopi, Arapahoe), and their origin myths define them as separate from outsiders, who are somehow “not-human”.

Such views, however, are almost universally rejected in the contemporary world. For example, chattel slavery and caste-based legal and political systems, which implicitly deny the existence of a morally significant common humanity, are almost universally condemned, even in the most rigid class societies.

The radical relativist response that consensus is morally irrelevant is logically impeccable. But many people do believe that such consensus strengthens a rule, and most think that it increases the justifiability of certain sorts of international action. In effect, a moral analogue to customary international law seems to operate. If a practice is nearly universal and generally perceived as obligatory, it is required of all members of the community. Even a weak cosmopolitan moral community imposes substantive limitations on the range of permissible moral variation.

Notice, however, that I contend only that there are a few cross-culturally valid moral values. This still leaves open the possibility of a radical cultural relativist denial of human rights. Plausible arguments can be (and have been) advanced to justify alternative mechanisms to guarantee human dignity. But few states today attempt such an argument. In all regions of the world, a strong commitment to human rights is almost universally proclaimed. Even where practice throws that commitment into question, such a widespread rhetorical “fashion” must have some substantive basis.

That basis, as I argued [...], lies in the hazards to human dignity-posed by modern markets and states. The political power of traditional rulers usually was substantially limited by customs and laws that were entirely independent of human rights. The relative technological and administrative weakness of traditional political institutions further restrained abuses of power. In such a world, inalienable entitlements of individuals held against state and society might plausibly be held to be superfluous (because dignity was guaranteed by alternative mechanisms), if not positively dangerous to important and well-established values and practices.

Such a world however, exists today only in a relatively small number of isolated areas. The modern state, even in the Third World, not only has been freed from many of the moral constraints of custom but also has a far greater administrative and technological reach. It thus represents a serious threat to basic human dignity, whether that dignity is defined in “traditional” or “modern” terms. In such circumstances, human rights seem necessary rather than optional. Radical or unrestricted relativism thus is as inappropriate as radical universalism. Some kind of intermediate position is required.

Respect for autonomous moral communities would seem to demand a certain deference to a society’s internal evaluations of its practices, but to commit ourselves to acting on the basis of the moral judgments of others would abrogate our own moral responsibilities. The choice between internal

and external evaluations is a moral one, and whatever choice we make will be problematic.

Where internal and external judgments conflict, assessing the relative importance attached to those judgments may be a reasonable place to start in seeking to resolve them [...].

Case 1 – morally unimportant both externally and internally – is uninteresting. Whether or not one maintains one's initial external condemnation is of little intrinsic interest to anyone.

Case 2 – externally unimportant, internally very important – is probably best handled by refusing to press the negative external judgment. To press a negative external judgment that one feels is relatively unimportant when the issue is of great importance internally usually will be, at best, insensitive. By the same token.

Case 3 – externally very important, internally unimportant – presents the best occasion to press an external judgment (with some tact).

Case 4, in which the practice is of great moral importance to both sides, is the most difficult to handle, but even here we may have good reasons to press a negative external judgment. Consider, for example, slavery. Most people today would agree that no matter how ancient and well established the practice may be, to turn one's back on the enslavement of human beings in the name of cultural relativity would reflect moral obtuseness, not sensitivity. Human sacrifice, trial by ordeal, extrajudicial execution, and female infanticide are other cultural practices that are (in my view rightly) condemned by almost all external observers today.

Underlying such judgments is the inherent universality of basic moral precepts, at least as we understand morality in the West. We simply do not believe that our moral precepts are for us and us alone. This is most evident in Kant's deontological universalism. But it is no less true of the principle of utility. And, of course, human rights are also inherently universal.

In any case, our moral precepts are our moral precepts. As such, they demand our obedience. To abandon them simply because others reject them is to fail to give proper weight to our own moral beliefs (at least where they involve central moral precepts such as the equality of all human beings and the protection of innocents).

Finally, no matter how firmly someone else, or even a whole culture, believes differently, at some point – slavery and untouchability come to mind – we simply must say that those contrary beliefs are wrong. Negative external judgments may be problematic. In some cases, however, they are not merely permissible but demanded.

In evaluating arguments of cultural relativism, we must distinguish between variations in substance, interpretation, and form. Even very weak cultural relativists – that is, strong universalists – are likely to allow considerable

variation in the form in which rights are implemented. For example, whether free legal assistance is required by the right to equal protection of the laws usually will best be viewed as largely beyond the legitimate reach of universal standards.

Important differences between strong and weak relativists are likely to arise, however, at the levels of interpretation and, especially, substance.

The Universal Declaration generally formulates rights at the level of what I will call the concept, an abstract, general statement of an orienting value. "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment" (Art. 23). Only at this level do I claim that there is a consensus on the rights of the Universal Declaration, and at this level, most appeals to cultural relativism fail.

It is difficult to imagine arguments against recognizing the rights of Articles 3-12, which include life, liberty, and security of the person; the guarantee of legal personality, equality before the law, and privacy; and protections against slavery, arbitrary arrest, detention, or exile, and inhuman or degrading treatment. These are so clearly connected to basic requirements of human dignity, and are stated in sufficiently general terms, that virtually every morally defensible contemporary form of social organization must recognize them (although perhaps not necessarily as inalienable rights). I am even tempted to say that conceptions of human nature or society that are incompatible with such rights are almost by definition indefensible in contemporary international society.

Civil rights such as freedom of conscience, speech, and association may be a bit more relative. Because they assume the existence of a positive evaluation of relatively autonomous individuals, they may be of questionable applicability in strong, thriving traditional communities. In such communities, however, they would rarely be at issue. If traditional practices truly are based on and protect culturally accepted conceptions of human dignity, then members of such a community will not have the desire or the need to claim such rights. In the more typical contemporary case, however, in which relatively autonomous individuals face modern states, it is hard for me to imagine a defensible conception of human dignity that does not include almost all of these rights. A similar argument can be made for the economic and social rights of the Universal Declaration.

In twenty years of working with issues of cultural relativism, I have developed a simple test that I pose to skeptical audiences. Which rights in the Universal Declaration, I ask, does your society or culture reject? Rarely has a single full right (other than the right to private property) been rejected. Never has it been suggested to me that as many as four should be eliminated.

Typical was the experience I had in Iran in early 2001, where I posed this question to three different audiences. In each case, discussion moved quickly to freedom of religion, and in particular atheism and apostasy by Muslims (which the Universal Declaration permits but Iran prohibits). Given the continuing repression of Iranian Bahais – although, for the moment at least, the apparent end to executions – this was quite a sensitive issue. Even here, though, the challenge was not to the principle, or even the right of freedom of religion (which almost all Muslims support) but to competing “Western” and “Muslim” conceptions of its limits. And we must remember that every society places some limits on religious liberty. In the United States, for example, recent court cases have dealt with forced medical treatment for the children of Christian Scientists, live animal sacrifice by practitioners of Santaria, and the rights of Jehovah’s Witnesses to evangelize at private residences.

We must be careful, however, not to read too much into this consensus at the level of the concept, which may obscure important disagreements concerning definitions and implicit limitations. Consider Article 5 of the Universal Declaration: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. The real controversy comes over definitions of terms such as “cruel”. Is the death penalty cruel, inhuman, or degrading? Most European states consider it to be. The United States does not. We must recognize and address such differences without overstating their importance or misrepresenting their character.

Implicit limits on rights may also pose challenges to universalist arguments. Most of the rights in the Universal Declaration are formulated in categorical terms. For example, Article 19 begins: “Everyone has the right to freedom of opinion and expression”. To use the hackneyed American example, this does not mean that one can scream “Fire!” in a crowded theater. All rights have limits. But if these limits differ widely and systematically across civilizations, the resulting differences in human rights practices might indeed be considerable.

Are there systematic differences in definitions of terms across civilizations? Do cultures differ systematically in the standard limits they put on the exercises of rights? And if these differences are systematic, how significant are they? I have suggested that the answers to these questions are largely negative. For reasons of space – as well as the fact that such negative arguments cannot be conclusively established – I leave this claim as a challenge. Critics may refute my argument with several well-chosen examples of substantial cultural variation either at the level of concepts or in systematic variations at the level of interpretation that undermine the apparent conceptual consensus. So far, at least, I have not encountered anyone capable of presenting such a pattern of contradictory evidence, except in the case of small and relatively isolated communities.

What ought to count, for example, as adequate protection against unemployment? Does it mean a guaranteed job, or is it enough to provide compensation to those who are unemployed? Both seem to me plausible interpretations. Some such variations in interpreting rights seem not merely defensible but desirable, and even necessary.

Particular human rights are like "essentially contested concepts" in which there is a substantial but rather general consensus on basic meaning coupled with no less important, systematic, and apparently irresolvable conflicts of interpretations. In such circumstances, culture provides one plausible and defensible mechanism for selecting interpretations (and forms).

We should also note that the Universal Declaration lists some rights that are best viewed as interpretations. For example, the right of free and full consent of intending spouses reflects an interpretation of marriage over which legitimate controversy is possible. Notice, however, that the right (as stated in Sec. 2 of Art. 16) is subordinate to the right to marry and to found a family (over which, at this highest level of generality, there is little international dispute). Furthermore, some traditional customs, such as bride price, provide alternative protections for women that address at least some of the underlying concerns that gave rise to the norm of free and full consent.

I would suggest, however, that defensible variations in interpretations are likely to be relatively modest in number. And not all "interpretations" are equally plausible or defensible. They are interpretations, not free associations or arbitrary, let alone self-interested, [supulations]. The meaning of, for example, "the right to political participation" is controversial, but an election in which a people were allowed to choose an absolute dictator for life ("one man, one vote, once", as a West African quip put it) is simply indefensible.

We must also note that considerable divergences in interpretation exist not only between but also within cultures or civilizations. Consider, for example, differences within the West between Europe and the United States on the death penalty and the welfare state. Japan and Vietnam have rather different interpretations of the rights to freedom of speech and association, despite being East Asians.

Even where there are variations between two cultures, we still need to ask whether culture in fact is the source of cause of these differences. I doubt that we are actually saying much of interest or importance when we talk of, say, Japan as Asian. Consider the common claim that Asian societies are communitarian and consensual and Western societies are individualistic and competitive. What exactly is this supposed to explain, or even refer to, in any particular Asian or Western country? Dutch or Norwegian politics is at least as consensual as Thai politics. The Dutch welfare state is in its own way as caring and paternalistic as the most traditional of Japanese employers. Such examples, which are easily multiplied, suggest that even where variations in

practice exist, culture does much less explanatory work than most relativists suggest – or at least that the “culture” in question is more local or national rather than regional or a matter of civilization.

Just as concepts need to be interpreted, interpretations need to be implemented in law and political practice. To continue with the example of the right to work, what rate of unemployment compensation should be provided, for how long, in what circumstances? The range of actual and defensible variation here is considerable – although limited by the governing concept and interpretation.

Even a number of rights in the International Human Rights Covenants involve specifications at the level of form. For example, Article 10(2)(b) of the International Covenant on Civil and Political Rights requires the segregation of juvenile defendants. In some cultures the very notion of a juvenile criminal defendant (or a penitentiary system) does not exist. Although there are good reasons to suggest such rules, to demand them in the face of strong reasoned opposition seems to me to make little sense – so long as the underlying objectives are realized in some other fashion.

Differences in implementations, however, often seem to have little to do with culture. And even where they do, it is not obvious that cultural differences deserve more (or less) respect than differing implementations attributable to other causes (e.g., levels of economic development or unique national historical experiences).

I stress this three-level scheme to avoid a common misconception. My argument is for universality only at the level of the concept. The Universal Declaration insists that all states share a limited but important range of obligations. It is, in its own words, “a common standard of achievement for all peoples and all nations”. The ways in which these rights are implemented, however, so long as they fall within the range of variation consistent with the overarching concept, are matters of legitimate variation.

This is particularly important because most of the “hot button” issues in recent discussions have occurred at the level of implementation. For example, debates about pornography are about the limits – interpretation or implementation – of freedom of expression. Most Western countries permit the graphic depiction of virtually any sex act (so long as it does not involve and is not shown to children). Many others countries punish those who produce, distribute, or consume such material. This dispute, however, does not suggest a rejection of human rights, the idea of personal autonomy, or even the right to freedom of speech.

We should also note that controversy over pornography rages internally in many countries. Every country criminalizes some forms of pornography, and most countries – Taliban Afghanistan being the exception that proves the rule – permit some depictions of sexual behavior or the display of erotic images

that another country has within living memory banned as pornographic. Wherever one draws the line, it leaves intact both the basic internationally recognized human right to freedom of speech and the underlying value of personal autonomy.

There are at least three ways in which rights that vary in form and interpretation can still be plausibly described as “universal”. First and most important, there may be an overlapping consensus on the substance of the list, despite diversity in interpretations and implementations. Second, even where there are differences at the level of substance or concept, a large common core may exist with relatively few differences “around the edges”. Third, even where substantial substantive disagreements occur, we might still be justified in speaking of universal rights if there are strong statistical regularities and the outliers are few and clearly overshadowed by the central tendency.

In contemporary international society, I think that we can say that there are few far outliers (e.g., North Korea) at least at the level of agreed-on concepts. I would admit that overlapping conceptual consensus often is thin. Nonetheless, I think that we can fairly (although not without controversy) say that variations at the level of concepts are infrequent. Somewhat more contentious is the claim that I would also advance that the range of diversity in standard interpretations is modest and poses relatively few serious international political disputes.

We do not face an either–or choice between cultural relativism and universal human rights. Rather, we need to recognize both the universality of human rights and their particularity and thus accept a certain limited relativity, especially with respect to forms of implementation. We must take seriously the initially paradoxical idea of the relative universality of internationally recognized human rights.

If my argument for relative universality is even close to correct, how can we explain the persistence of foundational appeals to culture? If we could explain this puzzle, both for the relativist arguments considered in this chapter and for the claims about human rights in traditional societies [...], the plausibility of a universalist perspective would be enhanced. At least six explanations come to mind.

First, it is surprisingly common for even otherwise sophisticated individuals to take the particular institutions associated with the realization of a right in their country or culture to be essential to that right. Americans, in particular, seem to have unusually great difficulty in realizing that the way we do things here is not necessarily what international human rights norms require.

Second, narrow-minded and harm-handed (Western and especially American) international human rights policies and statements exacerbate

these confusions. Consider Michael Fay, an American teenager who vandalized hundreds of thousands of dollars worth of property in Singapore. When he was sentenced to be publicly caned, there was a furor in the United States. President Clinton argued, with apparently genuine indignation, that it was abominable to cane someone, but he failed to find it even notable that in his own country people are being fried in the electric chair. If this indeed is what universalism means – and I hasten to repeat that it is not – then of course relativism looks far more attractive.

The legacy of colonialism provides a third important explanation for the popularity of relativist arguments. African, Asian, and Muslim (as well as Latin American) leaders and citizens have vivid, sometimes personal, recollections of their sufferings under colonial masters. Even when the statements and actions of great powers stay within the range of the overlapping consensus on the Universal Declaration, there is understandable (although not necessarily justifiable) sensitivity to external pressure. (Compare the sensitivity of the United States to external criticism even in the absence of such a historical legacy). When international pressures exceed the bounds of the overlapping consensus, that sensitivity often becomes (justifiably) very intense.

Fourth, arguments of relativism are often rooted in a desire to express and foster national, regional, cultural, or civilizational pride. It is no coincidence that the “Asian values” debate took off in the wake of the Asian economic miracle – and dramatically subsided after the 1977 financial crisis.

The belief that such arguments have instrumental efficacy in promoting internationally recognized human rights is a fifth important reason. For example, Daniel Bell plausibly argues that building human rights implementation strategies on local traditions (1) is “more likely to lead to long term commitment to human rights”; (2) “may shed light on the groups most likely to be about desirable social and political change”; (3) “allows the human rights activist to draw on the most compelling justifications”; (4) “may shed light on the appropriate attitude to be employed by human rights activists”; and (5) “may also make one more sensitive to the possibility of alternative” mechanisms for protecting rights. I would insist only that we be clear that this is a practical, not a theoretical, argument; that we operate with a plausible theory of culture and an accurate understanding of the culture in question; and what we not assume that culture trumps international norms. “To realize greater social justice on an international scale, activists and intellectuals insist, take culture seriously, but not in the totalizing, undifferentiated way in which some leaders of non-Western nations have used it as a trump card”.

This leads to the sixth, and perhaps the most important, explanation for the prevalence of culturalist arguments, namely, that they are used by vicious elites as a way to attempt to deflect attention from their repressive

policies. And wellmeaning Westerners with a well-developed sense of the legacy of Western colonialism indirectly support such arguments when they shy away from criticizing arguments advanced by non-Westerners even when they are empirically inaccurate or morally absurd.

So far I have proceeded, in line with the standard assumption of cultural relativists, by treating “cultures” as homogenous, static, all-encompassing, and voluntarily accepted “things”, the substance of which can be relatively easily and uncontroversially determined. None of these assumptions is defensible.

Cultures are anything but homogenous. In fact, differences within civilizations often are as striking, and is important as those between civilizations. “The Western tradition” for example, includes both Caligula and Marcus Aurelius, Francis of Assisi and Torquemada, Leopold II of Belgium and Albert Schweitzer, Jesus and Hitler – and just about everything in between.

We thus face a difficult problem even in determining what is to count as evidence for a claim of the form “civilization x holds belief y”. Political authorities are but one (very problematic) source of evidence of the views and practices of a civilization. Nor can we rely on authoritative texts. For example, the Christian Bible has significantly shaped Western civilization. But even when particular practices do not diverge from what one might expect from reading this “foundational” text – and setting aside the fact that such expectations change with time, place, and reader – few Western practices are adequately explained in terms of, let alone reducible to, those texts.

Even the long-established practice of leading states may diverge significantly from the norms and values of the civilization of which they are a part. The United States, for example, is in many ways a very atypical Western country in its approach to economic and social rights. In characterizing and comparing civilizations, we must not mistake some particular expressions, however characteristic, for the whole. For example, Christianity and secularism are arguably equally important to modern Western civilization. And the balance between secular and religious forces, values, and orientations varies dramatically with time, place, and issue in “the West”.

Such cautions are especially important because culturalist arguments regularly rely on appeals to a distant past, such as the precolonial African village, Native American tribes, and traditional Islamic societies. The traditional culture advanced to justify cultural relativism far too often no longer exists – if it ever did in the idealized form in which it is typically presented. In the Third World today we usually see not the persistence of “traditional” culture in the face of “modern” intrusions, or even the development of syncretic cultures and values, but rather disruptive “Westernization”, rapid cultural change, or people enthusiastically embracing “modern” practices and values.

And the modern nation-states and contemporary nationalist regimes that have replaced traditional communities and practices cannot be judged by standards of a bygone era.

We must also be careful to distinguish “civilization” or “culture” from religion and politics. The United States is a state, a political entity, not a civilization. Islam is not a civilization but a religion, or, as many believers would put it, a true and comprehensive way of life that transcends culture or civilization. An “Islamic civilization” – centered on Mecca and running, say, from the Maghreb to the Indus – does not include all Muslims, or even all majority Muslim countries. The broader Muslim world, running from Dakar to Jakarta, may be an international political unit of growing interest or importance, but it certainly is not a culture or civilization. And tens of millions of Muslims live outside of even this community.

Cultures are not merely diverse but are contested. In fact, contemporary anthropologists increasingly depict “cultures” not as “things” but as sites of contestation. “Rather than simply a domain of sharing and commonality, culture figures here more as a site of difference and contestation, simultaneously ground and stake of a rich field of cultural-political practices”.

Culture is usually viewed by the new cultural theorists as contested – a social context in which power struggles are constantly waged over the meaning and control of what Pierre Bourdieu has called “symbolic capital” as well as over more overtly material forms of wealth and power. In short, culture is not a given, but rather a congeries of ways of thinking, believing, and acting that are constantly in the state of being produced; it is conjunct and always unstable, especially as the forces of “modernity” have barreled down upon most people throughout the world over the course of the twentieth century.

All forms of cultural relativism fundamentally fail to recognize culture as an ongoing historic and institutional process where the existence of a given custom does not mean that the custom is either adaptive, optimal, or consented to by a majority of its adherents. Culture is far more effectively characterized as an ongoing adaptation to a changing environment rather than as a static superorganic entity. In a changing environment, cultural practices routinely outlive their usefulness, and cultural values change either through internal dialogue within the cultural group or through cross-cultural influences.

“Culture” is constructed through selective appropriations from a diverse and contested past and present. Those appropriations are rarely neutral in process, intent or consequences. Cultural relativist arguments thus regularly obscure often troubling realities of power and politics.

Arguments of cultural relativism are far too often made by (or on behalf of) economic and political elites that have long since left traditional culture

behind. Even when this represents an admirable effort to retain or recapture cherished traditional values, it is at least ironic to see “Westernized” elites warning against the values and practices they have adopted. There is also more than a hint of a troubling, even tragic, paternalism. For example, “villagization” in Tanzania, which was supposed to reflect traditional African conceptions, was accomplished only by force, against the strong opposition of much of the population.

Even such troubling sincerity is unfortunately rare. Government officials denounce the corrosive individualism of Western values – while they line their pockets with the proceeds of massive corruption, drive imported luxury automobiles, and plan European or American vacations. Leaders sing the praises of traditional communities – while they wield arbitrary power antithetical to traditional values, pursue development policies that systematically undermine traditional communities, and replace traditional leaders with corrupt cronies and party hacks. Rigged elections, military dictatorships, and malnutrition caused by government incentives to produce cash crops rather than food are just a few of the widespread abuses of internationally recognized human rights that do not express, but rather infringe, indigenous cultural values.

In traditional cultures – at least the kinds of traditional cultures that might justify deviations from international human rights standards – people are not victims of the arbitrary decisions of rulers whose principal claim to power is their control of modern instruments of force and administration. Traditional customs and practices usually provide each person with a place in society and a certain amount of dignity and protection. Furthermore, rulers and ruled (and rich and poor) usually are linked by reciprocal bonds. The human rights violations of most Third World regimes are as antithetical to such cultural traditions as they are to “Western” human rights conceptions.

Relativist arguments became particularly perverse when they support a small elite that has arrogated to itself the “right” to speak for “its” culture or civilization, and then imposes its own self-interested views and practices on the broader society-invoking cultural relativism abroad while ruthlessly trampling on local customs. Consider, for example, Subarto and his cronies in Indonesia, who sought to cloak their version of modern state-based repression and crony capitalism in the aura of traditional culture. In Zaire, President Mobutu created the practice of *salongo*, a form of communal labor with a supposedly traditional basis, which was in fact essentially a revival of the colonial practice of *corvee* labor. Macias Nguema of Equatorial Guinea, perhaps the most vicious ruler independent black Africa has seen called himself “Grand Master of Popular Education, Science, and Traditional Culture” a title that might be comical were the situation not so tragic.

The above discussion is intentionally one-sided. I have drawn attention to commonalities and minimized (real) differences. But even if I am correct about the extent of those differences, we must not confuse overlapping consensus with homogeneity.

Furthermore, the fact that differences are relatively minor, in the context of the full body of internationally recognized human rights, does not mean that they are unimportant, especially at the level of day-to-day politics. Questions about such issues as capital and corporal punishment, the limits of religious liberty, and the dimensions of gender equality merit intensive discussions both within and between states and civilizations.

Should traditional notions of “family values” and gender roles be emphasized in the interest of children and society, or should families be conceived in more individualistic and egalitarian terms? What is the proper balance between rewarding individual economic initiative and redistributive taxation in the interest of social harmony and support for disadvantaged individuals and groups? At what point should the words or behaviors of deviant or dissident individuals be forced to give way the interests or desires of society?

Questions such as these, which in my terminology involve conflicting interpretations, involve vital issues of political controversy in virtually all societies. In discussing them we must often walk the difficult line between respect for the other and respect for one’s own values [...]. Here I want to consider a relatively easy case – slavery – in an unconventional way.

Suppose that in contemporary Saudi Arabia a group were to emerge arguing that because slavery was accepted in the early Muslim world it should be reinstated in contemporary Saudi Arabia. I am certain that almost all Saudis, from the most learned clerics to the most ordinary citizens, would reject this view. But how should these individuals be dealt with?

Dialogue seems to me the appropriate route, so long as they do not attempt to practice slavery. Those in the majority who would remonstrate these individuals for their despicable views have, I think, an obligation to use precisely such forceful moral terms. Nonetheless, freedom of belief and speech requires the majority to tolerate these views, in the minimal sense of not imposing legal liabilities on those who hold or express them. Should they attempt to practice slavery, however, the force of the law is appropriately applied to suppress and punish this practice. Condemnation by outsiders also seems appropriate, although so long as the problem is restricted to expressions of beliefs only in Saudi Arabia there probably will be few occasions for such condemnations.

But suppose that the unthinkable were to occur and the practice of slavery were reintroduced in Saudi Arabia – not, let us imagine, as a matter of law, but rather through the state refusing to prosecute slave-holders. Here we

run up against the state system and the fact that international human rights law gives states near total discretion to implement internationally recognized human rights within their own territories.

One might argue that slavery is legally prohibited as a matter of *jus cogens*, general principles of law, and customary (as well as treaty) law. But coercive international enforcement is extraordinarily contentious and without much legal precedent. Outsiders, however, remain bound by their own moral principles (as well as by international human rights norms) to condemn such practices in the strongest possible terms. And foreign states would be entirely justified in putting whatever pressure, short of force, they could mobilize on Saudi Arabia to halt the practice.

This hypothetical example illustrates the fact that some cultural practices, rather than deserve our respect, demand our condemnation. It also indicates, though, that some beliefs, however despicable, demand our toleration – because freedom of opinion and belief is an internationally recognized human right. So long as one stays within the limits of internationally recognized human rights, one is entitled to at least a limited and grudging toleration and the personal space that comes with that. But such individuals are owed nothing more.

Many cases, however, are not so easy. This is especially true where cultures are undergoing substantial or unusually rapid transformation. In much of the Third World we regularly face the problem of “modern” individuals or groups who reject traditional practices. Should we give priority to the idea of community self-determination and permit the enforcement of customary practices against modern “deviants” even if this violates “universal” human rights? Or should individual self-determination prevail, thus sanctioning claims of universal human rights against traditional society?

In discussing women’s rights in Africa, Rhoda Howard suggests an attractive and widely applicable compromise strategy. On a combination of practical and moral grounds, she argues against an outright ban on such practices as child betrothal and widow inheritance, but she also argues strongly for national legislation that permits women (and the families of female children) to “opt out” of traditional practices. This would permit individuals and families to, in effect, choose the terms on which they participate in the cultures that are of value to their lives. Unless we think of culture as an oppressive external force, this seems entirely appropriate.

Conflicting practices, however, may sometimes be irreconcilable. For example, a right to private ownership of the means of production is incompatible with the maintenance of a village society in which families hold only rights of use to communally owned land. Allowing individuals to opt out and fully own their land would destroy the traditional system. Even such conflicts, however, may sometimes be resolved, or at least minimized, by the

physical or legal separation of adherents of old and new values, particularly with practices that are not material to the maintenance or integrity of either culture.

Nevertheless, a choice must sometimes be made, at least by default, between irreconcilable practices. Such cases take us out of the realm in which useful general guidelines are possible. Fortunately, though, they are the exception rather than the rule – although no easier for that fact to deal with when they do arise.

It would be dangerous either to deny differences between civilizations where they do exist or to exaggerate their extent or practical importance. Whatever the situation in other issue areas, in the case of human rights, for all the undeniable differences, it is the similarities across civilizations that are more striking and important. Whatever our differences, now or in the past, all contemporary civilizations are linked by the growing recognition of the Universal Declaration as, in its own words, “a common standard of achievement for all peoples and all nations.” Or, as I prefer to put it human rights are relatively universal.

Otfried Höffe

**MORAL REASONS FOR AN INTERCULTURAL
CRIMINAL LAW.
A PHILOSOPHICAL ATTEMPT**

Source: Otfried Höffe, *Moral Reasons for an Intercultural Criminal Law*.
A Philosophical Attempt, Ratio Juris, Vol. 11, No. 3, September 1998, pp. 206-227.

The increasing globalization extends well beyond the area of industry and finance. That not only national but also societal and cultural limits are exceeded in this process urgently poses the question as to how legal systems are to proceed against the persons who overstep such limits, i.e., against aliens, particularly “extreme aliens” who do not come from states which are culturally similar but from completely different legal cultures. May legal systems nonetheless implement their most stringent means, i.e., criminal law? Do legal systems have a (subjective) right to apply (objective) criminal law cross-culturally? Does an intercultural right to impose punishment exist? In relation to these questions, I do not conceive of the term “subjective right” in the positive sense – for the legal systems themselves decide in this regard – but rather in a moral sense, i.e., as part of those moral obligations which human beings have a mutual duty to recognize. The question is therefore as follows: Does an intercultural right to impose punishment pertain to those obligations to which human beings have a claim? Is any such right to impose punishment legitimate in terms of legal morality?

Such questions are all the more urgent in that globalization is threatening an element which is indispensable to human existence: membership in well-determined groups. Not merely well-being, but personal identity is being jeopardized, which threatens such basic legal interests as the right to one’s own religion, to one’s own language, to one’s own culture. Even when interests are not directly threatened, they become indirectly jeopardized. An alien stemming from a different culture feels culturally “torn” between the old and new (legal) cultures. This situation is highly significant with regard to criminal policy. Persons with injured identities tend toward criminality more than persons with stable identities; identity problems “promote crime”.

However, we should not overlook the fact that these questions are often less dramatic in practice. In terms of legal policy, such questions are in many cases irrelevant, given that not only state claims to impose punishment but also most types of criminal offences are equally recognized in nearly all legal cultures. Criminal law is closely associated with the traditions and “value

systems” of cultures, which is why people have distanced themselves from a single European criminal code (though trends toward standardization do exist). Nonetheless, we have known in written form at least since the Code of Hammurabi that legal interests such as life, property and reputation (“honour”) have been protected in criminal law for ages. If the type of offence is known and we can expect from aliens that they will inform themselves of the particularities of the criminal law in the host country – especially in those areas where we might expect particularities – then aliens cannot so easily invoke differences.

Any answer will obviously only be convincing if it responds to the demands of the question and does not ultimately invoke the convictions or requirements of any single cultural area. Only pertinent and valid crosscultural terms and arguments can be applied to a question encompassing many cultures. If we conceive of culture as a system of particular values, convictions and rules of action, then we can expect any justifications to be culture-dependent. My thesis is that this is not the case for the foundations of criminal law, for all criminal offences or for the basic principles of criminal procedure. This topic is related to the general issue of exactly what different cultures may reasonably expect of each other.

Anyone having some historical consciousness knows that the question is basically not so new as the pathos with which many contemporaries hold the relation between globalization and multiculturalism as the latest achievement would have us assume. On the one hand, we should not forget that similar problems have already arisen within pluralistic societies. Set off by the schism in belief, reaffirmed by the Age of Enlightenment and reinforced by the bourgeois and industrial revolutions, a differentiation process occurred in the “old European” societies, which has dissolved the relatively homogeneous relations and produced multi-dimensional and open societies. More and more groups with their own interests and convictions are living in these societies, with different customs and values likewise becoming increasingly widespread. Insofar as it was still necessary, criminal law quickly learned the “lessons” due in this regard, providing the previous cultural alien through liberalization with the possibility in criminal law of the *lex patriae*. Whether we consider people of different religions or (even fighting-spirited) atheists, critics of the society or nation, divorce, homosexuality and sexual liberality, “deviant behaviour” is not only no longer a crime but has become no cause for concern in criminal law.

On the other hand, we should not overlook the fact that powerful models of multi-culturalism and of globalization itself have existed for a long time: in antiquity in the wake of the Alexandrine campaigns, later during the expansion of the Roman Empire and still later during the spread of Christianity and Islam. We are also familiar with such developments from

the ages of discovery, colonialization and world trade. With regard to all of these developments, the question arose as to how one was to treat aliens, particularly “extreme aliens” in terms of criminal law. Model responses were proposed in antiquity which are still worthy of discussion today. Two of the models are particularly familiar to us even without any specialized knowledge.

The first model stems from the Old Testament. In accordance with this rule – “[...] the stranger that dwells with you shall be to you as one born among you [...]” (LV 19:34) – aliens should not be treated any better or worse. They are not to be subject to any special law but to the same law. The continuation of the verse specifies the underlying humanitarian intention: “... and thou shalt love him [*sic.*, i.e., the stranger] as thyself.” The concept of hospitality based on one’s own experience provides the reason for the equal treatment: “for you were strangers in the land of Mizrayim.” Experience alone is obviously not a sufficient argument. In order to avert the generally imminent error of legitimation, i.e., wrongly concluding from is to ought, an additional, genuinely moral element is required. This element can be so self-evident, however, that it does not need to be expressed.

For the above-mentioned verse, such element could be a negative version of the Golden Rule: “Do not unto others that which you do not wish others to do unto you” (for the Old Testament, cf. Tb 4:15). This rule, a basic principle of reciprocity, applies interculturally in both empirical terms and in terms of legitimation. Empirically, the rule is cross-cultural in that it is to be found in many of the cultures known to us, such as in Confucius and Thales, in one of the Seven (Greek) Sages, in the Indian national epic, the *Mahabharata* (XIII, V. 5571ff.) as well as in the Old and New (Mt 7:12; Lc 6:31) Testaments. In terms of legitimation, the Golden Rule is cross-cultural because it does not set any culture-specific requirements. From both points of view, the Golden Rule is part of our common moral heritage, or, more precisely, the legacy of justice of humanity.

Equal treatment could prove to be inhumane, however. Aliens who are subject to local laws lose their right to pursue their home customs. Given that these customs have become second nature, aliens even run the risk of criminal punishment. A harmless example: a group of emigrants who go trout fishing. Because it was an established right in their homeland Kazakhstan, they are not aware that it is wrong. No longer so harmless, however, are sexual relations with minors, which (in this case) aliens enter into partially because they “simply started at some point”, partially because young women were not so strictly protected in their home countries and thus counted as “free game.”

People who wish to avoid prosecution must become estranged from their own customs and submit to foreign ones. A dilemma arises at this point, the

legal dilemma of intercultural encounter: An elementary principle of justice of any legal system, i.e., equal treatment, threatens to turn into unequal treatment and thus injustice when applied to aliens. While people born in a country may pursue their own customs, aliens must submit to previously unknown customs which often contradict their own. The intercultural legal dilemma rests in the conflict between equal treatment and submission, though mere customs are normally insignificant in terms of criminal law.

In principle at least, this dilemma was familiar to the Roman Empire. As an association of states to which numerous more or less autonomous states belonged that were only dependent on Rome through treaties, the Roman Empire represented a state of many peoples in which a highly complex and, in today's terms, "multicultural" society existed. The Roman Empire provides further model responses, such as a special law of nations. The Roman *ius gentium* did not refer to the (public) law between peoples (*ius inter gentes*) but to private international law, above all commercial law. An international public law did emerge at the margins, however, such as in the law of envoys and state treaties. In contrast to Rome's autochthonous private law, the quirinal *ius civile*, the *ius gentium* was an intercultural law known to all peoples, which philosophically influenced academic doctrine would like to attribute to a natural reason (*naturalis ratio*) common to all human beings. With regard to obligations (including purchases, leases, management, etc.), for example, one invoked the *fides*, the duty to maintain one's word, which applied to all people irrespective of their ethnic or religious background and which originally stood under the protection of the gods. As an intercultural obligation, the *fides* was applied with good cause against aliens. Rome did not try aliens (*hostes*, later: *peregrini* or foreigners) in accordance with either Roman or – at least with regard to relations among various nationalities – their own law. Instead, Rome resorted to a law which was familiar to everyone so that the risks of estrangement/submission imminent in ancient Israel no longer applied.

Taking foreign legal experience into account, the *ius gentium* was supplemented and refined over the course of the generations so that the Roman jurist Gaius could portray it in the second century AD as an international, nearly universal law recognized by all (civilized) peoples (*omnes populi qui legibus et moribus reguntur*). Where the *ius gentium* did not reign, Sallust suspected immorality, lawlessness and an absence of rule to be at work (*neque moribus, neque lege, neque imperio cuiusquam regebantur*). A neutral and at the same time interculturally sensitive observer, however, would see at work in this interpretation the remnants of a legal cultural imperialism. No "extreme legal cultural imperialism" took place because this "Roman law" did not correspond to the minority law of the Roman city-state, the *ius civile*. Developed at a particular time and for many but not all peoples, the

ius gentium, despite its intercultural character, was not so universally valid (Germanic groups, black Africans, not to mention Native Americans were missing) that any deviating legal provision should simply have been deprived of membership in the overall concept of “law.”

Roman criminal law did not fall under the *ius gentium*. According to Theodor Mommsen’s classical monograph (1899), our tradition that the *ius gentium* was not applied to criminal determinations relates only to the fact that the narrow articles of formal civil law were not at all applied to such group. We thus encounter a third model response. In this model, the difference between citizens and aliens no longer applies because “the term ‘crime,’ both public and private, was not focused on citizens but on human beings.” Thus, a system of human rights or a universal human criminal law was already evident in Roman times, though admittedly only regarding an objective not a subjective conception of law. “Whether morality, arson, theft or damage to property” were concerned, in all of these questions, Romans merely sought “the ethical responsibility and not the personal status of the perpetrator”. It must be added in relation to Mommsen that the above-mentioned offences count as universal legal violations and thus a tacit criminal *ius gentium* was used here. Even with regard to “the criminal treatment of adultery, a more extensive term, which included all foreign marriages, would be taken as the basis and not the marriage of Roman civil law”. This last remark reveals a condition of objective systems of human rights or universal criminal law, a condition which corresponds to the concept of the *ius gentium*: In order to avert the risk of hegemony, one cannot use locally- or regionally-bound legal terms but must use broader, supraregional ones. When this condition is violated, such as with regard to the crime of heresy, a crime against the state introduced under the Christian Caesars, then an obvious moral wrong occurs as well as political havoc.

A fourth, not necessarily alternative model is to be found in Roman criminal jurisdiction. A phenomenon approaching a federalism of criminal law which met the requirement of “no alien judges” still valid today can be added to the criminal-law system of human rights: particularly those in the eastern half of the Empire, the Greek or Greek-influenced part, who had a sense of culture and legal culture, reserved the right for subservient cities or states to have their own criminal courts.

The federalism of criminal law even extended to several criminal offences, for not all offences were recognized as such in all parts of the Roman Empire. This astonishing federalism in relation to criminal offences can be interpreted in two ways: either (1) not all criminal offences are of a universal rank so that two types of offences exist: interculturally valid offences and culture-specific offences; or (2) “ultimately”, i.e., after thorough consideration, only universal offences exist. Of the latter type of offences, not all but perhaps

most, such as “morality, arson, theft or damage to property”, perhaps even counterfeiting, so obviously represent crimes that they may be punished at any place and time. Others do not so obviously represent a crime. Here, for example, actions which are considered as non-crimes to a large extent within a single society that has no sense of wrong-doing can be leniently tolerated for some time with consideration to other customs. While Gallician human sacrifices were prohibited by Augustus, they were only generally prohibited to Roman citizens at a later time.

The private-law *ius gentium* became necessary due to a problem which is foreign to modern, secular and territorial states but was unavoidable for the city-states of antiquity. Because people did not become citizens either through subordination to a territorial public authority or through membership in an ethnic community but through participation in a legal and political association and because the law applicable to such persons was closely tied up with religious and traditional standards, the personality principle applied instead of the territorial principle. Each person lived independently of residence, hence a fifth model, in accordance with that person’s law of origin. In this sense, *ius civile* literally and originally referred to that civil law which applied to *cives*, to the citizens as members of a *civitas*, a city-state, and exclusively to them. The term did not signify civil law as private law as opposed to public law.

Let us draw an interim conclusion at this point. The first three model responses have one thing in common: Aliens cannot invoke their otherness. In accordance with the model of ancient Israel, aliens could not invoke it because they were to be treated in equal fashion to those born in the land. In accordance with the ancient Roman private-law model, aliens could not invoke their otherness because they were measured in terms of an interculturally applicable law. And in accordance with the ancient Roman criminal-law model, this was impossible for aliens because the model stressed human beings *qua* human beings from the outset. While the fourth “federalist” model permitted regional particularities, the fifth model, judgment in accordance with the person’s own home law, has played an important role up to the present, especially in the family law.

Aliens may not invoke their otherness in the Roman criminal-law model. What then happens when two cultures assign different existential weight to an issue or the issue turns out, as is well-known, quite differently in two cultures, such as in the areas of sexual offences and marriage? As an example, I would like to construe a case that approximates a case which actually occurred: A Senegalese man agreed with the parents of a young woman to take her, a minor likewise from Senegal, with him to Germany and to care for her in his home. After a while, the man had sexual intercourse with the then sixteen-year-old girl.

In accordance with German criminal law, the Senegalese man thus sexually abused a charge. Under § 174 of the German Criminal Code, any person who performs “sexual acts on a person under eighteen years of age, who has been trusted to his care for direction, while abusing the dependence associated with the custody relation”, is liable to criminal punishment. If the perpetrator and victim were both native Germans, the decision would clearly have to be “guilty.” According to the girl, whom the judges found credible, it is a prevalent custom in Senegal for a woman to sexually “submit” to the man who takes her into his household and maintains her (i.e., her provider). The girl also emphasized that she acted on her own without duress. How is this case to be judged?

Another case is presented by an Arab who married a second wife in Germany, which is permitted in his home country but forbidden in Germany as bigamy (§ 5 of the German Marriage Act; § 171 of the German Criminal Code). The complication of this case: The Arab was married in Germany and flew back to his home country only for the purpose of marrying a second wife and then returned to Germany to live with both women.

The term “human rights” is pressing for any interculturally convincing discussion of cases of the above sort, provided, that is, that the term can be justified without culture-specific premises. Oft-invoked pictures of human nature, such as those of the Greeks, Jews, Christians, Moslems, Buddhists, etc., obviously have culture-specific interests related to human rights. Any universalistic argumentation must break away from these in order to consider the decisive aspects, the descriptive and normative elements, free of ethnocentric interests. While this is not the place to develop the two aspects in detail, a few examples will suffice.

But first a note on legal history. Not without reason is the West particularly proud of the concept of human rights. Nonetheless, the West should not forget that the concept only found acceptance late in history: Ancient Greece, Judaism and Christianity, even the early United States, permitted slavery and the inequality of women. In other places as well, the West initially created pathologies, such as religious intolerance, the absolutist state and colonialism, against which human rights were necessary as therapy. The West has also permitted itself grave relapses and some deficits up to this day.

If we forgo the culture-specific when seeking intercultural justification on the descriptive side, the *conditio humana* and its study, anthropology, remain. With respect to the *conditio humana*, we again encounter the risk of declaring as universal that which is actually only valid on a culture-specific level. Many ethnologists and linguistic theorists have serious doubts about the possibility of general statements regarding the *conditio humana*. Many linguists, for example, deny that any structure of the world and human beings exists independently of concrete languages. Some ethnologists argue for the

radical cultural relativism which Joseph Marie de Maistre, a critic of the Enlightenment, formulated and – not unlike the corresponding ethnologists – directed against the concept of universal human rights.

This scepticism may be answered by a concept of interests which represent the condition for the possibility of ordinary interests, i.e., logically higher-order transcendental interests. Even if the argumentative model designated with such term is new, philosophy has been familiar with the results since its beginnings. The same is true for other cultures; *de facto*, they recognize the entity “higher-order interests.”

Three dimensions prove to be of a higher logical order while being valid in a culturally indifferent fashion. In order to discover these dimensions, no long search or astute consideration is required. Our daily experience is sufficient. Moreover, these dimensions have for a long time been evident in basic anthropological principles. Whatever interests reign within any culture, the following prove to be conditions for the possibility of at all forming and pursuing interests, i.e., to be conditions of agency and thus indispensable conditions for human beings: (1) life and limb, including (material) conditions for the direction of life; anthropology correctly categorizes human beings in the cosmos of nature close to the *zoa* or *animalia*, the living beings; (2) speech and reason: human beings are considered a *zōon logon echon* or *animal rationale*; (3.1) a general social capacity: human beings are the *animal sociale*; and (3.2) a specific political capacity: human beings as *zōon politikon*, which include law (*animal juridicum*) and community (*animal politicum*).

Though objections can be made to each dimension, such objections can be refuted. Against the thesis of the logically higher-order significance of life and limb, one can refer to martyrs and suicides, who relativize the interest in life in different ways. Yet, because even martyrs and suicides wish to decide why, when and how they will die – otherwise they would simply be killed – life and limb nonetheless remain a condition of their capacity to act, though not the “highest good.” In each of the three descriptive respects, law and, from a moral point of view, legal morality are required.

If we likewise forgo the culture-specific on the normative side, the concept of regulation remains, which raises an objection to arbitrariness and violence, realizes such objection on a universal level and thus enables all parties to benefit. We might call such regulation “legally practical reason” which is made manifest in three stages. In a first stage of the realization of law, certain rules are introduced; in a second stage of the legitimation of law, people act strictly according to the system’s criteria; and in a third stage of the standardization, the rules are themselves subjected to the rules of a legal morality (of the second stage).

While it is conceivable to introduce just any rules in the first stage, such arbitrary use of power has been rejected since early times. In nearly all places,

people submit to legal rules which have a moral character, such as protection of life and limb, property and marriage. Outlawed, i.e., without any legal protection, is only that person who is thrown out of the legal community. And this procedure, itself a legal act, only occurs due to the most grievous legal violations.

As the above-mentioned rules – or, more precisely, regulatory areas – pertain to the dimension of human rights, we must correct the self-conception of the European modern era. The modern era did not discover human rights but only some of them. Even the religious freedom of which the modern era would like to be so proud is not completely new. Religious tolerance was practiced in the Alexandrine Empire, previously in the Persian Empire under Kyros, and in the Roman Empire. In Japan, the peaceful coexistence of Shintoism, Buddhism and later Christianity not only in society but also in one and the same person has been common for ages. Other elements are newer: the abolition of slavery, the abolition of the death penalty and equal rights for men and women. In short, not the institution of human rights itself, but its comprehensive recognition is characteristic for modernity.

And legitimation? In relation to the first of the three dimensions specified, human beings as living beings, the following argumentative model applies: In accordance with their biological capacities, because they can raise their hand against others and can be injured by the hand of others, human beings are both potential victims and potential perpetrators of violence. Legal morality provides a morally appropriate response to this basic situation of human beings, this *conditio humana socialis*. In accordance with the concept of human rights, a subjective claim exists not to become the victim of any alien capacity for violence or, positively formulated, this represents a right to life and limb.

In order to justify this right, the assumption of an interest, even an inalienable (transcendental) interest in life and limb, is not sufficient. No claim to recognition of an interest by others can follow from the interest itself. A further argument is required for such recognition. This argument arises from the fact that subjective rights only exist where others assume the corresponding duties; human rights are bound to the corresponding human duties. For example, my right to life and limb is to be found in the obligation of all others to refrain from making use of their capacity to perpetrate violence against me.

Generally, claims to performance exist where such performance is rendered under the reservation that a certain counter-performance will follow. Claims are legitimized through reciprocity, *pars per toto* and exchange. In order to justify human rights in their character as subjective rights, we must disclose a certain reciprocity which distinguishes human beings merely because they are human beings. This situation exists where we can

only realize an interest which is inalienable for all human beings in and through reciprocity. In such cases where interests are inalienable and at the same time bound to reciprocity, the indispensability is transferred to the reciprocity; the corresponding exchange is itself indispensable. A system of human rights exists not because every human being has a (higher-order) interest in life and limb but initially because (1) the interest is only realizable in reciprocity and because (2) in the "system of reciprocity" each person claims that performance (the waiver of violence by others) which can only transpire under the condition of the counter-performance, one's own waiver of violence.

This sketch of the relevant arguments illustrates how human rights can be justified in a culturally indifferent fashion in terms of both their descriptive and normative components. I consciously speak of human rights in this regard without the definite article. By "the" human rights, we designate a particular catalogue of rights in which culture-specific elements often enter. With the knowledge that not all rights which are asserted under the heading "human rights" are actually human rights, the justification sketched above contents itself with a criterion for human rights and leaves the creation of a catalogue of human rights to subordinate consideration.

Our interim conclusion is as follows: Human rights are not a specifically European or western phenomenon; a universal element is generally accepted in them. "Generally accepted", however, includes a moment of evolution. Insofar as the West has succeeded in reaching this general acceptance while other cultures have not, the latter appear less developed, whereby a tendency toward arrogance, against which the other cultures "naturally" defend themselves, is in fact discernible: European/North American culture assesses itself as being superior to the other cultures.

Does the legal evolution assumed actually testify to arrogance? "The West" does not understand this evolution in relation to other cultures but in relation to itself, to its own past. If the modern era is arrogant, it is so primarily vis-à-vis the Middle Ages and Antiquity. In fact, the abolition of slavery and equal rights for women represent legal progress in relation to both Athens and the Christian Middle Ages. "The West" now believes to have discovered again in other cultures those elements of retrograde legal institutions which it has so proudly surmounted. Under this assumption, it is only logical that the West extends the superiority over its own past and regards itself as superior in relation to other cultures. From the relative, culture-immanent and diachronous superiority comes an absolute, culture-transcendent and synchronous superiority. Intercultural legal discourse, however, demands caution.

In the West's encounter with other cultures in the modern era, e.g., with China and Japan, reciprocal inspiration and a mutual give-and-take have

taken place. Insofar as the West demands respect for human rights from the other side, it must ask itself whether pure human rights, unfalsified and without any additions, actually exist or rather whether a mixture does not often exist, the linkage of human rights with western independence, special experience and even perhaps special interests. For this reason, it is advisable to formulate a *hypothesis of mixture*, to assume that the alleged human rights are in truth mixed with other elements.

Although each alleged human right can be asserted from non-universal elements, the hypothesis of mixture does not demand any basic restraint. It does demand the effort of careful interpretation, however. From the hypothesis of mixture follows the task of de-mixing. In accordance with the model of the analytical chemist, we separate the truly general from the particular in order to reach the real human rights in this way. Only through this work will philosophers complete the obligation toward pure general reason they have assumed since the Greeks, which permits them, even if they are only modern Europeans, to call themselves with “functionaries” or, better, advocates of humanity.

From the intercultural justification of human rights, it follows that such rights may only be demanded of other cultures when we grant them a high degree of autonomy. That serious questions of delineation then arise is illustrated in the following example, which in fact warns us to be modest. In their early times, Orinoko Indians drowned newborn girls. This custom forced grown boys to join in groups (hordes) and steal girls who were strangers, a practice by which Orinoko Indians protected themselves from inbreeding. They were subsequently driven from their traditional territories into higher areas of the Andes. Because no rivers existed there, they could not continue the cruel practice of drowning girls. As a result, due to inbreeding, a disproportionately high number of mentally handicapped persons live among them today.

Not only legislators and authors of constitutions need to be culturally open, given that they formulate the human rights and the criminal law subject thereto. Criminal judges must also be culturally open so that they can assess the perpetrators and victims in criminal proceedings arising from typical cultural conflicts equally. Even in the most grievous cases, German criminal jurisdiction has adhered to this openness to legal cultures. In accordance with a ruling of the Criminal Appeals Division of the Federal Supreme Court, blood vengeance was not assessed as a lower motive, even though it should have been considered as such in accordance with certain elements of crime (§ 211 II of the German Criminal Code). For this reason, the same court acquitted a father from eastern Turkey, who had sexual relations with his daughter, who was of legal age, because he had started the relation in his own country, where that did not represent a criminal offence.

Assuming the term “human rights” and the justification for them, it will be worthwhile to list a few components of a theory of criminal law, even if no complete theory can be presented here. Ethnologists are quick to defend relativism. The societies which they investigate are so different that they remain skeptical of the assumption that generally accepted obligations can exist. Criminal law provides a clear counter-example to this. True, types of punishment have been quite different depending on the society and epoch. That a community – *pars pro toto*: a state – punishes at all, however, is not first to be seen in modernity but in the Middle Ages as in Antiquity as in the ancient oriental empires and in cultures even further removed. Our *first component*: the legal institution of (state) criminal punishment proves to be a sociocultural universal.

Criminal punishment is such a decisive means of coercion that we cannot simply assume it as tradition or convention. We must pose the question of legitimation: Does criminal punishment really pertain to the legitimate activities of the state? Radical critics of criminal law respond with a clear “no.” According to H. Ostermeyer (1975), criminal acts represent discharges of aggression. Given that no innate drives toward aggression exist, our society and civilization, influenced by power, success and the greed for profit, is responsible for such aggression. The demand to abolish criminal law is, incidentally, in no way new. The psychiatrist Cesare Lombroso (1889) and the criminologist Enrico Ferri (1881) made this same demand a century ago. Our comparative societal perspective naturally does not have any legitimating force, for we know enough cultures which are not guided by “power, success and greed for profit” and which are nonetheless familiar with the legal institution of criminal punishment.

Theoretically more serious debates discuss not the abolition of criminal law but the legitimate purposes of punishment. The wealth of options may be reduced to three basic forms. Our *second component*: retribution or rehabilitation in society, i.e., resocialization, are discussed as being the purpose of punishment. Portrayed as a primitive revenge instinct, the concept of retribution continuously falls under crossfire from critics. Because Kant and Hegel support the concept, the motto for criminal-law purposes is then always: “Farewell to Kant and Hegel.” Without doubt, we need to fight against any legal institution which gives expression to society’s revenge instinct and covers such action in a cloak of legitimacy.

Let us therefore clarify the term “criminal punishment.” Criminal punishment is foremost and trivially an evil. Not every evil, however, is a legal penalty. Though treatment by a dentist can be painful, it nonetheless does not fall under the term “legal penalty.” In the end, we go voluntarily to the dentist. Any punishment recognized by declaratory decision is forced on the affected party, if necessary – so the second definition. This also applies

to any “highly liberal right to resocialization.” People often believe that any such right could remove the character of punishment; that rehabilitation in society is in the interest of the affected party and thus cannot be considered a punishment. This argument of interest eliminates only the first definitional element, the evil character, and not the second. The affected party does not have the responsibility to refuse resocialization. Consequently, and so a *third component*, resocialization represents a meaningful element for any comprehensive theory of criminal law. Resocialization represents an indispensable criterion, particularly regarding the *execution* of punishment, though it does not suffice as the only element of a comprehensive theory of criminal law.

Natural disasters, quarantine measures and, for many citizens, taxes also represent forced evils. Criminal penalties, on the other hand, do not. They occur after and *due to* a (grievous) legal violation. An unpretentious “afterthe- fact” and the true reason why pertain to punishment. If a “*post et propter*” reaction exists, the punishment first occurs when the legal violation has already taken place. Precisely for this reason, the punishment represents retribution. “Retribution” literally means “consideration” and “repayment.” Originally, this primarily concerned cash performances for services rendered. The expression is thus to be understood neutrally and, often enough, positively as a reward. The term, at any rate, has nothing to do with revenge. Instead, a moment of retribution – the *fourth component* – proves to be indispensable to the term “punishment.” This definitional point of view incidentally contains a significant logical aspect. The retributive character prohibits punishing the innocent, a prohibition which applies categorically (“absolutely”) and without exception. No compromises are allowed with the collective well-being.

We call medical measures to protect against disease preventive measures. State penalties may also have a preventive effect, which is even unavoidable to a certain degree. In accordance with the principle *nulla poena sine lege*, the rule upon which any penalty is based must be well-defined and known beforehand. Even though it transpires after the fact, punishment thus always entails preventive force: It can deter the potential lawbreaker. In definitional terms, however, the retrospective character has priority. Considered in itself, the punishment is a reaction, i.e., a retribution; the deterrent is initially only a (granted, unavoidable) side-effect, a thoroughly welcome utility. The sentence *penitur ne peccetur* (it is punished so that the law is not violated) always assumes the other sentence *penitur quia peccatum est* (it is punished because the law has been violated).

So long as criminal law relates to intentional acts which occur after and due to violations of rules, the law can be reformed in many ways, though its retributive character cannot be abolished. For this reason, much of the recent

criticism of retribution theory lacks real weight. Given that the alternatives, prevention and resocialization, exist in *post* and *propter* reactions to violations of rules, they recognize the concept of retribution, if *à contre-coeur*.

Retribution cannot be relinquished in another respect, i.e., regarding the *degree* of the punishment. Required here is that we overcome any theories of representation. Epistemology and linguistic philosophy have long given up the view of a mirror of reality. Criminal theory must comport itself in a similar way. It must give up the principle “an eye for an eye, a tooth for a tooth” and “blood for blood.” We cannot desire what is stated in a century-old textbook on criminal law to the effect that “the physiognomy of the crime should manifest itself in the punishment”. The matter depends not on material but on formal concepts, with which we are familiar from the original meaning of retribution. Anyone who pays for services rendered with cash consideration, repays in a fundamentally distinct currency, namely money instead of services. Decisive is merely a certain correspondence: the degree of the punishment is determined in accordance with the severity of the act. It is not legitimate or “just” either to “set an example” by punishing more severely for the purposes of creating a deterrent or to refrain from punishment in those cases where no deterrent is required. On the other hand, we should be able to allow crimes which are committed with premeditation and intent but which are typical one-time acts to go unpunished. What we – rightly – undertake against one-time Nazi perpetrators is also required with regard to other crimes: Anyone who fundamentally violates the law and is guilty of a crime merits punishment which corresponds to the degree of guilt.

The critique of ideologies which interprets criminal law as an institution of societal revenge overlooks an additional definitional element. Criminal law is determined by legislators, applied by judges, executed by the corresponding parts of the executive branch; the instances authorized in this regard are thus responsible. Our *sixth component*: The great cultural service of state punishment consists in the fact that it takes the place of blood vengeance, feuds, private justice and neither pursues the reaction of the injured party nor that of the family, friends, neighbours or a diffuse public. The power to impose punishment rests alone with (perhaps not always in reality but in principle) unbiased third parties. State punishment is therefore legitimate or just in a second, more modest sense. If the institution of criminal punishment is to exist at all, then it should not be exercised in the form of arbitrariness or subjective dismay but by unbiased third parties, i.e., by the authorized public authorities.

Legal penalties, however, often entail societal or professional penalties. After serving a sentence, a person loses many social contacts. Jobs are difficult to encounter. Often enough, family members, i.e., innocent persons, are likewise punished. These types of additional penalties are neither controlled

nor authorized. They are therefore illegitimate though predictable, which is why a new area of responsibility – our *seventh component* – arises in this regard: society must free itself of illegitimate additional penalties.

Once again, the alleged forms of societal instincts for revenge do in fact exist. They lead not only to additional penalties but often enough to punishment where the justice administration has acquitted the defendant. Society is not committed to react only where previously determined and known rules have been violated nor to initiate any reaction with a review of the facts nor, in the case of legitimate sanction, to hold itself to a previously determined degree of punishment which corresponds to the criminal act. Hence, withdrawing criminal law from “society”, which is as diffuse as it is prejudiced by bias, again proves to be a moral gain.

The term “punishment” now allows an initial assessment of the three “purposes of punishment.” The assessment leads to something that, though a little colourless, provides the *eighth component*, which can be called “unification theory.” With the term “retribution”, the basic structure of legal punishment is described and a principle is simultaneously determined for the degree of punishment. Nonetheless, no sufficient provision exists to describe the type of punishment or, even less, to determine the type of execution. The other aspects might be needed in this regard. They could thus supplement the concept of retribution but in no way correct or eliminate it. Within the framework of retribution, there is room for both deterrence and improvement. Deterrence serves the general goal of criminal law to maintain the legal order. If a legal breach cannot be avoided, then everything should be undertaken to prevent any relapse on the part of the lawbreaker and to provide him or her a new opportunity for societal and professional rehabilitation.

For purposes of justification, let us consider the rights which a state has. The main task is obvious: the state is responsible for the legal order. More than one legal power is designated thereby. The state’s task lies in this responsibility. The state is required to fulfill this task. A state is not merely permitted but is obligated to protect the legal order both internally and externally. The legitimation strategy is therefore prescribed: The state has the power to impose punishment if criminal punishment is required to secure the law but the state has no such power if criminal punishment prevents the security of the law or even opposes it.

The complex structure which we call the legal system consists – not exclusively but primarily – of two classes of rules. Both are linked to a power of coercion. The type of coercion – this is overlooked by a long-dominating legal theory, the theory of imperatives – however, is fundamentally different. One class of rules defines the conditions under which certain actions can become valid legal acts. The corresponding rules, primarily those of civil

law, consist in procedural and formal provisions which define how people acquire and sell title to property, how marriages and divorces come about, how a will becomes legally valid, etc. These rules have compulsory character insofar as the desired legal act will not come about in the event of non-observance; the act will be null and void, though no penalty occurs.

The case is different with the second class of rules, which do not consist of formal provisions but of prohibitions, the non-observance of which is linked to the institution of criminal punishment. The first class of rules is of a hypothetical nature. The law leaves the question of whether a person desires the corresponding legal act to the affected party. People are free in their will; “private autonomy” reigns in this regard. If a person so desires, however, that person can become bound to the formal provisions. Criminal laws, on the other hand, apply categorically: No matter what a person desires, it is prohibited to kill, steal, forge documents, etc.

Any legitimation of criminal punishment must first demonstrate why such acts are categorically prohibited and then why criminal punishment is necessary to enforce the categorical prohibitions. This is not the place to elaborate both stages of legitimation in detail; it is sufficient to refer to the respective core of legitimacy. The first step proves the above-mentioned prohibitions to be the flip-side of legitimate claims. Because every human being has a right to life, it is forbidden to kill; so that title to property may exist, it is forbidden to steal, etc. In principle, every person has an interest in the corresponding prohibitions – hence a *ninth component*. Such prohibitions serve the general well-being not only in a collective but in a distributive sense. They not only have utilitarian significance but also significance in terms of justice.

In specific cases, however, the non-observance of the prohibitions can be beneficial for the one party. In order to prevent persons from claiming the benefits of the legal system without paying the due price – pointedly stated, to combat free riders in the legal system – the state reserves a disadvantage, a penalty, for the non-observance of the prohibitions which is so severe that it outweighs the benefit. More precisely, the anticipated damage, i.e., the product from the anticipated penalty and the probability of being caught and punished, must be higher. Assuming that a person acts willingly and intentionally, the person knows that the violation is not worth it, whereby the legal order is secured. The obvious objection is that this assumption is quite often not at all true. In fact, many criminal acts occur in the heat of the moment. This fact can be a legitimate ground for mitigation, sometimes even a ground for pardon. One of the most crucial tasks of criminal proceedings is to determine whether any such mitigating circumstances exist. In this regard, criminal punishment is also distinguished from an institution of revenge or from “natural penalties” in that it initially ascertains the facts of the case

with due diligence before declaring any punishment, while providing the opportunity for defense and exoneration.

Having considered the moral principles, let us return to the case of the Senegalese man sketched at the beginning and weigh the interests of victim and perpetrator. Basic questions initially arise. For purposes of simplification, I will skip several ancillary issues, which any judge sensitive to the case nonetheless should pursue, questions related to the effect on the victim: Will the girl lose her provider as a result of the decision, thus putting her in a worse position? Will the girl be stigmatized should the case make it to the newspapers? The following questions, however, are unavoidable.

First. Are the perpetrator and victim only in Germany for a short period of time? They could then be seen as transients, in whose private affairs one need not interfere insistently or unnecessarily. In the case under assumption, however, at least several months are involved. As is well-known, this period can turn into years and even decades, which raises a question of criminal-law *policy*: With what are young Senegalese women better served: with the (allegedly) lower criminal protection in their society of origin or with the greater criminal protection of the society in which they will reside over the long term and perhaps even – and this cannot be ruled out – for life?

Second. Was the girl at sixteen years of age already considered at home as being of legal age? Insofar as the judges deem it likely, they could consider a mistake on the part of the defendant as to the wrongful nature of the act, which would not lead to any criminal liability for the negligent commission of an act. (This could only be the case in the event of a mistake as to the element of the offence, which could hardly be the case here, given that the perpetrator knew that he was undertaking sexual acts with a “person under 18 years of age.”) With regard to any mistake of law, one would have to assume that the defendant had only had sexual intercourse with the charge because he believed her to be of legal age. Because issues of legal age are fundamental, one cannot attribute any mistake of law without further justification to someone who has lived in Germany for a longer period of time. At minimum, the mistake would have to be seen as avoidable. And the legal requirements for avoidability are extremely high according to prevalent legal opinion. The textbook example: Even a cannibal who has just landed at the airport may not eat an airport worker and then invoke a mistake as to the wrongful nature of the act. He could definitely have informed himself, according to the dogmatic criminal-law assumption. Otherwise, the judges made a mistake (as to an element of the offence): In Senegal, a sixteen year-old girl is only considered of legal age if she is married.

Third. What were the details of the agreement with the parents? Perhaps the parents already indemnified the defendant (materially or theoretically) so that the defendant thus took double wages?

Fourth. If we remain on the level of the custom, then the question arises, how voluntary actually is the “voluntary submission” within the framework of the custom? In addition, the voluntariness of the submission does not exonerate criminal liability, for in the event of involuntariness, the offence “abuse of a charge” (§ 174 of the German Civil Code) and perhaps any violence or severe threat or “compulsion” (§ 240 of the German Civil Code) would have to be added. Moreover, one can hardly assume simple voluntariness, for the act took place within the framework of the specified custom which determined the options for action. True, any custom restricts possibilities of action. With regard to the custom at hand, however, the restriction goes beyond the basic form associated with most customs. The sexual submission is a gift in return for the gift of maintenance. In this regard, the principle of the justice of exchange – performance for counter-performance – plays a role. Maintained by the defendant, the victim believes that she owes him the (only?) possible indemnification, sexual submission. The voluntariness therefore occurs within the framework of involuntariness, i.e., the necessity to compensate.

Fifth. What (criminal) legal status does this custom have? The Senegalese legal system is modelled on the French system and thus on a system that is so closely related to German legal culture that a right to any exception in criminal law would be on weaker ground than if a completely different legal culture were concerned. In the new French *Code pénal*, Article 227.27 would be relevant: abuse of an authority relation with a victim who is more than 15 years old but a minor not emancipated by marriage. In the old *Code pénal* still applicable in Senegal, it is Article 331-1 essentially that corresponds to § 174(1)2 of the German Criminal Code, which, incidentally, also contains an emancipation clause.

Sixth. The content of the custom allows us to infer a traditional and patriarchal society, the majority of which in the case of Senegal (90%) pertains to Islam. Given that we know the value which such societies place on virgins, this custom should drastically prejudice the girl. This circumstance should make us skeptical in relation to the contention that a different custom exists there; without detailed research, we should not accept this contention. To the contrary, in Senegal as in other areas of Islamic influence, one could expect stringent customs, whereby the right to an exception in criminal law is placed on even weaker ground.

Seventh. We might consider whether the indispensable element of the offence, “abuse”, is not applicable, given that a true love affair existed. The invocation of a Senegalese custom speaks against this, however, that is, the invocation of a practice or tradition instead of insisting on an entirely personal love.

Our inquiries show that the encounter of distinct cultures does not readily create situations in which aliens can invoke their different (legal)

cultures. Nonetheless, experts say that some Africans, Indians, etc. cultivate a double morality against non-western cultures. In cases where the other culture demands more responsibility, they invoke their home culture in the West; while in their homelands, they invoke European customs. For purposes of simplification, let us assume that the above-mentioned questions are answered in favour of the defendant so that the core issue still remains: How far does the power of coercion of a legal system extend in such a case in relation to other cultures?

Commenting on a related case, a journalist took up the part of the defendant: “Even when we accept and even provide for foreigners as charges, we should not expect that they are ideologically going to share table and bed with us”. The argument appeals to our ideological pluralism and the accompanying tolerance. In the case of foreigners, it requires extending the high degree of tolerance which has long been common in Germany even further.

If the matter merely concerned overcoming the alleged cultural prejudice executed in any criminal judgment, the case would be simple. Modern societies are ignoring the remnants of cultural bigotry. In this sense, they have cleaned up their criminal law little-by-little, deleting as criminal offences, for example, suicide, then homosexuality or “illicit sexual affairs”, as well as heresy, *lèse-majesté* and criticism of the state. A large number of criminal offences, particularly those against life and limb, are not based on any cultural prejudice. To the contrary, rights of human dignity are concerned, which, moreover, are recognized nearly everywhere. No legal cultures are known which do not provide for the criminal offence of manslaughter.

Cultural prejudice is evident, however, in several special provisions. Based on the various waves of enlightenment, modern legal systems have removed such prejudice from criminal law step-by-step. Thanks to enlightenment and emancipation, a liberal criminal law, nearly completely purged of “regional culture” (including religion and customs) and reduced to the core of criminal law, reigns in (western) modernity. Remnants of cultural prejudices may still exist; these, however, cannot be reviewed generally but only on a case-by-case basis.

Let us return to our case: Does the sexual protection of dependent minors provided by German criminal law fall under the heading of “cultural prejudice”? *Prima facie*, the opposite is true. As a result of the corresponding protection, cultural prejudices – such as the attitude of patriarchal societies not to recognize women and children as legal subjects with equal rights – are rather overcome. The protection of under-age women does not serve Germans or people resident in Germany nor the maintenance of European or western culture. It serves the entirety of all legal subjects, foreigners no less than nationals. The matter also does not concern a right to any freedom

that is practiced in the West, of which other cultures remain skeptical, i.e., the sexual freedom of youth. It represents something fundamental and universal. The lack of disruption in the sexual development of children and youth, so crucial for the formation of independent and responsible adults, should not be impaired.

Given that the same applies to the protection of one's own culture, an immanent conflict of human rights could exist here. The human right to undisturbed sexual development collides with the right to one's own culture. If this state of affairs is accurate, we would have to search for a rule of priority that decided which of the human rights merits priority in cases of conflict. A culture which does not provide this protection or insufficiently provides it can be criticized on human rights grounds. The Senegalese custom – if such existed! – would then have to be reviewed as to its moral legitimacy. Any restrained review, however, should not go so far that our legal system in truth lowers its moral requirements, allegedly in the name of cultural openness or readiness toward multiculturalism.

A marginal remark regarding a topic which is normally not overtly related to criminal law. In accordance with our legal understanding, the equality of women demanded by human rights cannot be satisfied by formal legal equality. In education, for example, equality likewise demands equal opportunity, which is also required by the concept of social democracy. On the other hand, the daughters of many immigrant groups are put at such a disadvantage that their intellectual, musical and professional opportunities for development are severely impaired. In accordance with § 1666 of the German Civil Code, if a child's well-being is jeopardized, a guardian can be appointed and the child may be separated from the family, though rightly only when other less stringent measures of the courts are unsuccessful. Separating a child from its family is so decisive, normally so gravely negative, that we try to refrain from this solution as far as possible. On the other hand, it would represent a contradiction if a legal culture which holds equal opportunity to be a requirement for democracy and human rights and thus declares itself to be publicly responsible, then "accepted" the flagrant opposition to equal opportunity "without any comment." In this regard, a task of legal policy exists which our legal system has criminally neglected. What needs to be done can only be decided after careful diagnosis of the problem. The direction should be clear, however. A legal system must demand from immigrants in such questions that they be more open to the new legal culture.

We can now answer the initial question. Insofar as criminal offences can be justified with universal and, more specifically, human rights arguments – and this is generally true for most offences, particularly those of liberal criminal legal systems – a cross-cultural right to impose punishment, i.e.,

an intercultural criminal law, without a doubt exists. The reason does not lie in the presumption that aliens are subject to a legal system. The reason also does not lie in the desire to deny aliens the privilege of being acquitted by criminal law. Ultimately, the reason does not even lie primarily in the (certainly justified) interests of the society in self-protection but in the fact that, from the point of view of criminal law, the extreme alien does not exist at all: Legal cultures which are so essentially different that they do not know offences which are justifiable in terms of human rights are hard to find. If any such culture did exist, to the extent its members go abroad, we could demand recognition from them, for the relevant offences are indeed justifiable in terms of human rights. This intercultural criminal law thus reinforces a rule of thumb of intercultural legal discourse: That for which we become actively engaged, we also find in other cultures. Over that which we become outraged, other people become outraged (for a full development of this argument).

Jürgen Habermas

THE FUTURE OF HUMAN NATURE

Source: Jürgen Habermas, *The Future of Human Nature*, Polity Press, Cambridge 2006, pp. 29-44.

The philosophical dispute over the admissibility of research involving the destruction of embryos and PGD has, to date, followed the path of the debate over abortion. In Germany, this debate has resulted in a regulation stipulating that up to the twelfth week of pregnancy, induced abortion is a fact contrary to law, but one which goes unpunished. If founded on a medical indication considering the welfare of the mother, it is legal. The German population, like that of other countries, is split into two camps over this issue. Insofar as the current discussion is determined by the dispute over abortion, the polarization of “pro-life” versus “pro-choice” advocates has focused attention on the moral status of unborn human life. The conservative side, insisting on the absolute protection of the life of the fertilized embryo, hopes to be able to put a stop to the developments they fear will come out of genetic engineering. But the suggested parallels are misleading. Although the basic normative convictions are the same, they do not at all lead to the same positions in the present case as in the case of abortion. Today, the liberal camp of those holding that women’s right to self-determination has precedence over the protection of the life of the embryo in its early stages is split. Those who are guided by deontological intuitions refuse to unconditionally endorse utilitarian statements certifying to the unobjectionability of lifting the ban on the instrumental use of embryos.

Recourse to preimplantation genetic diagnosis, which may prevent potential abortion by allowing genetically deficient extracorporeal stem cells to be “rejected”, differs from abortion in relevant aspects. In refusing an unwanted pregnancy, the woman’s right to self-determination collides with the embryo’s need for protection. In the other case, the conflict is between the protection of the life of the unborn child and a weighing of goods by the parents who, while wanting a child, would abstain from implantation if the embryo is found to be deficient with respect to certain health standards. Moreover, the parents do not find themselves *unexpectedly* propelled into this conflict; by having genetic screening carried out on the embryo, they accept it from the start.

This type of deliberate quality control brings in a new aspect – the instrumentalization of conditionally created human life according to the

preferences and value orientations of third parties. Selection is guided by the desired composition of the genome. A decision on existence or nonexistence is taken in view of the potential *essence*. The existential choice of interrupting pregnancy has no more in common with this license to dispose over; or sort out, prenatal life in view of such traits as seem desirable than with the use of prenatal life for research purposes.

Still, in spite of these differences, something can be learned from decades of highly responsible abortion debate. In this controversy, all attempts to describe early human life in terms that are neutral with respect to world-views, that is, not prejudging, and thus acceptable for all citizens of a secular society, have failed. One side will describe the embryo in its early stages of development as a “set of cells” and confront it with the person of the neonate as the first to be accorded human dignity in a strict moral sense. The other side considers the fertilization of the human egg cell to be the relevant beginning of an already individuated, self-regulated evolutionary process. In this perspective, every single specimen of the species that can be *biologically determined* is to be considered a potential person and a subject possessing basic rights. Both sides, it seems, fail to see that something may be “not for us to dispose over” and yet not have the status of a legal person who is a subject of inalienable human rights as defined by the constitution. It does not solely belong to human dignity to qualify as “not to be disposed over” [*unverfügbar*]. Something may, for good moral reasons, be not for us to dispose over and still not be “inviolable” [*unantastbar*] in the sense of the unrestricted or absolute validity of fundamental rights (which is constitutive for “human dignity” as defined in Article 1 of the Basic Law).

If the dispute over the ascription of “human dignity” as guaranteed by the constitution could be resolved by compelling moral reasons, the deep-rooted anthropological issues of genetic engineering would not extend beyond the ordinary field of moral questions. As it is, the ontological assumptions of a scientific naturalism, which imply that birth be seen as the relevant caesura, are by no means more trivial or more “scientific” than the metaphysical or religious background assumptions leading to the contrary conclusion. Both sides refer to the fact that *every* attempt to draw a definite line somewhere between fertilization, or the fusion of nuclei, on the one hand, and birth on the other hand is more or less arbitrary because of the high degree of continuity prevailing in the development from organic origins to, first, life capable of feeling and, then, personal life. This continuity thesis, however, seems to me to speak against both attempts to rely on ontological propositions to fix an “absolute” beginning that would also be binding from a normative point of view.

Isn't it still more arbitrary to try to stipulate in favor of one or the other of these sides as a way of coming to an unambiguous moral commitment,

resolving the ambivalence of our gradually changing evaluative sentiments and intuitions toward an embryo in the early and middle stages of its development, as compared to a fetus at the later stages, an ambivalence entirely appropriate to the phenomenon concerned? An unambiguous definition of the moral status – be it in terms of Christian metaphysics or of naturalism – is possible only if facts which a pluralistic society is well advised to *leave to controversy* are submitted to a description impregnated by one worldview or another. Nobody doubts the intrinsic value of human life before birth – whether one calls it “sacred” or refuses to sanctify something that is an end in itself. But neither the objectivating language of empiricism nor the language of religion can express the normative substance of the protection to which prepersonal human life is entitled in a way that is rationally acceptable to all citizens.

In the normative disputes of a democratic public, only moral propositions in the strict sense will ultimately count. Only if they are neutral with respect to various worldviews or comprehensive doctrines can propositions on what is equally good for everybody claim to be, for good reasons, acceptable for all. This claim to rational acceptability is the distinguishing mark of propositions for the “just” solution for conflicts of action, as compared to propositions on what, in the context of a life history or in the context of a shared form of life, is “good for me” or “good for us” in the long run. This specific sense of questions of justice will, after all, allow us to come to a conclusion as to the “purpose of morality.” This attempt to “define” what morality is all about is, I believe, the appropriate key to finding an answer to the question of how to delimit – irrespective of controversial ontological definitions – the universe of the possible subjects of moral rights and duties.

The community of moral beings creating their own laws refers, in the language of rights and duties, to all matters in need of normative regulation; but only the members of this community can place *one another* under moral obligations and expect *one another* to conform to norms in their behavior. Animals benefit *for their own sake* from the moral duties which we are held to respect in our dealings with sentient creatures. Nevertheless, they do not belong to the universe of members who address intersubjectively accepted rules and orders *to one another*. “Human dignity”, as I would like to show, is in a strict moral and legal sense connected with this relational symmetry. It is not a property like intelligence or blue eyes, that one might “possess” by nature; it rather indicates the kind of “inviolability” which comes to have a significance only in interpersonal relations of mutual respect, in the egalitarian dealings among persons. I am not using “inviolability” [*Unantastbarkeit*] as a synonym for “not to be disposed over” [*Unverfügbarkeit*], because a *postmetaphysical* response to the question of how we should deal with prepersonal human life must not be bought at the price of a *reductionist* definition of humanity and of morality.

I conceive of moral behavior as a constructive response to the dependencies rooted in the incompleteness of our organic makeup and in the persistent frailty (most felt in the phases of childhood, illness, and old age) of our bodily existence. Normative regulation of interpersonal relations may be seen as a porous shell protecting a vulnerable body, and the person incorporated in this body, from the contingencies they are exposed to. Moral rules are fragile constructions protecting *both* the physis from bodily injuries and the person from inner or symbolical injuries. Subjectivity being what makes the human body a soul-possessing receptacle of the spirit, is itself constituted through intersubjective relations to others. The individual self will only emerge through the course of social externalization, and can only be *stabilized* within the network of undamaged relations of mutual recognition.

This dependency on the other explains why one can be hurt by the other. The person is most exposed to, and least protected from, injuries in the very relations which she is most dependent on for the development of her identity and for the maintenance of her integrity – for example, when giving herself to a partner in an intimate relationship. In its detranscendentalized version, Kant’s “free will” no longer descends from the sky as a property of intelligible beings. Autonomy rather, is a precarious achievement of finite beings who may attain something like “strength”, if at all, only if they are mindful of their physical vulnerability and social dependence. If this is the “purpose” of morality, it also explains its “limits”. It is the universe of possible interpersonal relations and interactions that is in need as well as capable of moral regulation. Only within this network of legitimately regulated relations of mutual recognition can human beings develop and – together with their physical integrity – maintain a personal identity.

Since man, biologically speaking, is born “unfinished” and subject to lifelong dependency on the help, care, and respect of his social environment, individuation by DNA sequences is revealed as *incomplete* as soon as the process of social individuation sets in. Individuation, as a part of life history is an outcome of socialization. For the organism to become, with birth, a person in the full sense of this term, an act of social individuation is required, that is, integration in the *public* context of interaction of an intersubjectively shared life world. It is not until the moment the symbiosis with the mother is resolved that the child enters a world of persons who can *approach* it, address it and talk to it. As a member of a species, as a specimen of a community of procreation, the genetically individuated child *in utero* is by no means a fully fledged person “from the very beginning”. It takes entrance in the public sphere of a linguistic community for a natural creature to develop into both an individual and a person endowed with reason.

In the symbolical network constituted by the relations of mutual recognition of communicatively acting persons, the neonate is identified

as “one of us.” He gradually learns to identify himself- simultaneously as a person in general, as a part or a member of his social community (or communities), and as an individual who is unmistakably unique and morally nonexchangeable. This tripartite differentiation of self-reference mirrors the structure of linguistic communication. It is only here, in the space of reasons (Sellars) disclosed through discourse, that the innate faculty of reason can, in the difference of the manifold perspectives of the self and the world, unfold its unifying and consensus-creating force.

Human life, as the point of reference for our obligations, even before its entry into the contexts of public interaction, enjoys legal protection without being itself a subject of either duties or human rights. We must take care not to draw the wrong conclusions from this. Parents do not only talk *about* the child growing in the womb, they *in a certain sense* already communicate *with* it. It does not take the visualization of the unmistakably human features of the fetus shown on the screen to transform the child moving in the womb into an addressee *of anticipatory socialization*. Of course we are under moral and legal obligations toward it *for its own sake*. Moreover, prepersonal life that has not yet reached a stage at which it can be addressed in the *ascribed role* of a second person still has an integral value for an *ethically* constituted form of life as a whole. It is in this respect that we feel compelled to distinguish between the dignity of human life and human dignity as guaranteed by law to every person – a distinction which, incidentally, is also echoed in the phenomenology of our highly emotional attitude toward the dead.

Recent press reports commented on an amendment to the law regulating funeral procedures in the state of Bremen. Referring to stillborn and prematurely born children, this amendment stipulates that due respect toward dead life be shown also when dealing with fetuses. Fetuses, it reads, should no longer be treated as “ethical garbage”, as the officialese wording was, but be buried anonymously in collective graves in a cemetery. The very reaction of the reader to the obscene term – let alone the embarrassing practice – betrays, *in the contre-jour* of the dead embryo, the widespread and deep-rooted awe inspired by the integrity of nascent human life no civilized society may unconditionally touch on. On the other hand, the newspaper’s comment on the anonymous collective burial also sheds a light on the intuitive distinction I am driving at here: “The Parliament of Bremen was aware of the fact that it would be an unreasonable demand – and perhaps even tantamount to a pathological collective mourning – to have embryos and fetuses buried on the same footing with the postnatal deceased ... The respect due to a dead human being may well be expressed in different forms of burial.”

There is no twilight zone beyond the boundaries of a rigorously defined community of moral persons where we may act irrespective of normative rules and unscrupulously tamper with things. If, on the other hand, the

interpretation of morally saturated legal terms like “human right” and “human dignity” tends to be counterintuitively construed in too broad a sense, they will not only lose their power to provide clear conceptual distinctions, but also their critical potential. Violations of human rights must not be reduced to the scale of offences against values. The difference between rights, which are exempt from weighing, and goods, which can be weighed and ranked accordingly as primary or secondary should not be blurred.

The nature of the inhibitions we feel in dealing with human life before birth and after death, being hard to define, explains our choice of semantically *broad* terms. Even in its anonymous forms, human life possesses “dignity” and commands “respect.” The term of “dignity” comes to mind because it covers a broad semantic range only suggestive of the more specific term of “human dignity”. The semantics of “dignity” also include the traces of connotations which are much more obvious, due to the history of its premodern use, in the concept of “honor” connotations, that is, of an ethos determined by social status. The dignity of the king was embodied in styles of thought and behavior belonging to a form of life entirely different from that of the wife or the bachelor, the workman or the executioner. Abstraction from these concrete manifestations of so many specific dignities became possible only with the advent of “human dignity” as something attached to the person as such. Still, we should not let ourselves be inveigled, by this step of abstraction leading to “human dignity” and – to Kant’s single – “human right”, into forgetting that the moral community of free and equal subjects of human rights does not form a “kingdom of ends” in the noumenal beyond, but remains embedded in concrete forms of life and their ethos.

If morality is situated in a linguistically structured form of life, the current dispute over the admissibility of research involving the destruction of embryos and PGD cannot be resolved by a single argument concluding that the fertilized egg cell possesses, in the strict sense, “human dignity” and has the status of a subject possessing human rights. I indeed understand, and even share, the motive for wanting to use such an argument. A restrictive concept of human dignity implies that the embryo’s need for, and entitlement to, protection is subjected to a weighing of goods which would leave the door open a crack for an instrumentalization of human life and for the erosion of the categorical sense of moral inhibitions. It is, therefore, all the more important to search for a solution which is at once conclusive and neutral with respect to competing worldviews, a neutrality we are anyway committed to by the constitutional principle of tolerance. Even if my own understanding, as proposed here, of the purpose as well as the limit of morality should fail to meet this claim and be found guilty of a metaphysical bias, the consequence would still be the same. If it is democratically constituted and committed to inclusion, the neutral state must refrain from taking sides in an “ethically”

controversial reference to Articles 1 and 2 of the German constitution. If the question of how to deal with unborn human life is an ethical one, there is every reason to expect well-founded dissent to arise, as was the case in the debate of the Bundestag on May 31. The philosophical debate, disburdened of sterile polarizations, may then focus on the issue of an appropriate ethical self-understanding of the species.

First, however, a note on linguistic usage. I call “moral” such issues as deal with the just way of living together. Actors who may come into conflict with one another address these issues when they are confronted with social interactions in need of normative regulation. Conflicts of this type may be reasonably expected to be in principle amenable to rational solutions that are in the equal interest of all. No such rational acceptability may be expected, by contrast, if the description of the conflictual situation as well as the justification of pertinent norms are themselves shaped by the preferred way of life and the existential self-understanding of an individual or a group of citizens, that is, by their identity-forming beliefs. Background conflicts of this kind touch upon “ethical” issues.

Persons and communities whose existence may go wrong address questions of a happy or not misspent life with regard to values that direct their life history or form of life. Such ethical questions are tailored to the perspective of persons who, within the context of their life, want to understand who they are and which practices are, on the whole, best for them. Nations differ in their attitudes towards the mass crimes of former regimes. Strategies of forgiving and forgetting or processes of punishment and critical reappraisal will be chosen in accordance with their historical experience and collective self-understanding. Their attitude toward nuclear energy will depend, among other things, on their ranking of security and health as compared to economic prosperity. For ethical-political questions like these, it is “so many cultures, so many customs.”

The questions raised, in contrast, by our attitude toward prepersonal human life are of an altogether different caliber. They do not touch on this or that difference in the great variety of cultural forms of life, but on those intuitive self-descriptions that guide our own identification *as human beings* – that is, our self-understanding as members of the species. They concern not culture, which is different everywhere, but the vision different cultures have of “man” who – in his anthropological universality – is everywhere the same. If I am not mistaken in my assessment of the debate over the “use” of embryos for research, or over the conditional creation of embryos, it is disgust at something obscene rather than moral indignation proper that comes to be expressed in our emotional reactions. It is the feeling of vertigo that seizes us when the ground beneath our feet, which we believed to be solid, begins to slip. Symptomatically, it is revulsion we feel when confronted with the chimaera that bear witness to a violation of the species boundaries that

we had naively assumed to be unalterable. This “ethical virgin soil”, rightly termed such by Otfried Hoffe, consists of the very uncertainty that invades the identity of the species. The perceived, and dreaded, advances of genetic engineering affect the very concept we have of ourselves as cultural members of the species of “humanity” – to which there seems to be no alternative.

Of course, these ideas also are plural. Cultural forms of life are bound up with systems of interpretations that explain the position of humanity in the universe and provide the “thick” anthropological context in which the prevailing moral code is embedded. In pluralistic societies, these metaphysical or religious interpretations of the self and the world are, for good reasons, subordinated to the moral foundations of the constitutional state, which is neutral with respect to competing worldviews and committed to their peaceful coexistence. Under the condition of postmetaphysical thought, the ethical self-understanding of the species, which is inscribed in specific traditions and forms of life, no longer provides the arguments for overruling the claims of a morality presumed to be universally accepted. But this “priority of the just over the good” must not blind us to the fact that the abstract morality of reason proper to subjects of human rights is itself sustained by a prior *ethical self-understanding of the species*, which is shared by all *moral persons*.

Like the great world religions, metaphysical doctrines and humanistic traditions also provide contexts in which the “overall structure of our moral experience” is embedded. They express, in one way or the other, an anthropological self-understanding of the species that is consistent with an autonomous morality. The religious interpretations of the self and the world that were elaborated by highly advanced civilizations during the axial age converge, so to speak, in a minimal ethical self-understanding of the species sustaining this kind of morality. As long as the one and the other are in harmony, the priority of the just over the good is not problematical.

This perspective inevitably gives rise to the question of whether the instrumentalization of human nature changes the ethical self-understanding of the species in such a way that we may no longer see ourselves as ethically free and morally equal beings guided by norms and reasons. For the self-evident nature of elementary background assumptions to crumble, it takes the unanticipated emergence of surprising alternatives (even though these novel facts – like the artificial “chimaera” of transgenic organisms – have their archaic prefigurations in mythical images). Irritants of this kind are provoked by all the current scenarios that step out of science-fiction literature and invade the scientific feature pages. Thus we are of late confronted, by a strange lot of non-fiction authors, with the vision of humans being improved by chip implants, or ousted by intelligent robots.

To illustrate the technologically assisted life-processes of the human organism, nano-engineers draw up visions of man and machine fused into

a production plant subjected to autoregulated processes of supervision and renewal, permanent repair and upgrading. In this vision, self-replicating microrobots circulate in the human body, combining with organic matter in order, for instance, to stop ageing processes or to boost the functions of the cerebrum. Computer engineers, as well, have not been idle, contributing to this genre by drawing up the vision of future robots having become autonomous and evolving into machines which mark flesh-and-blood human beings as a model doomed to extinction. These superior intelligences are supposed to have overcome the flaws of human hardware. As to the software, which is modeled on our brains, they promise not only immortality, but unlimited perfection.

Bodies stuffed with prostheses to boost performance, or the intelligence of angels available on hard drives, are fantastic images. They dissolve boundaries and break connections that in our everyday actions have up to now seemed to be of an almost transcendental necessity. There is fusion of the organically grown with the technologically made, on the one hand, and separation of the productivity of the human mind from live subjectivity, on the other hand. Whether these speculations are manifestations of a feverish imagination or serious predictions, an expression of displaced eschatological needs or a new variety of science-fiction science, I refer to them only as examples of an instrumentalization of human nature initiating a change in the ethical self-understanding of the species – a self-understanding no longer consistent with the normative self-understanding of persons who live in the mode of self-determination and responsible action.

The provocation inherent in the advances of genetic engineering that have already been realized or are realistically to be expected does as yet not go that far. Still, there is no denying certain analogies. The manipulation of the makeup of the human genome, which is progressively being decoded, and the hopes entertained by certain scientists of soon being able to take evolution in their own hands do, after all, uproot the categorical distinction between the subjective and the objective, the naturally grown and the made, as they extend to regions which, up to now, we could not dispose over. What is at stake is a dedifferentiation, through biotechnology, of deep-rooted categorical distinctions which we have as yet, in the description we give of ourselves, assumed to be invariant. This dedifferentiation might change our ethical self-understanding as a species in a way that could also affect our moral consciousness – the conditions, that is, of nature-like growth which alone allow us to conceive of ourselves as the authors of our own lives and as equal members of the moral community. Knowledge of one's own genome being programmed might prove to be disruptive, I suspect, for our assumption that we exist as a body or, so to speak, "are" our body, and thus may give rise to a novel, curiously asymmetrical type of relationship between persons.

Where have our reflections so far taken us? On the one hand, we cannot, from the premise of pluralism, ascribe to the embryo “from the very beginning” the absolute protection of life enjoyed by persons who are subjects possessing basic rights. On the other hand, there is the intuition that prepersonal human life must not simply be declared free to be included in the familiar balancing of competing goods. To clarify this intuition, I choose to approach it indirectly via the – at present purely theoretical – possibility of liberal eugenics, which, in the United States, for example, is already being discussed in some detail. In this anticipatory perspective, the contours of the ongoing controversy about the two current issues will emerge more clearly.

Normative restrictions in dealing with embryonic life cannot be directed against genetic interventions as such. The problem, of course, is not genetic engineering, but the mode and scope of its use. It is, moreover, the *attitude* in which interventions in the genetic makeup of potential members of our moral community are carried out that provides the standards for an assessment of their moral admissibility. Thus, in the case of *therapeutic* gene manipulations, we approach the embryo as the second person he will one day be. This clinical attitude draws its legitimizing force from the well-founded counterfactual assumption of a possible consensus reached with another person who is capable of saying yes or no. The burden of normative proof is thus shifted to the justification of an anticipated consent that at present cannot be sought. In the case of a therapeutic intervention in the embryo it might, in the best of cases, be confirmed later (and, in the case of birth being precluded as a preventive act, not at all). What this requirement may really mean in the context of a practice that – like PGD and embryonic research – is only hypothetically, or not at all, aimed at later birth, is still unclear.

In any case, *assumed* consensus can only be invoked for the goal of avoiding evils which are unquestionably extreme and likely to be rejected by all. Thus, the moral community which in the profane realm of everyday politics takes on the sober form of democratically constituted nations must eventually believe itself capable of working out, time and again, from the spontaneous proceedings of everyday living, sufficiently convincing criteria for what is to be understood as a sick, or a healthy, bodily existence. Our commitment to the “logic of healing” is based, I would like to show, on the moral point of view that obliges us, in our dealings with second persons, to refrain from instrumentalizing them and, instead, saddles us – in contrast to the extensive scope left to tolerance by liberal eugenicists – with the responsibility of drawing a line between negative eugenics and enhancing eugenics. The program of liberal eugenics blinds itself to this task because it ignores the biotechnological dedifferentiation of the modes of action.

Leszek Kołakowski

WHY DO WE NEED HUMAN RIGHTS?

Our dreams about a world without poverty and hunger, without wretchedness and slavery, about humanity living in brotherhood and solidarity, without battles and violence, are most certainly necessary and legally valid. It is not, however, sensible to call all goodness that we would wish for ourselves and for others human rights. My intention is to encourage myself and others to consider an exceptionally improper question: Can we place the UNO Declaration of Human Rights and other earlier declarations from history into the archive of honourable mementoes and live tolerably or perhaps even more tolerably than we do at the moment? I am not talking about questioning the various decent wishes expressed therein but about questioning the method of their reinforcement precisely as human rights.

The expression “I have the right” to this or that may quite simply mean that I am a party to some agreement which allows me to do something (“I have the right to travel on this train because I bought a ticket”), and the basis of my entitlement is the general rule that agreements ought to be kept; this rule probably does not need to be justified by some more general rule except perhaps by God’s commandments or by the not very disputable assertion that without observance of this – however imperfect – rule, collective life would be impossible. Often saying “I have the right”, I refer by implication not to a written agreement but to some established custom (“We have the right to know what you were doing so late in the evening” – parents say to their unruly daughter; “I don’t have the right to repeat unproven gossip about the private life of that lady” etc.). Sometimes “I have the right” means no more than I need something badly (“I have the right to rest after a whole day of hard work”) and that, in my opinion, other people have the duty to enable me to do this.

It might seem that the human rights in the 1948 Declaration have a different sense; these are after all universal rights, abstract and without exception, referring to all people. But the various afore-mentioned entitlements could also without great effort be deduced from these abstractions: if somebody were to refuse me access to the train despite my having purchased a ticket, he would be abusing my property, and the right to property is given to me by article 17; if somebody were to hinder me from resting after work, he would be violating the right given to me in article 24 etc.

Let us consider, however, what real sense the assurances about the rights in the 30 articles actually have. The rights enshrined in the American

Declaration of Independence – and there are only three of them – are important because they were given to us by our Maker. So we are – all of us – carriers of these rights (to life, to freedom, to seek happiness) on the basis of a divine decree which cannot be questioned. That we are happy possessors of these rights is a factual statement, just as it is a fact that I am, by virtue of the law, the possessor of this pencil. The UNO Declaration does not, however, say anything about the fact that God gave us the rights which it enumerates or that Nature gave them to us. What then does the statement mean that, for example, I have the right to receive decent payment for my work? Is this a statement about a certain fact but at the same time a metaphysical statement ascribing to me irreversibly a certain feature, which I bear like the feature that I have two ears? If that was what the authors of this famous document meant, if they really were establishing a factual circumstance, then they should have said how they knew that, as a representative of the human race, I am the carrier of these 30 features, just like all other people are carriers, and undoubtedly – although the document does not say so directly – not just those living today but everybody from the beginning of the world to its end.

If, however, the list of human rights cannot be interpreted so boldly as a metaphysical statement, what does it then mean? We can assume that this is a normative text expressing the opinion of its authors, according to which it would be better if we, I and others, received decent payment for our work, or that the world in general would be better if people were never subject to arbitrary arrest or torture. If so, the Declaration is simply a wish-list of its authors and even if I share these wishes, if I preferred the world to be rather better than worse in the sense suggested by the Declaration, I cannot insist that my wishes or those of other people are truths, much less eternal ones, which is suggested by an interpretation of these “rights” as metaphysical statements. Even the most empirically or scientistically disposed person cannot have anything against people expressing their wishes and even he might be ready to express his own wishes but he would not state that he is expressing the truth in this way.

There is, however, a third possible interpretation of “human rights”. The well-known and important historical documents which we regard as the antecedents of these rights, such as the *Magna Carta*, the later *Habeas Corpus Act* in England, “*Neminem captivabimus*” in Poland or the Edict of Nantes in France, are quite simply limitations which the state or rather the monarch agrees to acknowledge, restrictions imposed on the authorities either through direct pressure or even without compulsion and for various reasons accepted by the king. They are, therefore, laws by which the subjects, mainly the aristocracy, defend themselves against the lawlessness and force of those who reign, and also against taxes. They are not intended to be written in

stone like Moses' Commandments, valid for ever and it is probably in this way that the human rights in our Declaration were thought up.

Since we are talking about concessions made more or less readily by monarchs, it was obvious that they could be improved, changed or invalidated, which is exactly what happened with the afore-mentioned and with other statutes of this kind. *Magna Carta* underwent change as early as the first decade after its declaration in 1215 and many of its provisions lost their validity as a result of political and social changes and in at least one case the promised freedoms do not have any validity today (for example, the principle that in times of peace anyone could settle in England); the promise of "*Neminem captivabimus*" was not an unchangeably binding law in Polish history and the Edict of Nantes was rescinded after several decades. All of these statutes or decrees did not pass, however, without trace – they somehow became encoded in the collective memory and served as a starting-point for later documents like, for example, the *Magna Carta* for the American Declaration of Independence. Some indeed also played a destructive role, like the privileges of the Polish nobility.

There are no compelling reasons for the content demanded by the Declaration of Human Rights to be registered in the form of rights and there are reasons why this form of registration should be abandoned.

If such a thing as human rights exists, then these rights ought to fulfil several conditions.

Firstly, these are entitlements whose carrier is a human individual, every individual, and not the collective, nations, tribes or the whole of humanity. Obviously, all conflicts between tribes, all claims and grievances, are now written about in the category of human rights. Obviously, this territory belongs to us by force of historical reasons and taking it away from us is a violation of human rights – this can be heard from all sides of the conflict. But also the wishes of individuals which, as we can see every day, are in conflict with each other are expressed in these categories. Do not young people have the right to listen to rock music if they like it? And do their neighbours not have the right to sleep peacefully at night without being exposed to shouts and noise? My own needs and wishes may also be in conflict with each other. Is it not my human right to live in an unpolluted natural environment? Certainly. But is it not also my right to be the owner of a car and to use it whenever I want to or to use air transport and to have an adequate supply of electrical energy produced by the burning of coal or petroleum? But of course all of these – car, aeroplane, power stations – pollute the environment, violating my rights in so doing. For these problems there is a simple recipe: let the government do something so that I can have all these comforts but ensure that the natural environment does not suffer as a result. The government

does not want to do anything? So it is clear that the government does not care about human rights.

It is not enough, therefore, for just individuals to be the carriers of rights – something has to be added so that the rights of individuals such as I do not collide with the rights of individuals such as you. How can this be done? To make sure there is no collision, there is only one possible way: I will decide about my rights and so the claims of all other people who might come into conflict with me are invalid. For this, it would be enough to establish me as king of the world.

Bearing in mind that the chances of arranging the world in this excellent way are minimal, we have to come to terms with the fact that the claims of particular people expressed in the language of human rights are inevitably contradictory and to make use of all legal institutions to ensure that the collisions of these claims are settled by way of compromise, without violence.

The next condition for the idea of human rights to be applicable at all is the following: in the case where someone's rights are violated or he thinks that they are violated, there should be the possibility of establishing who the violator of these rights is by name. In some cases this is possible. If someone is tortured or unlawfully arrested, then there are defined persons or offices and agents of these offices who have committed these violations. Similarly, if, for example, state law sentences me to death for changing my faith, as occurs in Islamic countries, you can indicate the people and the offices who are the authors and executors of the legislation by virtue of which human rights are violated.

It would be different, however, if I became unemployed, which, according to the Declaration under discussion, violates human rights, namely the right to work. We know that unemployment of considerable dimensions is currently a dramatic and painful curse in almost every country. If there were to exist, however, an inalienable right to work, it would have to be established who by name is the perpetrator of unemployment in each particular case and he would have to be forced to return the place of work to the unemployed person. Unemployment, however, is the result of various economic and social processes over which no particular person and no particular institution has such power as to lift it by decree. We are allowed to, and we should, demand from governments that they take realisable measures to reduce unemployment and to ensure for the unemployed minimal social security benefits but the situation in which no-one is looking for work is only possible in a totalitarian system. The right to the level of remuneration which is in accordance with human dignity and ensures a tolerable standard of living for the worker and his family would not arouse the opposition of anyone if we only knew how to execute it where there are enormous areas of

poverty, particularly in Africa, Latin America and Asia. Our dreams about a world without poverty and hunger, without misfortunes and slavery, about humanity living in brotherhood and solidarity, without battles and violence, are undoubtedly necessary and valid for us but it is not sensible to call by the name of human rights all the goodness (without differentiation) that we would wish for ourselves and for others; it must also be borne in mind that those rights which can be guaranteed by state law appear on the list in the neighbourhood of those which can only be possible as a result of long-lasting and difficult historical processes or are in fact completely impossible.

Yet another condition without which human rights lose their sense is this: the beneficiaries of these rights must be aware that they possess them. This matter was often raised in connection with the so-called rights of animals. The argument that rats and cockroaches do not have rights because they cannot be aware that they possess them can seemingly be refuted by the remark that young children also do not have rights. In fact young children do not have rights, but this does not mean that we can kill them or persecute them – they do not have rights but we adults have responsibilities towards them – we have to feed them, protect them from dangers and suffering and educate them to participate in our culture. These are our moral obligations and not the rights of children; there is here no symmetry of obligations and claims. The language of responsibilities in a normative description of inter-personal relations is much more precise and clear and creates far fewer opportunities for abuse than the language of entitlements.

Whether we have moral responsibilities towards animals is a separate matter which can be omitted here, except for the obvious (it would seem) remark that humanity would not survive for long if it were not allowed to destroy various species that are harmful for humanity, that vegetarianism is not a moral duty, that the attempt to impose by force a vegetarian diet on humanity would cause hunger and wars and finally that we should not cause unnecessary pain to animals or try out our cruelty on them. We do not, therefore, know of any animal rights and animals do not know them either.

It is worth remarking on this occasion that, despite what theologians sometimes tell us, we cannot ascribe any rights to God either and this is for the reason that we cannot do Him any harm or damage, because He is after all unmoved in His existence and gives us orders, which we listen to or not, but when we do not listen we only bring harm to ourselves and not to God.

In contrast to the language of responsibilities, the language of human rights is unclear and we are rarely certain how far the validity of a given law stretches, that is what exactly its content is. Does the right to life automatically mean that the death penalty is inadmissible? And does it mean, which is worse, that no-one can participate in a war and that anyone who recognises human rights must also be a total pacifist who, in the event of a democratic

country being attacked by barbarians, should immediately without opposition submit to these barbarians?

Every one has the right to participate in the government of his country and every one has equal access to public service, as article 21 informs us. Does “equal access” automatically assume that a hereditary monarchy is invalid and that it should be abolished even if the majority of the population wants it to continue in existence? How many political coups and dangerous disturbances can be expected if we suddenly had to change state systems in order to adapt them to the abstraction of human rights? (Maybe someone would like to defend the Polish elective monarchy which, although it was not entirely democratic by today’s standards, could be regarded as a great step towards democracy? The fact that it brought Poland nothing but misfortunes should then be regarded as insignificant: some progress did take place! The British House of Lords would also have to be abolished.)

Every human being, we find out, has the right to own property. Let us consider how many problems this simple statement must solve. We assume that we are talking about property legally obtained, about the right to obtain it, to have it at one’s disposal and about defence against any arbitrary confiscation. Here, however, some people will tell us: there are wealthy owners of great landed estates and they are such because the husband of a certain lady who was the mistress of the king received them as a gift in gratitude several hundred years ago when the king treated the country as his own property. Does this rich man, many generations after the times of the afore-mentioned mistress, possess a property legally obtained? Let us just try to imagine the legislative process which could deal effectively with such cases.

What does it mean that every one has the right to own property? Does it ensue from this, as some early French socialists used to say sometimes, that anyone who does not have property should get some? How and from whom? Or perhaps we mean that property ought to be equally apportioned? If such was the ideal of the authors of the Declaration, it would have to foretell totalitarian tyranny, the only place where this equal apportioning is conceivable, but only in an ideological illusion; in reality after all in a kingdom of universal and equally apportioned property, by virtue of the force of the “dialectical” reversal, there would be no private property at all. On the list of human rights, admittedly there is no right to equal apportionment but the whole ideological construction is so nebulous that it is hard to be amazed that the absurd and unrealisable idea of equal apportionment is propagated in precisely these categories. “I am poor and he is rich, so my human rights have been violated” – this is the standard reaction which often ensues from the phraseology of human rights.

Every one has the right to live in security. Who would not sign his name under such a slogan? But what does it mean? That there should not be any

murders, robberies, rapes, that there should not exist any criminal gangs and terrorists, and that police control should be effective? Undoubtedly but to implement this programme the doctrine of human rights is not necessary.

Freedom of religion and to express opinions? Certainly, a good idea. But does it ensue from this that we have to rescind the existing bans in certain countries on proclaiming racist slogans and racial hatred? Or, on the contrary, should we tolerate without opposition summons to a holy war against infidels, i.e. non-Muslims, in the civilised world?

People exposed to persecution for ethnic or political reasons have the right to asylum in other countries, it is stated in the Declaration. Among those exposed to persecution are the Taliban in Afghanistan and the proponents of the old regime in Iraq etc. Admittedly, I cannot seek asylum if I have committed an act in opposition to the aims and principles of the UNO but who is to judge what is or is not in opposition to these aims? Is a battle against foreign armies which have invaded my country in opposition to the aims and tasks of the UNO? For this is the case as far as the invasion of the American or multi-national forces in Afghanistan, Iraq or Yugoslavia is concerned. The General Assembly of the UNO will vote on whose forces are in a valid or invalid way in another country or who is right or wrong in this or some other of the numerous civil wars in Africa? The same UNO, where the Chairman of the Human Rights Commission was the representative of Saddam Hussein's Iraq and where are represented various tyrannical regimes perpetrating on a mass basis tortures and expulsions of people? But every one seeking the status of a political refugee – for good reasons, without any reasons or for the wrong reasons – refers to human rights and considers moreover that they have been violated when the state which accepts him does not give him the kind of flat he wanted or directs him to a different place from the one he wanted. And are we always to accept without reservations every armed intervention that takes place in the name of human rights – with or without the blessing of the UNO? Why in this place on earth rather than in that one where things are even worse?

What then is there that is bad or unconstructive in the proclamation of human rights? Not the fact that the authors condemn slavery, the murder of people, inequality before the law, religious discrimination or numerous other well-known, historically and today, atrocities of our collective life.

What is the list of human rights? What is its Rousseau-esque article 1, according to which all human beings are born equal in dignity and rights, endowed with reason and conscience? This is typical ideological language dressed up in such a style as if it concerned the confirmation of a certain fact although nobody is able to say how you could establish such a peculiar fact that people are born free and equal and that everybody possesses reason and conscience.

What then is, if you will allow the repetition, the list of human rights? It is an ideologically constructed constitution for all the countries in the world, past, present and future, a project for a benevolent system where nobody will suffer and nobody will want and everybody will live in brotherhood. This project can be concisely summarised thus: the world ought to be just and not unjust. And who could oppose that?

Anybody who did not like this project would be unmasked as the enemy of a better world, a herald of injustice who wanted humanity to live in slavery and who supported tyrannical governments, torture, lawlessness, poverty and unemployment.

Such is ideology. Reality is different. People murder each other for the most varied reasons and always have done, beginning from the first pair of brothers born naturally. It is, however, very doubtful whether a declaration that everybody has the right to life is a better way of preventing murders and wars than the appropriate Commandments of the Decalogue guaranteed by divine authority or than the effectiveness of the prosecuting and penal authorities; the last thing we can count on is that thanks to this declaration all wars will disappear from the earth. In any case, the innumerable wars, invasions, genocidal expeditions, massacres and pogroms that have taken place since 1948 do not incline us to presume something so bold. In criticising states where tyrants and oppressors rule, one can of course cite human rights but there is very little chance that the hearts of tyrants will be moved by this and the list of human rights will not give us any advice about how to combat tyrants and oppressors.

Legal provisions which are supposed to protect people from violence and discrimination do not have to refer at all to human rights and are even more precise without them. The Constitution of the United States, where freedom of religion is comprehensive and the separation of religion from the state is rigorously observed, does not say that freedom of religion is a human right – it only states in the First Amendment that Congress will not pass any laws establishing a religion or banning its free practice and it also states (Thirteenth Amendment) that slavery will not exist in the United States or in any other place subject to its jurisdiction. These are legal provisions which are concise and transparent and which could not under any circumstances be better if the legislators had added on that occasion that they were referring to human rights.

The phraseology of human rights does not by the way have any such ideological force that it could not serve to justify persecutions and terror. The terror of revolutionary France was not necessarily in contradiction to its Declaration. We will have freedom when we have rid ourselves of the enemies of freedom, said Adolf Hitler, citing Saint-Just probably. Indeed, people do have the right to equality so why not, in the name of this principle, wipe out

the aristocracy and the wealthy? And were not the Soviet labour camps an instrument of social justice and an embodiment of the human right to work and to enjoy freedom from unemployment?

The text itself of the doctrine on human rights does not contain practically anything that should be combated. But the course of the world's affairs, as Hegel states in "Phenomenology", achieves success "over the pompous declarations about the good of humanity and its oppression, about sacrificing oneself for good and making bad use of one's talents. These kinds of ideal beings and aims crumble as empty words which lift hearts but leave the mind empty, which are inspiring but do not construct anything. They are declarations whose only content is that the individual who states that he is acting in the name of these noble aims and has on his lips such elevated phrases and in his own eyes is a perfect being puffs himself up and fills his own head and the heads of others, but only with empty grandiloquence."

The doctrine of human rights, apart from the fact that it can easily be employed, like all good principles, to fulfil the worst aims, also has a particular dangerous side. Whatever I wish, whatever I want, I assume that I deserve it on the strength of my human rights. It is enough to read about the cases in which people bring against other people or institutions, demanding the fulfilment of their rights, namely claims. A person living on social benefits states that he should receive free aphrodisiacs because surely he has the right to sexual pleasures. I have the right to information, but my right is being violated when I am told to pay for using my television. Alcoholics accuse in court the producers of alcoholic beverages who had not informed the drunks that alcohol damages their health. Admittedly I have not heard about any young man complaining that his human rights are being violated because a particular girl does not wish to sleep with him but I would not be at all surprised if and when such a complaint were to be made. All claims – justified or unjustified, sensible or absurd, from genuine and painful want or from mindless envy – can in our culture be presented in categories of human rights and their violations.

In the American Declaration of Independence, we can read that every one has the right to seek happiness but it does not say that he has the right to happiness. We, however, seem to believe absurdly that the right to happiness is due to us and all of our complaints against the world can be deduced from abstract human rights. This is an easy ideology which codifies and sanctifies all of our possible and impossible dreams.

Since, as Kant said, nothing completely straight can be cut from such crooked wood as the one from which people were made, legal restrictions, bans and commands, threats and punishments are indispensable to us always and everywhere. Various such restrictions and entitlements which can be taken from the list of human rights are necessary and usually are present in

the legislation of civilised countries: it is good that there is a presumption of innocence in criminal trials, it is good that the consent of both sides is required for a marriage to take place, it is good that courts should be independent and that there should not be any discrimination on the basis of religion, race, sex etc. All these and many other regulations protect the individual from the violence of a state, a church or even customs. All of these bans and commands present in the law do not, however, have to be or perhaps even should not be validated in such a way that they ensue somehow from human rights.

The rights which were cited earlier from the amendments to the American Constitution and which establish religious freedom, a secular state, freedom of speech and a ban on slavery are in fact good as legal restrictions – philosophers can obviously debate their theoretical foundations but legislation is better and clearer when it is free from philosophical or theological doctrines, such as universal human rights. “Congress shall make no law [...] prohibiting the free exercise [of religion]”: enough.

In the eyes of sceptics and critics, human rights referred essentially to the fiction of an abstract person, thought up by the ideologues of Enlightenment, a person not grounded in history, not knowing or needing history, purged of all affiliations to any of the numerous and diverse cultures of the world, a person who is pure mind, the embodiment of doctrinal principles and not a real participant in collective, class, national or religious conflicts and battles, a person, it would seem, not speaking any of the thousands of languages and dialects of the world but a language generally, just as universal as the laws of arithmetic. He does not belong to any religious faith or church. But, critics said, such a person does not exist.

There is in this criticism some significant reason but it is not clear how far this reason stretches. Such a person does not in fact exist but we do not know how close to him the process of so-called globalisation will bring us. At the moment we are undoubtedly far from such a being incarnated by some – quite significant in number – European and North American academics. We have in the English language a global substitute for language, which as a practical instrument is easy to learn for speakers of other languages but that is not enough for cultural creativity.

Despite all the syncretisms and ecumenicalisms, the unity of religious faith does not seem closer today than it did 200 years ago and it may well be further away. National and tribal differences and self-identification are not waning and sometimes they seem to be growing in strength and causing dangerous catastrophes. This criticism, however, easily suggested such a discouraging conclusion: so let us leave in peace all civilisational traditions, whatever they may be, let us not try to inculcate our European system schemata which do not fit there for cultural reasons and even if they

are accepted then it is in a form that is horribly deformed or stunted. From this comes the next conclusion: wherever tyrants who murder and torture on a mass basis rule, let them continue to do so as it is clearly the civilisational tradition of these areas; let us leave in peace the custom on the basis of which parents decide about the marriages of their children, and children, when they grow up, have to honour the agreement; where women do not have full human rights, let them continue not having them; let the horrible mutilation of young girls continue; let people be stoned to death for adultery because it is part of a traditional custom.

But such conclusions ensuing from respect for the traditions of others seem to the majority of us, educated in the European civilisation, hard to swallow. Maybe then we should ceaselessly cry out our Declaration and force the barbarians to improve? Maybe we should draw up a catalogue of the successes enjoyed and failures endured in the activity of our uncommonly active and noisy ideological factory of human rights and consider what is and what is not effective. As with all human matters, wherever there are contradictory reasons, it is best to seek compromise solutions as long as there some perspectives of them. The world is still full of injustices and cruelties and our lecturing will often be ineffective. Various tyrannical systems were overthrown by violence, others improved under certain circumstances to the benefit of the inhabitants but they improved not because of our meditations on the Declaration of Human Rights but because the previous forms of tyranny drove the countries into economic stagnation and weakened them politically.

It is good to spread propaganda about equal rights for women and the cessation of torture in the hope that, if the barbarians do not civilise themselves, they will become ashamed of their barbarianism in certain matters that are the most painful for their people.

Some institutions, although not in accordance with our list of rights, are all the same worth maintaining either because they fulfil good functions or because their liquidation would cause significantly more civilisational damage – for example, constitutional dynastic monarchies in Europe or the Vatican State, which does not after all comply with the standards of the UNO Declaration even though nobody mentions it, quite rightly even. Certain privileges enjoyed by Islam in Muslim countries, although not in accordance with our list, can be respected if they are not murderous theocracies, just like those of the Anglican Church in England. It all depends on the degree of the privileges – hence, general rules are not very helpful.

Neither should we demand that organisations which are not part of a state should observe the human rights from our list in their internal system – for example that the Roman Catholic Church should allow women on this basis to become priests or should waive its condemnation of homosexual

practices. Nobody today is forced to belong to the Roman Church and every one can leave it at any time without fear of punishment if its rules discourage him, irrespective of the bases of these rules.

There is, however, another side to this issue – the civilisational and spiritual damage that fanaticism for human rights can inflict. Apart from the previously mentioned unwise private claims made in the name of human rights, apart from the absurd belief that every one of us has the right to happiness and should complain loudly and blame others for our lack of happiness, there do perhaps exist other undesirable features of our culture which are connected with the universalisation of belief in human rights. We know that freedom can be and is used for bad causes. The spread of pornography and the obsession with sex have their roots in this belief. Freedom of speech and printing is also a tool for the propagation of lies and slanders in the media for various political and private reasons – we can see this every day. Undoubted criminals exploit various schemata of the law in order, in the name of human rights, to avoid punishment.

We cannot, however, state that, in the world as it is today with its all-embracing network of mutual dependencies, we are able to rely safely on the codes of particular countries. The international code which serves to condemn tyrannical regimes and even, if it is possible, to overthrow them with the use of external force is undoubtedly necessary. The Declaration of Human Rights, as I have tried to justify, is inevitably full, wherever it is treated seriously, of dangerous effects characteristic of a civilisation dominated by a claim mentality, that particular cultural neurosis in which approval for the unlimited gluttony of every person individually is associated with the contrary inability to recognise that people inevitably differ from each other in various ways (this neurosis also says: “You must respect all differences” and “We should all be the same”).

Among these effects are, among other things, the great weakening of the effectiveness of the penal system – which is a subject often written about – and concomitantly an increase in crime and a loosening of discipline and standards in schools. It seems to me that what would be better than the Declaration of Human Rights is an international convention which would define what state authorities cannot do, a convention of limitations not entitlements and, therefore, not a list of the things to which we have a right but a list of things which no state has the right to do.

All the well-deserving international organisations which refer to human rights in order to unmask lawlessness, tyranny, arbitrary imprisonment, torture and censorship and also to help people around the whole world who are living among poverty and disease are obviously very necessary and within the framework of such a convention they could function very well. In order to condemn the torturing of people you do not need to seek the justification

that this not in accordance with human rights; similarly, in order to combat poverty and disease we do not have to refer to the fact that poverty and disease, so contrary to our natural wishes, are also in opposition to human rights. The simple and traditional differentiation between good and evil is enough of a foundation for the convention I am talking about.

In logic, as we know, there is a principle that from true sentences only true sentences can ensue, but from a false sentence there can ensue both false sentences and true ones. This is in accordance with common sense. It is different in the world of moral rules and values and their effects, which come about not on the basis of logic but on the basis of historical examples. In these fields, from evil can come both evil and good and from good there can arise both good and evil. We should always bear this in mind when we consider the radiant faith of the Enlightenment and the benevolent effects of the idea of human rights.

Martha Nussbaum

CAPABILITIES AND SOCIAL JUSTICE

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Women in much of the world lack support for fundamental functions of a human life. They are less well nourished than men, less healthy, more vulnerable to physical violence and sexual abuse. They are much less likely than men to be literate, and still less likely to have preprofessional or technical education. Should they attempt to enter the workplace, they face greater obstacles, including intimidation from family or spouse, sex discrimination in hiring and sexual harassment in the workplace – all, frequently, without effective legal recourse. Similar obstacles often impede their effective participation in political life. In many nations women are not full equals under the law: they do not have the same property rights as men, the same rights to make a contract, the same rights of association, mobility and religious liberty. Burdened, often, with the “double day” of taxing employment and full responsibility for housework and child care, they lack opportunities for play and the cultivation of their imaginative and cognitive faculties. All these factors take their toll on emotional well-being: women have fewer opportunities than men to live free from fear and to enjoy rewarding types of love – especially when, as often, they are married without choice in childhood and have no recourse from a bad marriage. In all these ways, unequal social and political circumstances give women unequal human capabilities.

According to the *Human Development Report 1999* of the United Nations Development Programme (UNDP), there is no country that treats its women as well as its men, in areas ranging from basic health and nutrition to political participation and economic activity.

One area of life that contributes especially greatly to women’s inequality is the area of care. Women are the world’s primary, and usually only, caregivers for people in a condition of extreme dependency: young children, the elderly, those whose physical or mental handicaps make them incapable of the relative (and often temporary) independence that characterizes so-called normal human lives. Women perform this crucial work, often, without pay and without recognition that it is work. At the same time, the fact that they need to spend long hours caring for the physical needs of others makes it more difficult for them to do what they want to do in other areas of life, including employment, citizenship, play and self-expression.

My aim in this brief presentation will be first to indicate why I believe other approaches to these inequalities are not fully adequate and the capabilities approach is needed. Then I shall mention some very general features of the capabilities approach to show how it can handle the problems other approaches fail to handle.

Prior to the shift in thinking that is associated with the work of Amartya Sen, and with the *Human Development Reports* of the UNDP, the most prevalent approach to measuring quality of life in a nation used to be simply to ask about GNP *per capita*. This approach tries to weasel out of making any cross-cultural claims about what has value although, notice, it does assume the universal value of opulence. What it omits, however, is much more significant. We are not even told about the distribution of wealth and income, and countries with similar aggregate figures can exhibit great distributional variations. (Thus South Africa always did very well among developing nations, despite its enormous inequalities and violations of basic justice.) Circus girl Sissy Jupe, in Dickens's novel *Hard Times*, already saw the problem with this absence of normative concern for distribution. She says that her economics lesson didn't tell her "who has got the money and whether any of it is mine." So too with women around the world: the fact that one nation or region is in general more prosperous than another is only a part of the story: it doesn't tell us what government has done for women in various social classes, or how they are doing. To know that, we'd need to look at their lives. But then we need to specify, beyond distribution of wealth and income itself, what parts of lives we ought to look at – such as life expectancy, infant mortality, educational opportunities, health care, employment opportunities, land rights, political liberties. Seeing what is absent from the GNP account nudges us sharply in the direction of mapping out these and other basic goods in a universal way, so that we can use the list of basic goods to compare quality of life across societies.

A further problem with all resource-based approaches, even those that are sensitive to distribution, is that individuals vary in their ability to convert resources into functionings. (This is the problem that has been stressed for some time by Amartya Sen in his writings about the capabilities approach.) Some of these differences are straightforwardly physical. Nutritional needs vary with age, occupation and sex. A pregnant or lactating woman needs more nutrients than a nonpregnant woman. A child needs more protein than an adult. A person whose limbs work well needs few resources to be mobile, whereas a person with paralyzed limbs needs many more resources to achieve the same level of mobility. Many such variations can escape our notice if we live in a prosperous nation that can afford to bring all individuals to a high level of physical attainment; in the developing world we must be highly alert to these variations in need. Again, some of the pertinent variations

are social, connected with traditional hierarchies. If we wish to bring all citizens of a nation to the same level of educational attainment, we will need to devote more resources to those who encounter obstacles from traditional hierarchy or prejudice: thus women's literacy will prove more expensive than men's literacy in many parts of the world. If we operate only with an index of resources, we will frequently reinforce inequalities that are highly relevant to well-being. As my examples suggest, women's lives are especially likely to raise these problems: therefore, any approach that is to deal adequately with women's issues must be able to deal well with these variations.

If we turn from resource-based approaches to preference-based approaches, we encounter another set of difficulties. Such approaches have one salient advantage over the GNP approach: they look at people, and assess the role of resources as they figure in improving actual people's lives. But users of such approaches typically assume without argument that the way to assess the role of resources in people's lives is simply to ask them about their satisfaction with their current preferences. The problem with this idea is that preferences are not exogenous, given independently of economic and social conditions. They are at least in part constructed by those conditions. Women often have no preference for economic independence before they learn about avenues through which women like them might pursue this goal; nor do they think of themselves as citizens with rights that were being ignored, before they learn of their rights and are encouraged to believe in their equal worth. All of these ideas, and the preferences based on them, frequently take shape for women in programs of education sponsored by women's organizations of various types. Men's preferences, too, are socially shaped and often misshaped. Men frequently have a strong preference that their wives should do all the child care and all the housework – often in addition to working an eight-hour day. Such preferences, too, are not fixed in the nature of things: they are constructed by social traditions of privilege and subordination. Thus a preference-based approach typically will reinforce inequalities: especially those inequalities that are entrenched enough to have crept into people's very desires. Once again, although this is a fully general problem, it has special pertinence to women's lives. Women have especially often been deprived of education and information, which are necessary, if by no means sufficient, to make preferences a reliable indicator of what public policy should pursue. They have also often been socialized to believe that a lower living standard is what is right and fitting for them, and that some great human goods (for example, education, political participation) are not for them at all. They may be under considerable social pressure to say they are satisfied without such things, and yet we should not hastily conclude that public policy should not work to extend these functions to women. In short, looking at women's lives helps us see the inadequacy of traditional

approaches; and the urgency of women's problems gives us a very strong motivation to prefer a nontraditional approach.

Finally, let us consider the influential human rights approach. This approach has a great deal to say about these inequalities, and the language of rights has proven enormously valuable for women, both in articulating their demands for justice and in linking those demands to the earlier demands of other subordinated groups. And yet the rights framework is shaky in several respects. First, it is intellectually contested: there are many different conceptions of what rights are, and what it means to secure a right to someone. (Are rights prepolitical, or artifacts of laws and institutions? Do they belong to individual persons only, or also to groups? Are they always correlated with duties, and who has the duties correlated with human rights? And what are human rights rights to? Freedom from state interference primarily, or also a certain positive level of well-being and opportunity?) Thus to use the language of rights all by itself is not very helpful: it just invites a host of further questions about what is being recommended. Second, the language of rights has been associated historically with political and civil liberties, and only more recently with economic and social entitlements. But the two are not only of comparable importance in human lives, they are also thoroughly intertwined: the liberties of speech and association, for example, have material prerequisites. A woman who has no opportunities to work outside the home does not have the same freedom of association as one who does. Women deprived of education are also deprived of much meaningful participation in politics and speech. Third, the human rights approach has typically ignored urgent claims of women to protection from domestic violence and other abuses of their bodily integrity. It has also typically ignored urgent issues of justice within the family: its distribution of resources and opportunities among its members, the recognition of women's work as work. This neglect is not accidental, because the rights approach is linked with the tradition of liberal political philosophy that typically recognizes a distinction between the public and the private realms, and puts the family off-limits for purposes of state action. Fourth and finally, the rights approach is often linked with the idea of negative liberty, and with the idea of protecting the individual from state action. Although rights of course need not be understood in this way, their history, at least in the Lockean tradition, does lend itself to that sort of interpretation, and the focus on such areas of negative liberty has been a persistent obstacle to making progress for women in areas ranging from compulsory education to the reform of marriage.

I shall now argue that a reasonable answer to all these concerns – capable of giving good guidance to governments establishing basic constitutional principles and to international agencies assessing the quality of life – is given by a version of the capabilities approach.

The central question asked by the capabilities approach is not, “How satisfied is this woman?” or even “How much in the way of resources is she able to command?” It is, instead, “What is she actually able to do and to be?” Taking a stand for political purposes on a working list of functions that would appear to be of central importance in human life, users of this approach ask, Is the person capable of this, or not? They ask not only about the person’s satisfaction with what she does, but about what she does, and what she is in a position to do (what her opportunities and liberties are). They ask not just about the resources that are present, but about how those do or do not go to work, enabling the woman to function.

To introduce the intuitive idea behind the approach, it is useful to start from this passage of Marx’s 1844 *Economic and Philosophical Manuscripts*, written at a time when he was reading Aristotle and was profoundly influenced by Aristotelian ideas of human capability and functioning:

It is obvious that the human eye gratifies itself in a way different from the crude, non-human eye; the human ear different from the crude ear, etc. ...The sense caught up in crude practical need has only a restricted sense. For the starving man, it is not the human form of food that exists, but only its abstract being as food; it could just as well be there in its crudest form, and it would be impossible to say wherein this feeding activity differs from that of animals.

Marx here singles out certain human functions – eating and the use of the senses, which seem to have a particular centrality in any life one might live. He then claims that there is something that it is to be able to perform these activities in a fully human way – by which he means a way infused by reasoning and sociability. But human beings don’t automatically have the opportunity to perform their human functions in a fully human way. Some conditions in which people live – conditions of starvation, or of educational deprivation – bring it about that a being who is human has to live in an animal way. Of course what he is saying is that these conditions are unacceptable, and should be changed.

Similarly, the intuitive idea behind my version of the capabilities approach is twofold: first, that there are certain functions that are particularly central in human life, in the sense that their presence or absence is typically understood to be a mark of the presence or absence of human life. Second, and this is what Marx found in Aristotle, that there is something that it is to do these functions in a truly human way, not a merely animal way. We judge, frequently enough, that a life has been so impoverished that it is not worthy of the dignity of the human being, that it is a life in which one goes on living, but more or less like an animal, not being able to develop and exercise one’s human powers. In Marx’s example, a starving person just grabs at the food

in order to survive, and the many social and rational ingredients of human feeding can't make their appearance. Similarly, the senses of a human being can operate at a merely animal level – if they are not cultivated by appropriate education, by leisure for play and self-expression, by valuable associations with others; and we should add to the list some items that Marx probably would not endorse, such as expressive and associational liberty, and the freedom of worship. The core idea seems to be that of the human being as a dignified free being who shapes his or her own life, rather than being passively shaped or pushed around by the world in the manner of a flock or herd animal.

At one extreme, we may judge that the absence of capability for a central function is so acute that the person isn't really a human being at all, or any longer – as in the case of certain very severe forms of mental disability, or senile dementia. But I am less interested in that boundary (important though it is for medical ethics) than in a higher one, the level at which a person's capability is "truly human," that is, *worthy* of a human being. The idea thus contains a notion of human worth or dignity.

Notice that the approach makes each person a bearer of value, and an end. Marx, like his bourgeois forebears, holds that it is profoundly wrong to subordinate the ends of some individuals to those of others. That is at the core of what exploitation is, to treat a person as a mere object for the use of others. What this approach is after is a society in which individuals are treated as each worthy of regard, and in which each has been put in a position to live really humanly.

I think we can produce an account of these necessary elements of truly human functioning that commands a broad cross-cultural consensus, a list that can be endorsed for political purposes by people who otherwise have very different views of what a complete good life for a human being would be.

The list is supposed to provide a focus for quality of life assessment and for political planning, and it aims to select capabilities that are of central importance, whatever else the person pursues. They therefore have a special claim to be supported for political purposes in a pluralistic society.

The list is, emphatically, a list of separate components. We cannot satisfy the need for one of them by giving people a larger amount of another one. All are of central importance and all are distinct in quality. The irreducible plurality of the list limits the trade-offs that it will be reasonable to make, and thus limits the applicability of quantitative cost-benefit analysis.

The basic intuition from which the capability approach begins, in the political arena, is that human abilities exert a moral claim that they should be developed. Human beings are creatures such that, provided with the right educational and material support, they can become fully capable of these human functions. That is, they are creatures with certain lower-level

capabilities (which I call “basic capabilities”) to perform the functions in question. When these capabilities are deprived of the nourishment that would transform them into the high-level capabilities that figure on my list, they are fruitless, cut off, in some way but a shadow of themselves. If a turtle were given a life that afforded a merely animal level of functioning, we would have no indignation, no sense of waste and tragedy. When a human being is given a life that blights powers of human action and expression, that does give us a sense of waste and tragedy – the tragedy expressed, for example, in the statement made by Tagore’s heroine to her husband, when she says, “I am not one to die easily.” In her view, a life without dignity and choice, a life in which she can be no more than an appendage, was a type of death of her humanity.

I have spoken both of functioning and of capability. How are they related? Getting clear about this is crucial in defining the relation of the “capabilities approach” to our concerns about paternalism and pluralism. For if we were to take functioning itself as the goal of public policy, a liberal pluralist would rightly judge that we were precluding many choices that citizens may make in accordance with their own conceptions of the good. A deeply religious person may prefer not to be well-nourished, but to engage in strenuous fasting. Whether for religious or for other reasons, a person may prefer a celibate life to one containing sexual expression. A person may prefer to work with an intense dedication that precludes recreation and play. Am I declaring, by my very use of the list, that these are not fully human or flourishing lives? And am I instructing government to nudge or push people into functioning of the requisite sort, no matter what they prefer?

It is important that the answer to this question is no. Capability, not functioning, is the appropriate political goal. This is so because of the very great importance the approach attaches to practical reason, as a good that both suffuses all the other functions, making them fully human, and also figures, itself, as a central function on the list. The person with plenty of food may always choose to fast, but there is a great difference between fasting and starving, and it is this difference that we wish to capture. Again, the person who has normal opportunities for sexual satisfaction can always choose a life of celibacy, and the approach says nothing against this. What it does speak against (for example) is the practice of female genital mutilation, which deprives individuals of the opportunity to choose sexual functioning (and indeed, the opportunity to choose celibacy as well). A person who has opportunities for play can always choose a workaholic life; again, there is a great difference between that chosen life and a life constrained by insufficient maximum-hour protections and/or the “double day” that makes women unable to play in many parts of the world.

Once again, we must stress that the objective is to be understood in terms of *combined capabilities*. To secure a capability to a person it is not sufficient to produce good internal states of readiness to act. It is necessary, as well, to prepare the material and institutional environment so that people are actually able to function. Women burdened by the “double day” may be *internally* incapable of play – if, for example, they have been kept indoors and zealously guarded since infancy, married at age six, and forbidden to engage in the kind of imaginative exploration of the environment that male children standardly enjoy. Young girls in poor areas of rural Rajasthan, India, for example, have great difficulty *learning* to play in an educational program run by local activists – because their capacity for play has not been nourished early in childhood. On the other hand, there are also many women in the world who are perfectly capable of play in the internal sense, but who are unable to play because of the crushing demands of the “double day.” Such a woman does not have the *combined capability* for play in the sense intended by the list. Capability is thus a demanding notion. In its focus on the environment of choice, it is highly attentive to the goal of functioning, and instructs governments to keep it always in view. On the other hand, it does not push people into functioning: once the stage is fully set, the choice is theirs.

One might worry that any approach as committed as is the capabilities approach to identifying a number of substantive areas of state action, and urging the state to promote capability in all of these areas by affirmative and not just negative measures, would ride roughshod over citizens’ liberties and preferences, and thus become ultimately an illiberal approach. There are several distinct ways in which my version of the capabilities approach tries to meet this concern. One way is by specifying the capabilities at a high level of generality and allowing a lot of latitude for different interpretations of a capability that suit the history and traditions of the nation in question. A free speech right that works well for the U.S. may not be right for Germany, which has expressed a commitment to the prohibition of anti-Semitic literature and expression that seems entirely appropriate, given its history. A second way, as this example shows, is that the standard political and civil liberties figure prominently within the content of the capabilities list. But the most important way in which the approach protects diversity and pluralism, or so it seems to me, is that it aims at capability rather than actual functioning, at the empowering of citizens rather than at dragooning them into one total mode of life.

Let me now return to the other approaches and briefly indicate how the capabilities approach goes beyond them. It appears superior to the focus on opulence and GNP, because it (a) treats each and every human being as an end, and (b) explicitly attends to the provision of well-being in a wide range

of distinct areas of human functioning. It appears superior to resource-based approaches because it looks at the variable needs human beings have for resources and the social obstacles that stand between certain groups of people and the equal opportunity to function. It provides a rationale for affirmative measures addressing those discrepancies. It appears superior to preference-based approaches because it recognizes that preferences are endogenous, the creation of laws and institutions and traditions, and refuses to hold human equality hostage to the status quo. Finally, the approach is a close ally of the human rights approach and is complementary with some versions of it. But it has, I believe, a superior clarity in the way in which it defines both the goal of political action and its rationale. And it makes fully clear the fact that the state has not done its job if it simply fails to intervene with human functioning: affirmative shaping of the material and social environment is required to bring all citizens up to the threshold level of capability.

Finally, there is one salient issue on which, or so it seems to me, the capabilities approach goes well beyond all other approaches stemming from the liberal tradition: this is the issue of care and our need both to receive care and to give it. All human beings begin their lives as helpless children; if they live long enough, they are likely to end their lives in helplessness, whether physical or also mental. During the prime of life, most human beings encounter periods of extreme dependency; and some human beings remain dependent on the daily bodily care of others throughout their lives. Of course putting it this way suggests, absurdly, that “normal” human beings do not depend on others for bodily care and survival; but political thought should recognize that some phases of life, and some lives, generate more profound dependency than others.

The capabilities approach, more Aristotelian than Kantian, sees human beings from the first as animal beings whose lives are characterized by profound neediness as well as by dignity. It addresses the issue of care in many ways: under “life” it is stressed that people should be enabled to complete a “normal” human life span; under “health” and “bodily integrity” the needs of different phases of life are implicitly recognized; “sense,” “emotions” and “affiliation” also target needs that vary with the stage of life. “Affiliation” is of particular importance, since it mentions the need for both compassion and self-respect, and it also mentions nondiscrimination. What we see, then, is that care must be provided in such a way that the capability for self-respect of the receiver is not injured, and also in such a way that the caregiver is not exploited and discriminated against on account of performing that role. In other words, a good society must arrange to provide care for those in a condition of extreme dependency, without exploiting women as they have traditionally been exploited, and thus depriving them of other important

capabilities. This huge problem will rightly shape the way states think about all the other capabilities.

The capabilities approach has a great advantage in this area over traditional liberal approaches that use the idea of a social contract. Such approaches typically generate basic political principles from a hypothetical contract situation in which all participants are independent adults. John Rawls, for example, uses the phrase “fully cooperating members of society over a complete life.” But of course no human being is that. And the fiction distorts the choice of principles in a central way, effacing the issue of extreme dependency and care from the agenda of the contracting parties, when they choose the principles that shape society’s basic structure. And yet such a fundamental issue cannot well be postponed for later consideration, since it profoundly shapes the way social institutions will be designed. The capabilities approach, using a different concept of the human being, one that builds in need and dependency into the first phases of political thinking, is better suited to good deliberation on this urgent set of issues.

The capabilities approach may seem to have one disadvantage, in comparison to some other approaches: it seems difficult to measure human capabilities. If this difficulty arises already when we think about such obvious issues as health and mobility, it most surely arises in a perplexing form for my own list, which has added so many apparently intangible items, such as development of the imagination, and the conditions of emotional health. We know, however, that anything worth measuring, in human quality of life, is difficult to measure. Resource-based approaches simply substitute something easy to measure for what really ought to be measured, a heap of stuff for the richness of human functioning. Preference-based approaches do even worse, because they not only don’t measure what ought to be measured, they also get into quagmires of their own, concerning how to aggregate preferences – and whether there is any way of doing that task that does not run afoul of the difficulties shown in the social choice literature. The capabilities approach as so far developed in the *Human Development Reports* is admittedly not perfect: years of schooling, everyone would admit, are an imperfect proxy for education. We may expect that any proxies we find as we include more capabilities in the study will be highly imperfect also – especially if it is data supplied by the nations that we need to rely on. On the other hand, we are at least working in the right place and looking at the right thing; and over time, as data-gathering responds to our concerns, we may expect increasingly adequate information, and better ways of aggregating that information. As has already happened with human rights approaches, we need to rely on the ingenuity of those who suffer from deprivation: they will help us find ways to describe, and even to quantify, their predicament.

Kofi A. Annan

TWO CONCEPTS OF SOVEREIGNTY

Source: "The Economist", 18 October 1999

The tragedy of East Timor, coming so soon after that of Kosovo, has focused attention once again on the need for timely intervention by the international community when death and suffering are being inflicted on large numbers of people, and when the state nominally in charge is unable or unwilling to stop it.

In Kosovo a group of states intervened without seeking authority from the United Nations Security Council. In Timor the council has now authorised intervention, but only after obtaining an invitation from Indonesia. We all hope that this will rapidly stabilise the situation, but many hundreds – probably thousands – of innocent people have already perished. As in Rwanda five years ago, the international community stands accused of doing too little, too late.

Neither of these precedents is satisfactory as a model for the new millennium. Just as we have learnt that the world cannot stand aside when gross and systematic violations of human rights are taking place, we have also learnt that, if it is to enjoy the sustained support of the world's peoples, intervention must be based on legitimate and universal principles. We need to adapt our international system better to a world with new actors, new responsibilities, and new possibilities for peace and progress.

State sovereignty, in its most basic sense, is being redefined – not least by the forces of globalisation and international cooperation. States are now widely understood to be instruments at the service of their peoples, and not vice versa. At the same time individual sovereignty – by which I mean the fundamental freedom of each individual, enshrined in the charter of the UN and subsequent international treaties – has been enhanced by a renewed and spreading consciousness of individual rights. When we read the charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them.

These changes in the world do not make hard political choices any easier. But they do oblige us to think anew about such questions as how the UN responds to humanitarian crises; and why states are willing to act in some areas of conflict, but not in others where the daily toll of death and suffering is as bad or worse. From Sierra Leone to Sudan, from Angola to Afghanistan, there are people who need more than words of sympathy. They need a real

and sustained commitment to help end their cycles of violence, and give them a new chance to achieve peace and prosperity.

The genocide in Rwanda showed us how terrible the consequences of inaction can be in the face of mass murder. But this year's conflict in Kosovo raised equally important questions about the consequences of action without international consensus and clear legal authority.

It has cast in stark relief the dilemma of so called "humanitarian intervention". On the one hand, is it legitimate for a regional organisation to use force without a UN mandate? On the other, is it permissible to let gross and systematic violations of human rights, with grave humanitarian consequences, continue unchecked? The inability of the international community to reconcile these two compelling interests in the case of Kosovo can be viewed only as a tragedy.

To avoid repeating such tragedies in the next century, I believe it is essential that the international community reach consensus – not only on the principle that massive and systematic violations of human rights must be checked, wherever they take place, but also on ways of deciding what action is necessary, and when, and by whom. The Kosovo conflict and its outcome have prompted a debate of worldwide importance. And to each side in this debate difficult questions can be posed.

To those for whom the greatest threat to the future of international order is the use of force in the absence of a Security Council mandate, one might say: leave Kosovo aside for a moment, and think about Rwanda. Imagine for one moment that, in those dark days and hours leading up to the genocide, there had been a coalition of states ready and willing to act in defence of the Tutsi population, but the council had refused or delayed giving the green light. Should such a coalition then have stood idly by while the horror unfolded?

To those for whom the Kosovo action heralded a new era when states and groups of states can take military action outside the established mechanisms for enforcing international law, one might equally ask: Is there not a danger of such interventions undermining the imperfect, yet resilient, security system created after the second world war, and of setting dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents and in what circumstances? Nothing in the UN charter precludes a recognition that there are rights beyond borders. What the charter does say is that "armed force shall not be used, save in the common interest." But what is that common interest? Who shall define it? Who shall defend it? Under whose authority? And with what means of intervention? In seeking answers to these monumental questions, I see four aspects of intervention which need to be considered with special care.

First, "intervention" should not be understood as referring only to the use of force. A tragic irony of many of the crises that go unnoticed or

unchallenged in the world today is that they could be dealt with by far less perilous acts of intervention than the one we saw this year in Yugoslavia. And yet the commitment of the world to peacekeeping, to humanitarian assistance, to rehabilitation and reconstruction varies greatly from region to region, and crisis to crisis. If the new commitment to humanitarian action is to retain the support of the world's peoples, it must be – and must be seen to be – universal, irrespective of region or nation. Humanity, after all, is indivisible.

Second, it is clear that traditional notions of sovereignty alone are not the only obstacle to effective action in humanitarian crises. No less significant are the ways in which states define their national interests. The world has changed in profound ways since the end of the cold war, but I fear our conceptions of national interest have failed to follow suit. A new, broader definition of national interest is needed in the new century, which would induce states to find greater unity in the pursuit of common goals and values. In the context of many of the challenges facing humanity today, the collective interest *is* the national interest.

Third, in cases where forceful intervention does become necessary, the Security Council – the body charged with authorising the use of force under international law – must be able to rise to the challenge. The choice must not be between council unity and inaction in the face of genocide – as in the case of Rwanda – and council division, but regional action, as in the case of Kosovo. In both cases, the UN should have been able to find common ground in upholding the principles of the charter, and acting in defence of our common humanity.

As important as the council's enforcement power is its deterrent power, and unless it is able to assert itself collectively where the cause is just and the means available, its credibility in the eyes of the world may well suffer. If states bent on criminal behaviour know that frontiers are not an absolute defence – that the council will take action to halt the gravest crimes against humanity – then they will not embark on such a course assuming they can get away with it. The charter requires the council to be the defender of the “common interest”. Unless it is seen to be so – in an era of human rights, interdependence and globalisation – there is a danger that others will seek to take its place.

Fourth, when fighting stops, the international commitment to peace must be just as strong as was the commitment to war. In this situation, too, consistency is essential. Just as our commitment to humanitarian action must be universal if it is to be legitimate, so our commitment to peace cannot end as soon as there is a ceasefire. The aftermath of war requires no less skill, no less sacrifice, no fewer resources than the war itself, if lasting peace is to be secured.

This developing international norm in favour of intervention to protect civilians from wholesale slaughter will no doubt continue to pose profound challenges to the international community. In some quarters it will arouse distrust, scepticism, even hostility. But I believe on balance we should welcome it. Why? Because, despite all the difficulties of putting it into practice, it does show that humankind today is less willing than in the past to tolerate suffering in its midst, and more willing to do something about it.

THE RESPONSIBILITY TO PROTECT

Source: "Foreign Affairs", Volume 81, Issue 6 (2002).

The international community in the last decade repeatedly made a mess of handling the many demands that were made for "humanitarian intervention": coercive action against a state to protect people within its borders from suffering grave harm. There were no agreed rules for handling cases such as Somalia, Bosnia, Rwanda, and Kosovo at the start of the 1990s, and there remain none today. Disagreement continues about whether there is a right of intervention, how and when it should be exercised, and under whose authority.

Since September 11, 2001, policy attention has been captured by a different set of problems: the response to global terrorism and the case for "hot preemption" against countries believed to be irresponsibly acquiring weapons of mass destruction. These issues, however, are conceptually and practically distinct. There are indeed common questions, especially concerning the precautionary principles that should apply to any military action anywhere. But what is involved in the debates about intervention in Afghanistan, Iraq, and elsewhere is the scope and limits of countries' rights to act in self-defense – not their right, or obligation, to intervene elsewhere to protect peoples other than their own.

Meanwhile, the debate about intervention for human protection purposes has not gone away. And it will not go away so long as human nature remains as fallible as it is and internal conflict and state failures stay as prevalent as they are. The debate was certainly a lively one throughout the 1990s. Controversy may have been muted in the case of the interventions, by varying casts of actors, in Liberia in 1990, northern Iraq in 1991, Haiti in 1994, Sierra Leone in 1997, and (not strictly coercively) East Timor in 1999. But in Somalia in 1993, Rwanda in 1994, and Bosnia in 1995, the UN action taken (if taken at all) was widely perceived as too little too late, misconceived, poorly resourced, poorly executed, or all of the above. During NATO's 1999 intervention in Kosovo, Security Council members were sharply divided; the legal justification for action without UN authority was asserted but largely unargued; and great misgivings surrounded the means by which the allies waged the war.

It is only a matter of time before reports emerge again from somewhere of massacres, mass starvation, rape, and ethnic cleansing. And then the question will arise again in the Security Council, in political capitals, and in

the media: What do we do? This time around the international community must have the answers. Few things have done more harm to its shared ideal that people are all equal in worth and dignity than the inability of the community of states to prevent these horrors. In this new century, there must be no more Rwandas.

Secretary-General Kofi Annan, deeply troubled by the inconsistency of the international response, has repeatedly challenged the General Assembly to find a way through these dilemmas. But in the debates that followed his calls, he was rewarded for the most part by cantankerous exchanges in which fervent supporters of intervention on human rights grounds, opposed by anxious defenders of state sovereignty, dug themselves deeper and deeper into opposing trenches.

If the international community is to respond to this challenge, the whole debate must be turned on its head. The issue must be reframed not as an argument about the “right to intervene” but about the “responsibility to protect.” And it has to be accepted that although this responsibility is owed by all sovereign states to their own citizens in the first instance, it must be picked up by the international community if that first-tier responsibility is abdicated, or if it cannot be exercised.

Using this alternative language will help shake up the policy debate, getting governments in particular to think afresh about what the real issues are. Changing the terminology from “intervention” to “protection” gets away from the language of “humanitarian intervention”. The latter term has always deeply concerned humanitarian relief organizations, which have hated the association of “humanitarian” with military activity. Beyond that, talking about the “responsibility to protect” rather than the “right to intervene” has three other big advantages. First, it implies evaluating the issues from the point of view of those needing support, rather than those who may be considering intervention. The searchlight is back where it should always be: on the duty to protect communities from mass killing, women from systematic rape, and children from starvation. Second, this formulation implies that the primary responsibility rests with the state concerned. Only if that state is unable or unwilling to fulfill its responsibility to protect, or is itself the perpetrator, should the international community take the responsibility to act in its place. Third, the “responsibility to protect” is an umbrella concept, embracing not just the “responsibility to react” but the “responsibility to prevent” and the “responsibility to rebuild” as well. Both of these dimensions have been much neglected in the traditional humanitarian intervention debate. Bringing them back to center stage should help make the concept of reaction itself more palatable.

At the heart of this conceptual approach is a shift in thinking about the essence of sovereignty, from control to responsibility. In the classic

Westphalian system of international relations, the defining characteristic of sovereignty has always been the state's capacity to make authoritative decisions regarding the people and resources within its territory. The principle of sovereign equality of states is enshrined in Article 2, Section 1, of the UN Charter, and the corresponding norm of nonintervention is enshrined in Article 2, Section 7: a sovereign state is empowered by international law to exercise exclusive and total jurisdiction within its territorial borders, and other states have the corresponding duty not to intervene in its internal affairs. But working against this standard has been the increasing impact in recent decades of human rights norms, bringing a shift from a culture of sovereign impunity to one of national and international accountability. The increasing influence of the concept of human security has also played a role: what matters is not just state security but the protection of individuals against threats to life, livelihood, or dignity that can come from within or without. In short, a large and growing gap has been developing between international behavior as articulated in the state-centered UN Charter, which was signed in 1946, and evolving state practice since then, which now emphasizes the limits of sovereignty.

Indeed, even the strongest supporters of state sovereignty will admit today that no state holds unlimited power to do what it wants to its own people. It is now commonly acknowledged that sovereignty implies a dual responsibility: externally, to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state. In international human rights covenants, in UN practice, and in state practice itself, sovereignty is now understood as embracing this dual responsibility. Sovereignty as responsibility has become the minimum content of good international citizenship. Although this new principle cannot be said to be customary international law yet, it is sufficiently accepted in practice to be regarded as a *de facto* emerging norm: the responsibility to protect.

The responsibility to protect implies a duty to react to situations in which there is compelling need for human protection. If preventive measures fail to resolve or contain such a situation, and when the state in question is unable or unwilling to step in, then intervention by other states may be required. Coercive measures then may include political, economic, or judicial steps. In extreme cases – but only extreme cases – they may also include military action. But what is an extreme case? Where should we draw the line in determining when military intervention is defensible? What other conditions or restraints, if any, should apply in determining whether and how that intervention should proceed? And, most difficult of all, who should have the ultimate authority to determine whether an intrusion into a sovereign state, involving the use of deadly force on a potentially massive scale, should actually go ahead? These questions have generated an enormous literature and much competing

terminology, but on the core issues there is a great deal of common ground, most of it derived from “just war” theory. To justify military intervention, six principles have to be satisfied: the “just cause” threshold, four precautionary principles, and the requirement of “right authority.”

As for the “just cause” threshold, our starting point is that military intervention for human protection purposes is an extraordinary measure. For it to be warranted, civilians must be faced with the threat of serious and irreparable harm in one of just two exceptional ways. The first is large-scale loss of life, actual or anticipated, with genocidal intent or not, which is the product of deliberate state action, state neglect, inability to act, or state failure. The second is large-scale “ethnic cleansing”, actual or anticipated, whether carried out by killing, forced expulsion, acts of terror, or rape.

Why does the bar for just cause need to be set so high? There is the conceptual reason that military intervention must be very exceptional. There is also a practical political rationale: if intervention is to happen when it is most necessary, it cannot be called on too often. In the two situations identified as legitimate triggers, we do not quantify what is “large scale” but make clear our belief that military action can be legitimate as an anticipatory measure in response to clear evidence of likely large-scale killing or ethnic cleansing. Without this possibility, the international community would be placed in the morally untenable position of being required to wait until genocide begins before being able to take action to stop it. The threshold criteria articulated here not only cover the deliberate perpetration of horrors such as in the cases of Bosnia, Rwanda, and Kosovo. They can also apply to situations of state collapse and the resultant exposure of the population to mass starvation or civil war, as in Somalia. Also potentially covered would be overwhelming natural or environmental catastrophes, in which the state concerned is either unwilling or unable to help and significant loss of life is occurring or threatened. What are not covered by our “just cause” threshold criteria are human rights violations falling short of outright killing or ethnic cleansing (such as systematic racial discrimination or political oppression), the overthrow of democratically elected governments, and the rescue by a state of its own nationals on foreign territory. Although deserving of external action – including in appropriate cases political, economic, or military sanctions – these are not instances that would seem to justify military action for human protection purposes.

Of the precautionary principles needed to justify intervention, the first is “**right intention**”. The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. There are a number of ways of helping ensure that this criterion is satisfied. One is to have military intervention always take place on a collective or multilateral basis. Another is to look at the extent to which

the intervention is actually supported by the people for whose benefit the intervention is intended. Yet another is to look to what extent the opinion of other countries in the region has been taken into account and is supportive. Complete disinterestedness may be an ideal, but it is not likely always to be a reality: mixed motives, in international relations as everywhere else, are a fact of life. Moreover, the budgetary cost and risk to personnel involved in any military action may make it imperative for the intervening state to be able to claim some degree of self-interest in the intervention, however altruistic its primary motive.

The second precautionary principle is “**last resort**”: military intervention can be justified only when every nonmilitary option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded. The responsibility to react with military coercion can be justified only when the responsibility to prevent has been fully discharged. This guideline does not necessarily mean that every such option must literally have been tried and failed; often there is simply not enough time for that process to work itself out. But it does mean that there must be reasonable grounds for believing that, given the circumstances, other measures would not have succeeded.

The third principle is “**proportional means**”: the scale, duration, and intensity of the planned military intervention should be the minimum necessary to secure the defined objective of protecting people. The scale of action taken must be commensurate with its stated purpose and with the magnitude of the original provocation. The effect on the political system of the country targeted should be limited to what is strictly necessary to accomplish the intervention’s purpose. Although the precise practical implications of these strictures are always open to argument, the principles involved are clear enough.

Finally, there is the principle of “**reasonable prospects**”: there must be a reasonable chance of success in halting or averting the suffering that has justified the intervention; the consequences of action should not be worse than the consequences of inaction. Military action must not risk triggering a greater conflagration. Applying this precautionary principle would, on purely utilitarian grounds, likely preclude military action against anyone of the five permanent members of the Security Council, even with all other conditions for intervention having been met. Otherwise, it is difficult to imagine a major conflict being avoided or success in the original objective being achieved. The same is true for other major powers that are not permanent members of the Security Council. This raises the familiar question of double standards, to which there is only one answer: The reality that interventions may not be plausibly mounted in every justifiable case is no reason for them not to be mounted in any case.

The most difficult and controversial principle to apply is that of “right authority.” When it comes to authorizing military intervention for human protection purposes, the argument is compelling that the United Nations, and in particular its Security Council, should be the first port of call. The difficult question – starkly raised by the Kosovo war is whether it should be the last.

The issue of principle here is unarguable. The UN is unquestionably the principal institution for building, consolidating, and using the authority of the international community. It was set up to be the linchpin of order and stability, the framework within which members of the international system negotiate agreements on the rules of behavior and the legal norms of proper conduct to preserve the society of states. The authority of the UN is underpinned not by coercive power but by its role as the applicator of legitimacy. The concept of legitimacy acts as the connecting link between the exercise of authority and the recourse to power. Attempts to enforce authority can be made only by the legitimate agents of that authority. Nations regard collective intervention blessed by the UN as legitimate because a representative international body duly authorized it, whereas unilateral intervention is seen as illegitimate because it is self-interested. Those who challenge or evade the authority of the UN run the risk of eroding its authority in general and undermining the principle of a world order based on international law and universal norms.

The task is not to find alternatives to the Security Council as a source of authority, but to make the council work better than it has. Security Council authorization should, in all cases, be sought prior to any military intervention being carried out. Those advocates calling for an intervention should formally request such authorization, ask the council to raise the matter on its own initiative, or demand that the secretary-general raise it under Article 99 of the UN Charter. The Security Council should deal promptly with any request for authority to intervene where there are allegations of large-scale loss of life or ethnic cleansing. It should, in this context, also seek adequate verification of facts or conditions on the ground that might support a military intervention. And the council’s five permanent members should agree to not exercise their veto power (in matters where their vital state interests are not involved) to block resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support. We know of at least one that will so agree.

If the Security Council is unable or unwilling to act in a case crying out for intervention, two institutional solutions are available. One is for the General Assembly to consider the matter in an emergency special session under the “Uniting for Peace” procedure, used in the cases of Korea in 1950, Egypt in 1956, and Congo in 1960. Had it been used, that approach could

well have delivered a speedy majority recommendation for action in the Rwanda and Kosovo cases. The other is action within an area of jurisdiction by regional or subregional organizations under Chapter VIII of the UN Charter, subject to their seeking subsequent authorization from the Security Council; that is what happened with the West African interventions in Liberia in the early 1990s and in Sierra Leone in 1997. But interventions by *ad hoc* coalitions (or individual states) acting without the approval of the Security Council, the General Assembly, or a regional or subregional grouping do not find wide international favor. As a matter of political reality, then, it would simply be impossible to build consensus around any set of proposals for military intervention that acknowledged the validity of any intervention not authorized by the Security Council or General Assembly.

There are many reasons to be dissatisfied with the role that the Security Council usually plays: its generally uneven performance, its unrepresentative membership, and its inherent institutional double standards with the permanent-five veto power. But there is no better or more appropriate body than the Security Council to deal with military intervention issues for human protection purposes. The political reality – quite apart from the force of the argument in principle – is that if international consensus is ever to be reached about how military intervention should happen, the Security Council will clearly have to be at the heart of that consensus.

But what if the Security Council fails to discharge its own responsibility to protect in a conscience-shocking situation crying out for action, as was the case with Kosovo? A real question arises as to which of two evils is the worse: the damage to international order if the Security Council is bypassed, or the damage to that order if human beings are slaughtered while the Security Council stands by. The answer to this dilemma is twofold, and these messages have to be delivered loud and clear. First, if the Security Council does fail to discharge its responsibility in such a case, then concerned individual states simply may not rule out other means to address the gravity and urgency of the situation. It follows that there will be a risk that such interventions, without the discipline and constraints of UN authorization, will not be conducted for the right reasons or with the right commitment to the necessary precautionary principles. Second, if the council does fail to act and a military intervention by an *ad hoc* coalition or individual state follows and respects all the necessary threshold and precautionary criteria – and if that intervention succeeds and is seen by the world to have succeeded – this outcome may have enduringly serious consequences for the stature of the UN itself. This is essentially what happened with the NATO intervention in Kosovo. The UN cannot afford to drop the ball too many times on that scale.

As important as it is to reach consensus on the principles that should govern intervention for human protection purposes, unless the political

will is mustered to act when necessary, the debate will be largely academic. As events during the 1990s too often demonstrated, even a decision by the Security Council to authorize international action in humanitarian cases has been no guarantee that any action would be taken, or taken effectively. The most compelling task now is to work to ensure that when the call for action goes out to the community of states, it will be answered.

Part of the problem is that there are few countries in the global community who have the assets most in demand in implementing intervention mandates. There are real constraints on how much spare capacity exists to take on additional burdens. United Nations peacekeeping peaked in 1993 at 78,000 personnel; today, if NATO and other multinational force operations (e.g., in Afghanistan) are included along with UN missions, the number of soldiers in international peace operations has grown by about 45 percent, to 113,000. Even states willing in principle to look at new foreign military commitments need to make choices about how to use limited and strained military capabilities.

If the right choices are to be made in the right situations, there is no alternative but to generate the necessary political will in the relevant constituencies. Too often more time is spent lamenting the absence of political will than on analyzing its ingredients and how to mobilize them. The key to mobilizing international support for intervention is to mobilize domestic support, or at least to neutralize domestic opposition. It is usually helpful to press three buttons in particular.

Moral appeals inspire and legitimize in almost any political environment: political leaders often underestimate the sheer sense of decency and compassion that prevails among their electorates. Financial arguments also have their place: preventive strategies are likely to be far cheaper than responding after the event through military action, humanitarian relief assistance, postconflict reconstruction, or all three. If coercive action is required, however, earlier is always cheaper than later. National interest appeals are the most comfortable and effective of all and can be made at many different levels. A voiding the disintegration of a neighbor, given the refugee outflows and general regional security destabilization associated with it, can be a compelling motive in many contexts. National economic interests often can be equally well served by keeping resource supply lines, trade routes, and markets undisrupted. And whatever may have been the case in the past, nowadays peace is generally regarded as much better for business than is war.

For those domestic constituencies who may actually demand that their governments not be moved by altruistic “right intention”, the best short answer may be that these days good international citizenship is a matter of national self-interest. With the world as interdependent as it now is, and with

crises as capable as they now are of generating major problems elsewhere (such as terrorism, refugee outflows, health pandemics, narcotics trafficking, and organized crime), it is in every country's interest to help resolve such problems, quite apart from the humanitarian imperative.

It is the responsibility of the whole international community to ensure that when the next case of threatened mass killing or ethnic cleansing invariably comes along, the mistakes of the 1990s will not be repeated. A good place to start would be agreement by the Security Council, at least informally, to systematically apply the principles set out here to any such case. So too would be a declaratory UN General Assembly resolution giving weight to those principles and to the whole idea of the "responsibility to protect" as an emerging international norm. There is a developing consensus around the idea that sovereignty must be qualified by the responsibility to protect. But until there is general acceptance of the practical commitments this involves, more tragedies such as Rwanda will be all too likely.

Michael Freeman

HUMAN RIGHTS IN THE TWENTY-FIRST CENTURY

Source: Michael Freeman, *Human Rights: An interdisciplinary approach*, Polity Press, Cambridge 2007, pp. 167-178.

The concept of human rights is now so familiar that we need to remember how new it is. It is true that, according to some scholars, the concept of rights was implicit in ancient cultures: the commandment 'thou shalt not steal', for example, they say, implies the right to property. Other scholars, however, maintain that legal disputes in classical Greece were decided by reference to the common good rather than to the rights of the parties. Fred Miller has nevertheless made a strong case that the concept of *citizens' rights*, especially rights to political participation and property, is found in the political philosophy of Aristotle. The Stoic philosophers had the concept of universal natural law, but not of natural rights. It was not until the Middle Ages that, within the framework of Christian theology, the concept of universal natural rights could emerge.

There is another way of thinking about the history of the concept of human rights in different cultures. At the core of *our* concept of human rights is the idea of protecting individuals (and perhaps groups) from *the abuse of power*. All human societies have power structures, and many of them have throughout history had some conception of the abuse of power. The concepts of *natural rights* and *human rights* are particular ways of expressing this concern about the abuse of power.

It is often said that the origin of the concept of human rights can be found in the ideology with which the bourgeoisie in seventeenth-century England defended their *property interests* against the feudal class and/or absolute monarchs. This account is inaccurate, however, for Tierney has shown that the concept of natural rights can be found centuries earlier in medieval thought. Medieval law was certainly much concerned with property, but more with land than with bourgeois property, and not all medieval conceptions of rights were directly linked with property. The Magna Carta, for example, provides for the right to a fair trial. Medieval Christian natural-rights theory was concerned with, among other things, the right to *subsistence*. Medieval debates were conducted in Latin, and, in Latin, the concept of 'property' refers to what is one's own, and that may include one's life and liberty. We see this late-medieval conception of rights in the political philosophy of John Locke, who was the first modern natural-rights thinker, but influenced by

medieval conceptions of natural rights. This more complex history of the origins of modern rights theory is relevant to human-rights debates today, because it shows that talk of 'three generations' of rights is unhistorical, and that the distinction between civil and political rights, on the one hand, and economic and social rights, on the other, cannot be derived from the history of the concept, which was concerned first with the right to subsistence and other (economic) property rights, and then with civil and political rights, because these were thought to be necessary to secure the basic rights to survival and property. There are *analytical* arguments for and against distinguishing these two types of human rights today, but the historical appeal to three generations of rights is false.

There was, however, no systematic theory of natural rights until the seventeenth century. Whether this concept was 'bourgeois' is controversial, because the concept 'bourgeois' is not precise; the facts are complex; and the interpretation of theories such as Locke's is still disputed. What is more certain is that the concept of natural rights in the seventeenth and eighteenth centuries was associated with (1) opposition to absolute monarchy; (2) emergent capitalism; and (3) dissident Protestantism or secularized political thought. These themes burst onto the stage of world history in the English Revolution of 1642-9 and the American and French revolutions of the late eighteenth century.

The violent disorder of the French Revolution provoked a strong *philosophical* reaction that targeted the concept of natural rights as (a) subversive, and (b) unscientific. The concept of natural rights derived the natural rights of individuals from the supposed will of God and the belief that *reason* could tell us what was right and wrong. The scientific philosophy of the eighteenth and nineteenth centuries undermined the concept of the natural rights of individuals and replaced it with that of the science of society (sociology). Saint-Simon, Comte, Marx, Weber and Durkheim were the leaders of this development. Rights were no longer fundamental moral ideas to regulate political life, but *ideological* products of social struggle or social morality. The social sciences marginalized the concept of rights. When the United Nations, after the Second World War, revived the eighteenth century concept of the Rights of Man as *human rights* in order to express its liberal-democratic opposition to Fascism, it ignored this social-scientific tradition. Both the concept of human rights and the social sciences have flourished since 1945, but for the most part independently of each other. Recently, the increasing influence of the concept of human rights in international and national politics, especially since the end of the cold war, has made some social scientists aware of the fact that they have ignored a major social development of the past fifty years. At last, they are applying their distinctive concepts, theories and methods to the real world of human rights and their

violation. I have, in this book, offered a review, both sympathetic and critical, of the new social science of human rights in the hope that it will advance the reconciliation of ethical idealism and scientific realism that the academic study of human rights requires.

After the adoption of the Universal Declaration of Human Rights by the UN General Assembly in 1948, the slow process of standard-setting (international human-rights law) and institution-building began. The cold war blocked progress for human rights, however, as communist regimes perpetrated gross violations of civil and political rights and the West was implicated in massive violations, either directly or through support of anti-communist dictatorships. World-wide decolonization brought many new states into the UN, paying lip-service to human rights, but with different priorities, such as economic development, anti-colonialism and anti-racism. Most had terrible records in the violation of civil and political rights, and few were successful in protecting economic and social rights. Anti-racism was, in principle, common ground among the Western, the communist and the third world states, and the international campaign against apartheid established the principle that human-rights violations within one nation-state were properly the object of scrutiny, condemnation and sanctions by the international community. This is still a controversial idea, resisted by many states, but it has become well established in international law and politics.

The progress of human rights since 1948 has a number of significant landmarks: the foundation of Amnesty International in 1961; the two UN covenants of 1966; the Helsinki Accord of 1975, which put human-rights pressure on the communist bloc; the human-rights foreign policy of President Jimmy Carter in the 1970s; the democratization of various Latin American and European countries (Portugal, Spain and Greece) from the mid-1980s; and the Vienna conference of 1993. The end of the cold war at the end of the 1980s produced contradictory results: liberalization in many former communist societies, but violent ethno-nationalist conflict in many others. By the end of the twentieth century the concept of human rights had become a 'hegemonic ideology'; there had been a tremendous expansion of human-rights law and institutions; there had been great real advances in many countries; and there were many unsolved political problems in the world that still gave rise to grave human-rights violations. Only six years before the century ended, more than half a million citizens of Rwanda were murdered by their government in a state-sponsored genocide. The battle for human rights was far from won.

Human rights may seem like an idea whose time has come, but this proposition must be treated with caution. We should not accept the extreme idealist view that human rights is a concept with enormous power in international politics: states still resist human-rights pressures from

within and outside their societies when they think that their interests are threatened. We should not, however, take the extreme realist view that the concept of human rights makes no significant difference to international politics. Communist human-rights violations may have been brought to an end because the West won the cold war, but the concept of human rights played a role in that war. The social sciences can clarify the respective roles of ideas and material interests in the politics of human rights.

Some critics believe that the concept of human rights is too *individualistic* and *legalistic*, so that the *structural* causes of human-rights violations, especially of economic and social rights, are ignored. This view almost certainly underestimates the achievements of the human-rights movement based on human-rights law, even though we do not know how to measure these achievements precisely. The structural approach is nevertheless useful in emphasizing the role played by inequalities of political power and the dynamics of the global economy in the causation of human-rights violations. It is limited by the difficulty of identifying alternative structures that would better protect human rights and are attainable. States, international institutions and multinational corporations are the principal players in international politics. NGOs have played an increasingly important role, but their resources and power are relatively weak. The UN is seriously underfunded. Its weakness can be explained by *the principle of limited sacrifice*. We are human and decent, and so we say that everyone ought to enjoy their human rights. However, human-rights declarations are cheap, whereas human-rights implementation is rather expensive. We are unwilling to pay the bill. We are disappointed at the gap between human-rights ideals and human-rights realities, but we are unwilling to recognize our fault in creating that gap, and find it easier to blame economic structures or supposedly ineffective institutions such as the UN. The weakness of the structural approach is that it fails to locate sources of possible change. The strength of the activist approach is that it emphasizes that we are responsible for the structures that we support. Human-rights activists have, however, begun to tackle the structural sources of human-rights violations (MNCs and IFIs), and so the idealist and structuralist approaches may be converging.

The history of the concept of human rights supports the contemporary thesis that human rights are 'indivisible' in that basic human material interests are closely connected with political freedom. Although the history of the concept is Western, the concept itself is universal. This history shows, too, that the concept reaches for the fundamental conditions of human well-being while evolving in response to changing social conditions. The social constructivist theory of human rights advocated by Donnelly emphasizes the changing nature of human rights. The social sciences can explain these changes, although their achievements in doing so have so far been

disappointing. Social constructivism, however, gives us no standard for *evaluating* these changes. The legacy of the history of the concept of human rights is confusion about how ethical, analytical and explanatory approaches are related to each other. Historically, social science attempted, but failed, to replace the ethical approach to human rights. Reconciling the ethics and social science of human rights is a principal challenge of the future.

The history of human rights teaches us not only that the concept of human rights is controversial, but also rather precisely *why* it is. The principal criticisms that were made in the late eighteenth and early nineteenth centuries of the Rights of Man still bite today. Burke said that the concept ignored the value of national traditions. Bentham argued that it ignored the social nature of moral and legal concepts. Marx complained that it concealed and legitimated exploitative and oppressive social structures. Such arguments are still made today. There is a danger that the success of the concept can induce complacency and dogmatism. In the face of relativist objections to human-rights universalism for being 'imperialistic', human-rights advocates would do well to recall the origin of the concept in the revulsion against Nazism. They would do well to remember the victims of genocide in Cambodia and Rwanda. They would do well to remember Lal Jamilla Mandokhel. It is reasonable and salutary to subject the concept of human rights to philosophical and practical criticism. The contemporary appeal and influence of the concept provide reasons to subject it to critical scrutiny. In this book I have tried to show both the moral power of the concept and the difficult theoretical and practical problems that it raises.

We cannot know the future of human rights, but the social sciences can throw some light on the darkness ahead. Risse and his colleagues, for example, have argued that human rights advances are brought about by a combination of external and internal pressures on rights-violating states. The Vienna conference of 1993 reinforced the commitment of the international community in principle to universal human rights. Most governments are formally committed to human rights, and the number and effectiveness of human-rights NGOs have greatly increased in recent years. Unashamed human-rights violating states are now much rarer than they were twenty years ago. Yet serious violations continue, especially against vulnerable groups such as women, children, indigenous peoples, minorities, migrant workers and asylum seekers. Here the limits of law and the need for social science are clear. The discourse of human rights has, for example, not taken capitalism seriously. We need a political economy of human rights.

The socialist critique of capitalism has been replaced by a more diffuse concern with 'globalization'. Globalization is a complex and disputed phenomenon that has complex implications for human rights. On the one hand, the concept of human rights is both theoretically *universal* and

practically *globalized*. Human-rights activists should be cautious in criticizing globalization, for they are promoting it. On the other hand, the most powerful forces of globalization are states and large, private economic organizations (MNCs), together with the international financial institutions. We have seen that human-rights activists can penetrate this power system, but only with difficulty and with limited results. Donnelly emphasizes the persistence of state sovereignty as a barrier to human-rights advance. This is true, but it is not the whole truth in at least two important respects. The first is that states are not the only abusers of human rights: MNCs and IFIs that are partly independent of states can be human-rights violators.

The second is that states do what certain human agents decide that they should do, and the relation between sovereignty and human rights can be changed in the future, as it has been changed in the past [...].

State sovereignty obstructs the implementation of human rights, partly because state leaders have an interest in suppressing human rights, and partly because ordinary people have a limited willingness to make sacrifices to defend the human rights of others. However, even if we can summon the will to defend human rights, it may be very difficult to do so. The NATO intervention in Yugoslavia of 1999 showed this dramatically. The government of Yugoslavia had committed serious human-rights violations against the Albanian people of Kosovo for many years. This had provoked armed Albanian resistance. The Yugoslav government had responded with brutal repression, involving more, and more serious, human-rights violations. There were fears of ethnic cleansing or even genocide, based in part on memories of recent mass atrocities in other parts of the former Yugoslavia, especially Bosnia. After failed negotiations, NATO bombed Yugoslavia, prompting the very ethnic cleansing it was supposed to avert, and killing large numbers of Yugoslav civilians, as well as inflicting massive economic damage – all this probably in violation of international law, since the Security Council had not called for the action. The Yugoslav government of Slobodan Milosevic was defeated; the Albanians returned home; Milosevic was overthrown and arrested as an indicted international criminal; Yugoslavia became a democracy, while Kosovo is neither stable nor a human-rights Utopia. The NATO action probably contributed to the destabilization of neighbouring Macedonia, whose future is currently fragile.

The concept of human rights is hardly adequate to understand this political complexity. It helps to identify the problem, but says rather little about the solution. The legalism of the modern human-rights concept is not up to the task. It may help to say that Iraq's invasion of Kuwait in 1991 was illegal, and that the Iraqi government is a gross violator of human rights, but this may leave us morally uncertain when we hear that economic sanctions against Iraq may be responsible (this is disputed) for the deaths of many

thousands of Iraqi children. Even if those intervening from outside are able to stop human-rights violations in the short term, the problems of creating the economic, social and political conditions for just and stable reconstruction are formidable.

The dilemma of human-rights intervention is that not intervening seems to mock the idealistic declarations of human rights, while interventions may be enormously costly and may even be counter-productive. This explains the actual, tentative responses of the international community to human rights disasters, such as Rwanda, Bosnia and Kosovo: its human-rights commitments mean that it doesn't want to do nothing, while the principle of limited sacrifice means that it doesn't want to do much. Thus, it usually does too little too late. After humanitarian and human-rights disasters such as Kosovo, the 'international community', and especially the governments of the rich and powerful states, are typically quick and generous in 'pledging' assistance for social reconstruction but slower and less generous in delivering it.

There is much talk in academic and political circles about the need for 'early warning' of human-rights disasters. This raises another difficult problem. We now have fairly good social-scientific knowledge about the early-warning signs of human-rights disasters. Relatively small-scale but persistent and systematic human-rights violations are often the precursors of much greater ones. The Nazi genocide of the Jews was preceded by several years of *relatively* minor human-rights violations, such as discrimination in employment. Although effective human-rights pressure from governments and NGOs and skilful conflict-resolution diplomacy may both improve the human-rights situation and reduce the risk of disaster, this may leave a difficult question of *when* to intervene. There were early warnings of disaster in Kosovo in the 1980s and a new set in the early 1990s. The problem is that the concept of early warning suggests early intervention, but early intervention may easily be disproportionate and counter-productive. The international human-rights movement may help to prevent human-rights violations from becoming human-rights catastrophes, but the concept of early warning does not resolve all the dilemmas of intervention.

Since the end of the cold war, Western policy-makers have presented human rights, democracy and market economies as a package. The relations between markets and human rights are, however, complex, problematic and not well understood. The relations between democracy and human rights are also problematic, because, although democracies generally respect human rights better than authoritarian regimes do, democracies can violate human rights, and the protection of human rights may require limitations on democracy. In practice, the Western powers have interpreted 'democracy' to mean free and fair elections, and, desirable though these are, they are not only not sufficient conditions for the protection of human rights, but

sometimes accompany, and perhaps even cause, the deterioration of human rights. In many recent cases, this has been because elected governments have pursued marketbased economic policies that have not only worsened the protection of economic and social rights for the most vulnerable sections of society (especially women), but also provoked increases in crime that have led to restrictions on civil and political rights. We must also distinguish between *democracy* and *democratization*, the process of political change that has a problematic relation to human rights for somewhat different reasons. The transition from authoritarianism to democracy may be a change from imposed order to regulated conflict. Where there is little or no tradition of democratic politics, and also economic hardship and/or ethnic divisions, the restraints that democracy places on conflict may break down. The results may resemble the human-rights catastrophes of Rwanda or Yugoslavia, in both of which countries the processes of democratization were involved in the ensuing human-rights tragedies.

The twenty-first century begins with the future of human rights uncertain. Great advances have been made since 1945, not only in standard-setting (international and national laws) and institution-building (human-rights commissions, committees, courts, etc.), but also in freedom and well-being for many people in many countries. There are still many countries in which civil and political rights are trampled on. Progress towards the recognition of economic and social rights has been slow and largely rhetorical. Worse, the fashion for neo-liberal economic policies has reduced the protection of these rights for millions of people around the world who enjoy them least. There is a tendency among human rights academics to devote excessive attention to the UN system of commissions and committees. These may be important, but they are certainly not the only important institutions that affect human rights in the world, and they are probably not the most important. The concept of human rights is centrally concerned with the misuse of *power*. The socialscientific study of human rights should give priority to the primary centres of power and to the possible sources of resistance. This entails that human-rights studies should attend more to the G7, the Bretton Woods institutions, and the foreign policy of the USA. The study of human rights should be integrated with political economy, development economics, conflict studies and the politics of democratic transition. The political theory of human rights has, since Locke, accorded to the rule of law a central place in the protection of human rights. This is correct. Nevertheless, both the theory and practice of human rights have suffered from being excessively legalistic. The kind of economics practised by Amartya Sen and the kind of applied moral philosophy developed by Martha Nussbaum may have more to contribute to the advance of human-rights knowledge than refined legal analysis of human-rights texts.

Donnelly has said that the struggle for human rights will be won or lost at the national level. This is only a partial truth. It is true that, notwithstanding globalization, the nation-state is still an important field of power. It is also true that, for many people, the single most important power that affects their human rights is their state and its institutions, especially its legal and law-enforcement agencies. It is also true, however, that, for many others, the structures and processes of the global economy and of global politics are more important. We should recall that many private corporations are richer and more powerful than many states. Risse and his colleagues rightly argue that a complex and finely judged mix of states and NGOs, of internal and external actors, provide the best hope for human rights in the coming years. We have seen that human-rights NGOs have increased greatly in number in recent years, not least in poor countries. Important distinctions are emerging between *international* NGOs, *national* NGOs and *grass-roots* or *community-based* NGOs. Observers have noted tensions among these different types of NGO, especially between those from the rich North and the poor South. I have suggested that these tensions may be healthy because they entail *the democratization of the human-rights movement*, that is, the bridging of the gap between the discourse and practices of UN diplomats and human-rights lawyers and the ordinary people of the world, to protect whose dignity, freedom and well-being the Universal Declaration of Human Rights was adopted. Anthropology may have a special contribution to make to understanding this aspect of human rights, for it can link the concept of human rights to the cultural understandings of real people in real situations. In addition, a kind of applied human-rights anthropology is being carried out by various projects of human rights education, both formal and informal, around the world. The social sciences have, after too long a delay, begun to take human rights seriously. We should hope that this welcome development will be accompanied by human-rights activists taking social science seriously.

Dalai Lama XIV

HUMAN RIGHTS AND UNIVERSAL RESPONSIBILITY

Source: "Journal of Buddhist Ethics":
<http://www.buddhistethics.org/1995conf/dalai1.html>

Our world is becoming smaller and ever more interdependent with the rapid growth in population and increasing contact between people and governments. In this light, it is important to reassess the rights and responsibilities of individuals, peoples and nations in relation to each other and to the planet as a whole. This World Conference of organizations and governments concerned about the rights and freedoms of people throughout the world reflects the appreciation of our interdependence.

No matter what country or continent we come from we are all basically the same human beings. We have the common human needs and concerns. We all seek happiness and try to avoid suffering regardless of our race, religion, sex or political status. Human beings, indeed all sentient beings, have the right to pursue happiness and live in peace and in freedom. As free human beings we can use our unique intelligence to try to understand ourselves and our world. But if we are prevented from using our creative potential, we are deprived of one of the basic characteristics of a human being. It is very often the most gifted, dedicated and creative members of our society who become victims of human rights abuses. Thus the political, social, cultural and economic developments of a society are obstructed by the violations of human rights. Therefore, the protection of these rights and freedoms are of immense importance both for the individuals affected and for the development of the society as a whole.

It is my belief that the lack of understanding of the true cause of happiness is the principal reason why people inflict suffering on others. Some people think that causing pain to others may lead to their own happiness or that their own happiness is of such importance that the pain of others is of no significance. But this is clearly shortsighted. No one truly benefits from causing harm to another being. Whatever immediate advantage is gained at the expense of someone else is short-lived. In the long run causing others misery and infringing upon their peace and happiness creates anxiety, fear and suspicion for oneself.

The key to creating a better and more peaceful world is the development of love and compassion for others. This naturally means we must develop concern for our brothers and sisters who are less fortunate than we are. In

this respect, the non-governmental organizations have a key role to play. You not only create awareness for the need to respect the rights of all human beings, but also give the victims of human rights violations hope for a better future.

When I travelled to Europe for the first time in 1973, I talked about the increasing interdependence of the world and the need to develop a sense of universal responsibility. We need to think in global terms because the effects of one nation's actions are felt far beyond its borders. The acceptance of universally binding standards of Human Rights as laid down in the Universal Declaration of Human Rights and in the International Covenants of Human Rights is essential in today's shrinking world. Respect for fundamental human rights should not remain an ideal to be achieved but a requisite foundation for every human society.

When we demand the rights and freedoms we so cherish we should also be aware of our responsibilities. If we accept that others have an equal right to peace and happiness as ourselves do we not have a responsibility to help those in need? Respect for fundamental human rights is as important to the people of Africa and Asia as it is to those in Europe or the Americas. All human beings, whatever their cultural or historical background, suffer when they are intimidated, imprisoned or tortured. The question of human rights is so fundamentally important that there should be no difference of views on this. We must therefore insist on a global consensus not only on the need to respect human rights world wide but more importantly on the definition of these rights.

Recently some Asian governments have contended that the standards of human rights laid down in the Universal Declaration of Human Rights are those advocated by the West and cannot be applied to Asia and others parts of the Third World because of differences in culture and differences in social and economic development. I do not share this view and I am convinced that the majority of Asian people do not support this view either, for it is the inherent nature of all human beings to yearn for freedom, equality and dignity, and they have an equal [opportunity?] to achieve that. I do not see any contradiction between the need for economic development and the need for respect of human rights. The rich diversity of cultures and religions should help to strengthen the fundamental human rights in all communities. Because underlying this diversity are fundamental principles that bind us all as members of the same human family. Diversity and traditions can never justify the violations of human rights. Thus discrimination of persons from a different race, of women, and of weaker sections of society may be traditional in some regions, but if they are inconsistent with universally recognized human rights, these forms of behavior must change. The universal principles of equality of all human beings must take precedence.

It is mainly the authoritarian and totalitarian regimes who are opposed to the universality of human rights. It would be absolutely wrong to concede to this view. On the contrary, such regimes must be made to respect and conform to the universally accepted principles in the larger and long term interests of their own peoples. The dramatic changes in the past few years clearly indicate that the triumph of human rights is inevitable.

There is a growing awareness of peoples' responsibilities to each other and to the planet we share. This is encouraging even though so much suffering continues to be inflicted based on chauvinism, race, religion, ideology and history. A new hope is emerging for the downtrodden, and people everywhere are displaying a willingness to champion and defend the rights and freedoms of their fellow human beings.

Brute force, no matter how strongly applied, can never subdue the basic human desire for freedom and dignity. It is not enough, as communist systems have assumed, merely to provide people with food, shelter and clothing. The deeper human nature needs to breathe the precious air of liberty. However, some governments still consider the fundamental human rights of its citizens an internal matter of the state. They do not accept that the fate of a people in any country is the legitimate concern of the entire human family and that claims to sovereignty are not a license to mistreat one's citizens. It is not only our right as members of the global human family to protest when our brothers and sisters are being treated brutally, but it is also our duty to do whatever we can to help them.

Artificial barriers that have divided nations and peoples have fallen in recent times. With the dismantling of Berlin wall the East-West division which has polarized the whole world for decades has now come to an end. We are experiencing a time filled with hope and expectations. Yet there still remains a major gulf at the heart of the human family. By this I am referring to the North-South divide. If we are serious in our commitment to the fundamental principles of equality, principles which, I believe, lie at the heart of the concept of human rights, today's economic disparity can no longer be ignored. It is not enough to merely state that all human beings must enjoy equal dignity. This must be translated into action. We have a responsibility to find ways to achieve a more equitable distribution of world's resources.

We are witnessing a tremendous popular movement for the advancement of human rights and democratic freedom in the world. This movement must become an even more powerful moral force, so that even the most obstructive governments and armies are incapable of suppressing it. This conference is an occasion for all of us to reaffirm our commitment to this goal. It is natural and just for nations, peoples and individuals to demand respect for their rights and freedoms and to struggle to end repression, racism, economic exploitation, military occupation, and various forms of colonialism and alien

domination. Governments should actively support such demands instead of only paying lip service to them.

As we approach the end of the Twentieth Century, we find that the world is becoming one community. We are being drawn together by the grave problems of overpopulation, dwindling natural resources, and an environmental crisis that threaten the very foundation of our existence on this planet. Human rights, environmental protection and great social and economic equality are all interrelated. I believe that to meet the challenges of our times, human beings will have to develop a greater sense of universal responsibility. Each of us must learn to work not just for oneself, one's own family or one's nation, but for the benefit of all humankind. Universal responsibility is the key to human survival. It is the best foundation for world peace.

This need for co-operation can only strengthen humankind, because it helps us to recognize that the most secure foundation for a new world order is not simply broader political and economic alliances, but each individual's genuine practice of love and compassion. These qualities are the ultimate source of human happiness, and our need for them lies at the very core of our being. The practice of compassion is not idealistic, but the most effective way to pursue the best interests of others as well as our own. The more we become interdependent the more it is in our own interest to ensure the well-being of others.

I believe that one of the principal factors that hinder us from fully appreciating our interdependence is our undue emphasis on material development. We have become so engrossed in its pursuit that, unknowingly, we have neglected the most basic qualities of compassion, caring and cooperation. When we do not know someone or do not feel connected to an individual or group, we tend to overlook their needs. Yet, the development of human society requires that people help each other.

I, for one, strongly believe that individuals can make a difference in society. Every individual has a responsibility to help more our global family in the right direction and we must each assume that responsibility. As a Buddhist monk, I try to develop compassion within myself, not simply as a religious practice, but on a human level as well. To encourage myself in this altruistic attitude, I sometimes find it helpful to imagine myself standing as a single individual on one side, facing a huge gathering of all other human beings on the other side. Then I ask myself, 'Whose interests are more important?' To me it is quite clear that however important I may feel I am, I am just one individual while others are infinite in number and importance.

CHARTER OF HUMAN DUTIES AND RESPONSIBILITIES

Gathered in Gdańsk, a place of singular distinction and tested by history, a place where cataclysms began and totalitarianism ended, we feel called to speak of human rights and obligations. Our concern is to assure that nowhere should totalitarian systems be maintained and reborn.

PREAMBLE

Every human person regardless of age, sex, race or religion is subject to rights as well as duties and responsibilities. The fact that inalienable rights of every human person must be respected by all others imposes specific obligations and responsibilities on us for the world's destiny. Responsibilities called for by the code of ethics common to the entire global population do not force any man to fulfill them, but are the moral impulse appealing to the feeling of solidarity with all that maintain the well-being of this world.

Solidarity is the fundamental basis for creating better order since it establishes the inner imperative of acting for the benefit of others, motivates self-restraint and leads to common well being.

RESPONSIBILITY FOR COMMON GOOD

Every man should participate to the best of his ability in shaping social environment, respecting dignity, freedom and sensibility of all other men. Respect for human dignity is the basis for such social order which facilitates inner development of every individual. Everyone should aspire to provide as many people as possible with the widest field of individual freedoms and responsibilities. The effort of thoughtful creation of social order by entrusting public functions to appropriate people is one of the basic human duties.

RESPECTING JUSTICE

The leading principle, which must be respected in the field of justice, is: Render a man his due. No one should take advantage of someone else's work, augmenting hardship not normally inherent to such work. The obligation arising from the sense of justice is to oppose every form of material and political corruption. The indifference to any harm, which is done in the presence of our mind, is the remissness, which infringes the obligation of solidarity.

SEARCH FOR THE RECOGNITION OF TRUTH AND SERVICE TO TRUTH

Basic duty of every man toward himself is his concern for his own conscience, which, as his innate ethic, decides the inner belief to act according to the truth. No external codes bind a man so forcefully as his own conscience. Destructive influences on society are caused by ideological, as well as racial and religious prejudices. Every man's obligation is the transcending of such by recognizing the truth in a fair dialogue. Scientists, educators, and artists are especially responsible for the presence of truth, goodness and beauty in public life. Their right is the external freedom for creative research, whereas their duty is the setting of internal limits.

RESPONSIBILITY FOR SPEECH

Freedom of speech, unrestricted access to mass media and the right to publish one's opinions obliges one to veracity. Truth rather than mediumistic, ideological, political or commercial attractiveness, should be the criterion of communication. Privacy as related to one's dignity as well as professional confidentiality ought to be respected in public life. The good name of others is the limit of freedom of speech set by conscience.

RESPECT FOR LIFE AND NATURE

The fundamental responsibility of all people is the service to life i.e. solidifying, augmenting and improvement of all its natural forms. The respect for the sanctity of life should characterize every interference with life. Moderate and careful exploitation of natural resources respecting right of future generations to them is the fundamental duty of all. Man's right to ownership and its expansion should not limit him in the narrow perspective of his personal interests or interests of any group. There is an urgent need for global solutions, efficiently eradicating extreme disproportion.

FAMILY

The duty of mother and father is not limited to extending life and caring for its development from the moment of conception, but also for maintaining the dignity of the family as well as responsibility for the welfare of the nation, ethnic group and the entire world family. The responsibility for the family ethos is shared by all generations constituting the family. The collective effort for the well being of the family is the best guarantee for its stability. Special attention should be given not only to children and the elderly but also to those who need assistance at times of their life's turning points, critical situations or loss of efficiency.

In this year of the Great Jubilee which for Christians represents time of particular joy and effort, and for all people of good will, the world over, can symbolize a threshold towards higher goals, we call upon everyone to take on the task of creating common good in the spirit of the Universal Declaration of Human Rights and this Document which we all sign in Gdańsk on this day, the 2nd of September of the year 2000.

Prof. Norman Davies, London
Prof. Bruno Forte, Napoli
Archbishop Tadeusz Gocłowski, Gdansk
Józefa Hennelowa, Cracow
Agnieszka Holland, Los Angeles
Jan Nowak-Jezioranski, Washington
Siergiej Kowaliow, Moscow
Janina Ochojska, Warsaw
Krzysztof Piesiewicz, Warsaw
Andrzej Wajda, Warsaw
Krzysztof Zanussi, Warsaw
Prof. Andrzej Zoll, Cracow

Pope John Paul II

RESPECT FOR HUMAN RIGHTS: THE SECRET OF TRUE PEACE

Source: "Vatican: The Holy See":
http://www.vatican.va/holy_father/john_paul_ii

Message of His Holiness Pope John Paul II for the celebration of the World Day of Peace 1 January 1999

1. In my first Encyclical *Redemptor Hominis*, addressed almost twenty years ago to all men and women of good will, I stressed the importance of respect for human rights. Peace flourishes when these rights are fully respected, but when they are violated what comes is war, which causes other still graver violations. (*Redemptor hominis*, 17)

At the beginning of a new year, the last before the Great Jubilee, I would like to dwell once more on this crucially important theme with all of you, the men and women of every part of the world, with you, the political leaders and religious guides of peoples, with you, who love peace and wish to consolidate it in the world.

Looking towards the World Day of Peace, let me state the conviction which I very much want to share with you: when the promotion of the dignity of the person is the guiding principle, and when the search for the common good is the overriding commitment, then solid and lasting foundations for building peace are laid. But when human rights are ignored or scorned, and when the pursuit of individual interests unjustly prevails over the common good, then the seeds of instability, rebellion and violence are inevitably sown.

Respect for Human Dignity, the Heritage of Humanity

2. The dignity of the human person is a transcendent value, always recognized as such by those who sincerely search for the truth. Indeed, the whole of human history should be interpreted in the light of this certainty. Every person, created in the image and likeness of God (cf. *Gen* 1:26-28) and therefore radically oriented towards the Creator, is constantly in relationship with those possessed of the same dignity. To promote the good of the individual is thus to serve the common good, which is that point where rights and duties converge and reinforce one another.

The history of our time has shown in a tragic way the danger which results from forgetting the truth about the human person. Before our eyes we have the results of ideologies such as Marxism, Nazism and Fascism, and also of myths like racial superiority, nationalism and ethnic exclusivism. No less pernicious, though not always as obvious, are the effects of materialistic consumerism, in which the exaltation of the individual and the selfish satisfaction of personal aspirations become the ultimate goal of life. In this outlook, the negative effects on others are considered completely irrelevant. Instead it must be said again that no affront to human dignity can be ignored, whatever its source, whatever actual form it takes and wherever it occurs.

The Universality and Indivisibility of Human Rights

3. The year 1998 has marked the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights. The Declaration was intentionally linked to the United Nations Charter, since it shares a common inspiration. As its fundamental premise, it affirms that the recognition of the innate dignity of all members of the human family, as also the equality and inalienability of their rights, is the foundation of liberty, justice and peace in the world. All the subsequent international documents on human rights declare this truth anew, recognizing and affirming that human rights stem from the inherent dignity and worth of the human person.

The Universal Declaration is clear: it acknowledges the rights which it proclaims but does not confer them, since they are inherent in the human person and in human dignity. Consequently, no one can legitimately deprive another person, whoever they may be, of these rights, since this would do violence to their nature. All human beings, without exception, are equal in dignity. For the same reason, these rights apply to every stage of life and to every political, social, economic and cultural situation. Together they form a single whole, directed unambiguously towards the promotion of every aspect of the good of both the person and society.

Human rights are traditionally grouped into two broad categories, including on the one hand civil and political rights and on the other economic, social and cultural rights. Both categories, although to different degrees, are guaranteed by international agreements. All human rights are in fact closely connected, being the expression of different dimensions of a single subject, the human person. The integral promotion of every category of human rights is the true guarantee of full respect for each individual right.

Defence of the universality and indivisibility of human rights is essential for the construction of a peaceful society and for the overall development of individuals, peoples and nations. To affirm the universality and indivisibility of rights is not to exclude legitimate cultural and political differences in the

exercise of individual rights, provided that in every case the levels set for the whole of humanity by the Universal Declaration are respected.

With these fundamental presuppositions clearly in mind, I would now like to identify certain specific rights which appear to be particularly exposed to more or less open violation today.

The Right to Life

4. The first of these is the basic right to life. Human life is sacred and inviolable from conception to its natural end. "Thou shalt not kill" is the divine commandment which states the limit beyond which it is never licit to go. "The deliberate decision to deprive an innocent human being of life is always morally evil" (*Evangelium vitae*, 57)

The right to life is inviolable. This involves a positive choice, a choice for life. The development of a culture of this kind embraces all the circumstances of life and ensures the promotion of human dignity in every situation. A genuine culture of life, just as it guarantees to the unborn the right to come into the world, in the same way protects the newly born, especially girls, from the crime of infanticide. Equally, it assures the handicapped that they can fully develop their capacities, and ensures adequate care for the sick and the elderly.

Recent developments in the field of genetic engineering present a profoundly disquieting challenge. In order that scientific research in this area may be at the service of the person, it must be accompanied at every stage by careful ethical reflection, which will bring about adequate legal norms safeguarding the integrity of human life. Life can never be downgraded to the level of a thing.

To choose life involves rejecting every form of violence: the violence of poverty and hunger, which afflicts so many human beings; the violence of armed conflict; the violence of criminal trafficking in drugs and arms; the violence of mindless damage to the natural environment (*Evangelium Vitae*, 10). In every circumstance, the right to life must be promoted and safeguarded with appropriate legal and political guarantees, for no offence against the right to life, against the dignity of any single person, is ever unimportant.

Religious Freedom, the Heart of Human Rights

5. Religion expresses the deepest aspirations of the human person, shapes people's vision of the world and affects their relationships with others: basically it offers the answer to the question of the true meaning of life, both personal and communal. Religious freedom therefore constitutes the very heart of human rights. Its inviolability is such that individuals must be recognized as having the right even to change their religion, if their

conscience so demands. People are obliged to follow their conscience in all circumstances and cannot be forced to act against it (*Dignitatis humanae*, 3). Precisely for this reason, no one can be compelled to accept a particular religion, whatever the circumstances or motives.

The Universal Declaration of Human Rights recognizes that the right to religious freedom includes the right to manifest personal beliefs, whether individually or with others, in public or in private. In spite of this, there still exist today places where the right to gather for worship is either not recognized or is limited to the members of one religion alone. This grave violation of one of the fundamental rights of the person is a source of enormous suffering for believers. When a State grants special status to one religion, this must not be to the detriment of the others. Yet it is common knowledge that there are nations in which individuals, families and entire groups are still being discriminated against and marginalized because of their religious beliefs.

Nor should we pass over in silence another problem indirectly linked to religious freedom. It sometimes happens that increasing tensions develop between communities or peoples of different religious convictions and cultures, which, because of the strong passions involved, turn into violent conflict. Recourse to violence in the name of religious belief is a perversion of the very teachings of the major religions. I reaffirm here what many religious figures have repeated so often: the use of violence can never claim a religious justification, nor can it foster the growth of true religious feeling.

The Right to Participate

6. All citizens have the right to participate in the life of their community: this is a conviction which is generally shared today. But this right means nothing when the democratic process breaks down because of corruption and favouritism, which not only obstruct legitimate sharing in the exercise of power but also prevent people from benefitting equally from community assets and services, to which everyone has a right. Even elections can be manipulated in order to ensure the victory of certain parties or persons. This is an affront to democracy and has serious consequences, because citizens have not only the right but also the responsibility to participate: when they are prevented from exercising this responsibility, they lose hope of playing any effective role and succumb to an attitude of passive indifference. The development of a sound democratic system then becomes practically impossible.

In recent times various measures have been adopted to ensure legitimate elections in States which are struggling to move from a totalitarian form of government to a democratic one. However useful and effective these may be in emergencies, such initiatives cannot dispense from the effort to create in

the citizens a basis of shared convictions, thanks to which manipulation of the democratic process would be rejected once and for all.

In the context of the international community, nations and peoples have the right to share in the decisions which often profoundly modify their way of life. The technical details of certain economic problems give rise to the tendency to restrict the discussions about them to limited circles, with the consequent danger that political and financial power is concentrated in a small number of governments and special interest groups. The pursuit of the national and international common good requires the effective exercise, even in the economic sphere, of the right of all people to share in the decisions which affect them.

A Particularly Serious Form of Discrimination

7. One of the most tragic forms of discrimination is the denial to ethnic groups and national minorities of the fundamental right to exist as such. This is done by suppressing them or brutally forcing them to move, or by attempting to weaken their ethnic identity to such an extent that they are no longer distinguishable. Can we remain silent in the face of such grave crimes against humanity? No effort must be judged too great when it is a question of putting an end to such abuses, which are violations of human dignity.

A positive sign of the growing willingness of States to recognize their responsibility to protect victims of such crimes and to commit themselves to preventing them is the recent initiative of a United Nations Diplomatic Conference: it specifically approved the Statute of an International Criminal Court, the task of which it will be to identify guilt and to punish those responsible for crimes of genocide, crimes against humanity and crimes of war and aggression. This new institution, if built upon a sound legal foundation, could gradually contribute to ensuring on a world scale the effective protection of human rights.

The Right to Self-Fulfilment

8. Every human being has innate abilities waiting to be developed. At stake here is the full actualization of one's own person and the appropriate insertion into one's social environment. In order that this may take place, it is necessary above all to provide adequate education to those who are just beginning their lives: their future success depends on this.

From this perspective, how can we not be concerned when we see that in some of the poorest regions of the world educational opportunities are actually decreasing, especially in the area of primary education? This is sometimes due to the economic situation of the particular country, which prevents teachers from receiving a proper salary. In other cases, money

seems to be available for prestigious projects and for secondary education, but not for primary schools. When educational opportunities are limited, particularly for young girls, there will surely arise discriminatory structures which adversely affect the overall development of society. The world could find itself divided according to a new criterion: on the one side, States and individuals endowed with advanced technologies; on the other, countries and people with extremely limited knowledge and abilities. As one can easily guess, this would simply reinforce the already acute economic inequalities existing not only between States but also within them. In developing countries, education and professional training must be a primary concern, just as they are in the urban and rural renewal programmes of more economically advanced peoples.

Another fundamental right, upon which depends the attainment of a decent level of living, is the right to work. Otherwise how can people obtain food, clothing, a home, health care and the many other necessities of life? The lack of work, however, is a serious problem today: countless people in many parts of the world find themselves caught up in the devastating reality of unemployment. It is urgently necessary on the part of everyone, and particularly on the part of those who exercise political or economic power, that everything possible be done to resolve this difficult situation. Emergency interventions, necessary as they are, are not enough in cases of unemployment, illness or similar circumstances which are beyond the control of the individual (*Universal Declaration of Human Rights*) but efforts must also be made to enable the poor to take responsibility for their own livelihood and to be freed from a system of demeaning assistance programmes.

Global Progress in Solidarity

9. The rapid advance towards the globalization of economic and financial systems also illustrates the urgent need to establish who is responsible for guaranteeing the global common good and the exercise of economic and social rights. The free market by itself cannot do this, because in fact there are many human needs which have no place in the market. “Even prior to the logic of a fair exchange of goods and the forms of justice appropriate to it, there exists something which is due to man because he is man, by reason of his lofty dignity” (*Centesimus annus*, 34).

The effects of the recent economic and financial crises have had heavy consequences for countless people, reduced to conditions of extreme poverty. Many of them had only just reached a position which allowed them to look to the future with optimism. Through no fault of their own, they have seen these hopes cruelly dashed, with tragic results for themselves and their children. And how can we ignore the effects of fluctuations in the financial markets? We urgently need a new vision of global progress in solidarity, which will

include an overall and sustainable development of society, so as to enable all people to realize their potential.

In this context, I make a pressing appeal to all those with responsibility for financial relations on the worldwide level. I ask them to make a sincere effort to find a solution to the frightening problem of the international debt of the poorest nations. International financial institutions have initiated concrete steps in this regard which merit appreciation. I appeal to all those involved in this problem, especially the more affluent nations, to provide the support necessary to ensure the full success of this initiative. An immediate and vigorous effort is needed, as we look to the year 2000, to ensure that the greatest possible number of nations will be able to extricate themselves from a now intolerable situation. Dialogue among the institutions involved, if prompted by a sincere willingness to reach agreement, will lead – I am certain – to a satisfactory and definitive solution. In this way, lasting development will become a possibility for those Nations facing the greatest difficulties, and the millennium now before us will become for them too a time of renewed hope.

Responsibility for the Environment

10. The promotion of human dignity is linked to the right to a healthy environment, since this right highlights the dynamics of the relationship between the individual and society. A body of international, regional and national norms on the environment is gradually giving juridic form to this right. But juridic measures by themselves are not sufficient. The danger of serious damage to land and sea, and to the climate, flora and fauna, calls for a profound change in modern civilization's typical consumer life-style, particularly in the richer countries. Nor can we underestimate another risk, even if it is a less drastic one: people who live in poverty in rural areas can be driven by necessity to exploit beyond sustainable limits the little land which they have at their disposal. Special training aimed at teaching them how to harmonize the cultivation of the land with respect for the environment needs to be encouraged.

The world's present and future depend on the safeguarding of creation, because of the endless interdependence between human beings and their environment. Placing human well-being at the centre of concern for the environment is actually the surest way of safeguarding creation; this in fact stimulates the responsibility of the individual with regard to natural resources and their judicious use.

The Right to Peace

11. In a sense, promoting the right to peace ensures respect for all other rights, since it encourages the building of a society in which structures of

power give way to structures of cooperation, with a view to the common good. Recent history clearly shows the failure of recourse to violence as a means for resolving political and social problems. War destroys, it does not build up; it weakens the moral foundations of society and creates further divisions and long-lasting tensions. And yet the news continues to speak of wars and armed conflicts, and of their countless victims. How often have my Predecessors and I myself called for an end to these horrors! I shall continue to do so until it is understood that war is the failure of all true humanism.

Thanks be to God, steps have been taken in some regions towards the consolidation of peace. Great credit must go to those courageous political leaders who are resolved to continue negotiations even when the situation seems impossible. But at the same time how can we not denounce the massacres still taking place in other regions, with the uprooting of entire peoples from their lands and the destruction of homes and crops? Mindful of the innumerable victims, I call on the leaders of the Nations and on all people of good will to come to the aid of those involved – especially in Africa – in cruel conflicts, sometimes prompted by external economic interests, and to help them to bring these conflicts to an end. A concrete step in this regard is certainly the eradication of trafficking in arms destined for countries at war, and the support of the leaders of those peoples in their quest for the path of dialogue. This is the path worthy of the human person, this is the path of peace!

I think with sorrow of those living and growing up against a background of war, of those who have known nothing but conflict and violence. Those who survive will carry the scars of this terrible experience for the rest of their lives. And what shall we say about children forced to fight? Can we ever accept that lives which are just beginning should be ruined in this way? Trained to kill and often compelled to do so, these children cannot fail to have serious problems in their future insertion into civil society. Their education is interrupted and their chances of employment are stifled: what a terrible legacy for their future! Children need peace; they have a right to it.

To the thought of these children I also wish to add a mention of the children who are victims of land mines and other devices of war. Despite efforts already being made to remove mines, we are now witnessing an unbelievable and inhuman paradox: with disregard for the clearly expressed will of governments and peoples to put a final end to the use of such an insidious weapon, mines are still being laid even in places which had already been cleared.

Seeds of war are also being spread by the massive and uncontrolled proliferation of small arms and light weapons, which it seems are passing freely from one area of conflict to another, increasing violence along the way. Governments must adopt appropriate measures for controlling the

production, sale, importation and exportation of these instruments of death. Only in this way will it be possible to deal effectively and completely with the problem of the massive illegal traffic in arms.

A Culture of Human Rights, the Responsibility of All

12. It is not possible to discuss this topic more fully here. I would however like to emphasize that no human right is safe if we fail to commit ourselves to safeguarding all of them. When the violation of any fundamental human right is accepted without reaction, all other rights are placed at risk. It is therefore essential that there should be a global approach to the subject of human rights and a serious commitment to defend them. Only when a culture of human rights which respects different traditions becomes an integral part of humanity's moral patrimony shall we be able to look to the future with serene confidence.

In effect, how could there be war if every human right were respected? Complete observance of human rights is the surest road to establishing solid relations between States. The culture of human rights cannot fail to be a culture of peace. Every violation of human rights carries within it the seeds of possible conflict. My Venerable Predecessor, the Servant of God Pius XII, at the end of the Second World War asked the question: "If one people is crushed to death by force, who will dare promise the rest of the world security in a lasting peace?"

The promotion of a culture of human rights which engages consciences requires all sectors of society to work together. I would like to mention specifically the role of the mass media, which are so important in forming public opinion, and consequently in influencing people's behaviour. Just as we could not deny their responsibility in cases of the violation of human rights arising from any exaltation of violence on their part, so it is right to give them credit for the noble initiatives of dialogue and solidarity which have come about thanks to their insistence on promoting mutual understanding and peace.

A Time of Decision, a Time of Hope

13. The new millennium is close at hand, and its approach has filled the hearts of many with hope for a more just and fraternal world. This is an aspiration which can, and indeed must, become a reality!

It is in this context that I now address you, dear Brothers and Sisters in Christ, who in all parts of the world take the Gospel as the pattern of your lives: become heralds of human dignity! Faith teaches us that every person has been created in the image and likeness of God. Even when man refuses it, the Heavenly Father's love remains steadfast; his is a love without limits. He sent his Son Jesus to redeem every individual, restoring each one's

full human dignity (*Redemptor hominis*, 13-14). With this in mind, how can we exclude anyone from our care? Rather, we must recognize Christ in the poorest and the most marginalized, those whom the Eucharist – which is communion in the body and blood of Christ given up for us – commits us to serve. As the parable of the rich man, who will remain for ever without a name, and the poor man called Lazarus clearly shows, “in the stark contrast between the insensitive rich man and the poor in need of everything, God is on the latter’s side”. We too must be on this same side.

The third and final year of preparation for the Jubilee is marked by a spiritual pilgrimage to the Father’s house: all are invited to walk the path of authentic conversion, which involves rejecting evil and making a positive choice for good. On the threshold of the year 2000, it is our duty to renew our commitment to safeguarding the dignity of the poor and the marginalized, and to recognize in a practical way the rights of those who have no rights.

Let us raise our voices on their behalf, by living in its fullness the mission which Christ entrusted to his disciples! This is the spirit of the now imminent Jubilee (*Tertio millennio adveniente*, 49-51). Jesus taught us to call God “Father”, *Abba*, thus revealing to us the depth of our relationship with him. Infinite and eternal is his love for every person and for all humanity. Eloquent in this regard are God’s words found in the book of the Prophet Isaiah:

“Can a woman forget her baby at the breast, or fail to cherish the child of her womb? Yet even if these forget, I will never forget you. See, upon the palms of my hands I have written your name” (49:15-16).

Let us accept the invitation to share this love! In it is found the secret of respect for the rights of every woman and every man. The dawn of the new millennium will thus find us more ready to build peace together.

From the Vatican, 8 December 1998.

Pope Benedict XVI

THE HUMAN PERSON, THE HEART OF PEACE

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**Message of His Holiness
Pope Benedict XVI
for the celebration
of the World Day of Peace
1 January 2007**

1. At the beginning of the new year, I wish to extend prayerful good wishes for peace to Governments, leaders of nations and all men and women of good will. In a special way, I invoke peace upon all those experiencing pain and suffering, those living under the threat of violence and armed aggression, and those who await their human and social emancipation, having had their dignity trampled upon. I invoke peace upon children, who by their innocence enrich humanity with goodness and hope, and by their sufferings compel us all to work for justice and peace. Out of concern for children, especially those whose future is compromised by exploitation and the malice of unscrupulous adults, I wish on this World Day of Peace to encourage everyone to reflect on the theme: *The Human Person, the Heart of Peace*. I am convinced that respect for the person promotes peace and that, in building peace, the foundations are laid for an authentic integral humanism. In this way a serene future is prepared for coming generations.

The human person and peace: gift and task

2. Sacred Scripture affirms that "God created man in his own image, in the image of God he created them; male and female he created them" (*Gen 1:27*). *As one created in the image of God, each individual human being has the dignity of a person*; he or she is not just something, but someone, capable of self-knowledge, self-possession, free self-giving and entering into communion with others. At the same time, each person is called, by grace, to a covenant with the Creator, called to offer him a response of faith and love that no other creature can give in his place. From this supernatural perspective, one can understand the task entrusted to human beings to mature in the ability to love and to contribute to the progress of the world, renewing it in justice and in peace. In a striking synthesis, Saint Augustine teaches that "God created us without our aid; but he did not choose to save us without our aid."

Consequently all human beings have the duty to cultivate *an awareness of this twofold aspect of gift and task.*

3. Likewise, *peace is both gift and task.* If it is true that peace between individuals and peoples – the ability to live together and to build relationships of justice and solidarity – calls for unfailing commitment on our part, it is also true, and indeed more so, that *peace is a gift from God.* Peace is an aspect of God’s activity, made manifest both in the creation of an orderly and harmonious universe and also in the redemption of humanity that needs to be rescued from the disorder of sin. Creation and Redemption thus provide a key that helps us begin to understand the meaning of our life on earth. My venerable predecessor Pope John Paul II, addressing the General Assembly of the United Nations on 5 October 1995, stated that “we do not live in an irrational or meaningless world... there is a moral logic which is built into human life and which makes possible dialogue between individuals and peoples.” The transcendent “grammar”, that is to say the body of rules for individual action and the reciprocal relationships of persons in accordance with justice and solidarity, is inscribed on human consciences, in which the wise plan of God is reflected. As I recently had occasion to reaffirm: “we believe that at the beginning of everything is the Eternal Word, Reason and not Unreason.” Peace is thus also a task demanding of everyone a personal response consistent with God’s plan. The criterion inspiring this response can only be *respect for the “grammar” written on human hearts by the divine Creator.*

From this standpoint, the norms of the natural law should not be viewed as externally imposed decrees, as restraints upon human freedom. Rather, they should be welcomed as a call to carry out faithfully the universal divine plan inscribed in the nature of human beings. Guided by these norms, all peoples – within their respective cultures – can draw near to the greatest mystery, which is the mystery of God. Today too, recognition and respect for natural law represents the foundation for a dialogue between the followers of the different religions and between believers and non-believers. As a great *point of convergence*, this is also a fundamental presupposition for authentic peace.

The right to life and to religious freedom

4. The duty to respect the dignity of each human being, in whose nature the image of the Creator is reflected, means in consequence that *the person can not be disposed of at will.* Those with greater political, technical, or economic power may not use that power to violate the rights of others who are less fortunate. Peace is based on respect for the rights of all. Conscious of this, the Church champions the fundamental rights of each person. In particular she promotes and defends respect for the *life* and the *religious freedom* of everyone. Respect for the right to life at every stage firmly establishes a principle of

decisive importance: *life is a gift which is not completely at the disposal of the subject*. Similarly, the affirmation of the right to religious freedom places the human being *in a relationship with a transcendent principle which withdraws him from human caprice*. The right to life and to the free expression of personal faith in God is not subject to the power of man. Peace requires the establishment of *a clear boundary between what is at man's disposal and what is not*: in this way unacceptable intrusions into the patrimony of specifically human values will be avoided.

5. As far as *the right to life* is concerned, we must denounce its widespread violation in our society: alongside the victims of armed conflicts, terrorism and the different forms of violence, there are the silent deaths caused by hunger, abortion, experimentation on human embryos and euthanasia. How can we fail to see in all this an attack on peace? Abortion and embryonic experimentation constitute a direct denial of that attitude of acceptance of others which is indispensable for establishing lasting relationships of peace. As far as *the free expression of personal faith* is concerned, another disturbing symptom of lack of peace in the world is represented by the difficulties that both Christians and the followers of other religions frequently encounter in publicly and freely professing their religious convictions. Speaking of Christians in particular, I must point out with pain that not only are they at times prevented from doing so; in some States they are actually persecuted, and even recently tragic cases of ferocious violence have been recorded. There are regimes that impose a single religion upon everyone, while secular regimes often lead not so much to violent persecution as to systematic cultural denigration of religious beliefs. In both instances, a fundamental human right is not being respected, with serious repercussions for peaceful coexistence. This can only promote *a mentality and culture that is not conducive to peace*.

The natural equality of all persons

6. At the origin of many tensions that threaten peace are surely *the many unjust inequalities* still tragically present in our world. Particularly insidious among these are, on the one hand, *inequality in access to essential goods* like food, water, shelter, health; on the other hand, there are *persistent inequalities between men and women in the exercise of basic human rights*.

A fundamental element of building peace is the recognition of the *essential equality of human persons* springing from their common transcendental dignity. Equality on this level is a good belonging to all, inscribed in that natural "grammar" which is deducible from the divine plan of creation; it is a good that cannot be ignored or scorned without causing serious repercussions which put peace at risk. The extremely grave deprivation afflicting many peoples, especially in Africa, lies at the root of violent reactions and thus inflicts a terrible wound on peace.

7. Similarly, inadequate consideration for the *condition of women* helps to create instability in the fabric of society. I think of the exploitation of women who are treated as objects, and of the many ways that a lack of respect is shown for their dignity; I also think – in a different context– of the mindset persisting in some cultures, where women are still firmly subordinated to the arbitrary decisions of men, with grave consequences for their personal dignity and for the exercise of their fundamental freedoms. There can be no illusion of a secure peace until these forms of discrimination are also overcome, since they injure the personal dignity impressed by the Creator upon every human being.

The “ecology of peace”

8. In his Encyclical Letter *Centesimus Annus*, Pope John Paul II wrote: “Not only has God given the earth to man, who must use it with respect for the original good purpose for which it was given to him, but man too is God’s gift to man. He must therefore respect the natural and moral structure with which he has been endowed.” By responding to this charge, entrusted to them by the Creator, men and women can join in bringing about a world of peace. Alongside the ecology of nature, there exists what can be called a “human” ecology, which in turn demands a “social” ecology. All this means that humanity, if it truly desires peace, must be increasingly conscious of the links between natural ecology, or respect for nature, and human ecology. Experience shows that *disregard for the environment always harms human coexistence*, and vice versa. It becomes more and more evident that there is an inseparable link between peace with creation and peace among men. Both of these presuppose peace with God. The poem-prayer of Saint Francis, known as “the Canticle of Brother Sun”, is a wonderful and ever timely example of this multifaceted ecology of peace.

9. The close connection between these two ecologies can be understood from the increasingly serious problem of *energy supplies*. In recent years, new nations have entered enthusiastically into industrial production, thereby increasing their energy needs. This has led to an unprecedented race for available resources. Meanwhile, some parts of the planet remain backward and development is effectively blocked, partly because of the rise in energy prices. What will happen to those peoples? What kind of development or non-development will be imposed on them by the scarcity of energy supplies? What injustices and conflicts will be provoked by the race for energy sources? And what will be the reaction of those who are excluded from this race? These are questions that show how respect for nature is closely linked to the need to establish, between individuals and between nations, relationships that are attentive to the dignity of the person and capable of satisfying his or her authentic needs. The destruction of the environment, its improper

or selfish use, and the violent hoarding of the earth's resources cause grievances, conflicts and wars, precisely because they are the consequences of an inhumane concept of development. Indeed, if development were limited to the technical-economic aspect, obscuring the moral-religious dimension, it would not be an integral human development, but a one-sided distortion which would end up by unleashing man's destructive capacities.

Reductive visions of man

10. Thus there is an urgent need, even within the framework of current international difficulties and tensions, for a commitment to *a human ecology that can favour the growth of the "tree of peace"*. For this to happen, we must be guided by a vision of the person untainted by ideological and cultural prejudices or by political and economic interests which can instil hatred and violence. It is understandable that visions of man will vary from culture to culture. Yet what cannot be admitted is the cultivation of *anthropological conceptions* that contain the seeds of hostility and violence. Equally unacceptable are *conceptions of God* that would encourage intolerance and recourse to violence against others. This is a point which must be clearly reaffirmed: war *in God's name* is never acceptable! When a certain notion of God is at the origin of criminal acts, it is a sign that that notion has already become an ideology.

11. Today, however, peace is not only threatened by the conflict between reductive visions of man, in other words, between ideologies. It is also threatened by *indifference as to what constitutes man's true nature*. Many of our contemporaries actually deny the existence of a specific human nature and thus open the door to the most extravagant interpretations of what essentially constitutes a human being. Here too clarity is necessary: a "weak" vision of the person, which would leave room for every conception, even the most bizarre, only apparently favours peace. In reality, it hinders authentic dialogue and opens the way to authoritarian impositions, ultimately leaving the person defenceless and, as a result, easy prey to oppression and violence.

Human rights and international organizations

12. A true and stable peace presupposes respect for human rights. Yet if these rights are grounded on a weak conception of the person, how can they fail to be themselves weakened? Here we can see how profoundly insufficient is *a relativistic conception of the person* when it comes to justifying and defending his rights. The difficulty in this case is clear: rights are proposed as absolute, yet the foundation on which they are supposed to rest is merely relative. Can we wonder that, faced with the "inconvenient" demands posed by one right or another, someone will come along to question it or determine that it should be set aside? Only if they are grounded in the objective requirements of the nature bestowed on man by the Creator, can the rights attributed to him be

affirmed without fear of contradiction. It goes without saying, moreover, that human rights imply corresponding duties. In this regard, Mahatma Gandhi said wisely: “The Ganges of rights flows from the Himalaya of duties.” Clarity over these basic presuppositions is needed if human rights, nowadays constantly under attack, are to be adequately defended. Without such clarity, the expression “human rights” will end up being predicated of quite different subjects: in some cases, the human person marked by permanent dignity and rights that are valid always, everywhere and for everyone, in other cases a person with changing dignity and constantly negotiable rights, with regard to content, time and place.

13. The protection of human rights is constantly referred to by international bodies and, in particular, the United Nations Organization, which set itself the fundamental task of promoting the human rights indicated in the 1948 Universal Declaration. That Declaration is regarded as a sort of *moral commitment assumed by all mankind*. There is a profound truth to this, especially if the rights described in the Declaration are held to be based not simply on the decisions of the assembly that approved them, but on man’s very nature and his inalienable dignity as a person created by God. Consequently it is important for international agencies not to lose sight of the natural foundation of human rights. This would enable them to avoid the risk, unfortunately ever-present, of sliding towards a merely positivistic interpretation of those rights. Were that to happen, the international bodies would end up lacking the necessary authority to carry out their role as defenders of the fundamental rights of the person and of peoples, the chief justification for their very existence and activity.

International humanitarian law and the internal law of States

14. The recognition that there exist inalienable human rights connected to our common human nature has led to the establishment of a body of *international humanitarian law* which States are committed to respect, even in the case of war. Unfortunately, to say nothing of past cases, this has not been consistently implemented in certain recent situations of war. Such, for example, was the case in the conflict that occurred a few months ago in southern Lebanon, where the duty “to protect and help innocent victims” and to avoid involving the civilian population was largely ignored. The heart-rending situation in Lebanon and the new shape of conflicts, especially since the terrorist threat unleashed *completely new forms of violence*, demand that the international community reaffirm international humanitarian law, and apply it to all present-day situations of armed conflict, including those not currently provided for by international law. Moreover, the scourge of terrorism demands a profound reflection on the ethical limits restricting the use of modern methods of guaranteeing internal security. Increasingly,

wars are not declared, especially when they are initiated by terrorist groups determined to attain their ends by any means available. In the face of the disturbing events of recent years, States cannot fail to recognize the need to establish clearer rules to counter effectively the dramatic decline that we are witnessing. War always represents a failure for the international community and a grave loss for humanity. When, despite every effort, war does break out, at least the essential principles of humanity and the basic values of all civil coexistence must be safeguarded; norms of conduct must be established that limit the damage as far as possible and help to alleviate the suffering of civilians and of all the victims of conflicts.

15. Another disturbing issue is the desire recently shown by some States to *acquire nuclear weapons*. This has heightened even more the widespread climate of uncertainty and fear of a possible atomic catastrophe. We are brought back in time to the profound anxieties of the “cold war” period. When it came to an end, there was hope that the atomic peril had been definitively overcome and that mankind could finally breathe a lasting sigh of relief. How timely, in this regard, is the warning of the Second Vatican Council that “every act of war directed to the indiscriminate destruction of whole cities or vast areas with their inhabitants is a crime against God and humanity, which merits firm and unequivocal condemnation.” Unfortunately, threatening clouds continue to gather on humanity’s horizon. The way to ensure a future of peace for everyone is found not only in international accords for *the non-proliferation of nuclear weapons*, but also in the determined commitment to seek their reduction and definitive dismantling. May every attempt be made to arrive through negotiation at the attainment of these objectives! The fate of the whole human family is at stake!

The Church as safeguard of the transcendence of the human person

16. Finally, I wish to make an urgent appeal to the People of God: let every Christian be committed to tireless peace-making and strenuous defence of the dignity of the human person and his inalienable rights.

With gratitude to the Lord for having called him to belong to his Church, which is “the sign and safeguard of the transcendental dimension of the human person” in the world, the Christian will tirelessly implore from God the fundamental good of peace, which is of such primary importance in the life of each person. Moreover, he will be proud to serve the cause of peace with generous devotion, offering help to his brothers and sisters, especially those who, in addition to suffering poverty and need, are also deprived of this precious good. Jesus has revealed to us that “*God is love*” (1 Jn 4:8) and that the highest vocation of every person is love. In Christ we can find the ultimate reason for becoming staunch champions of human dignity and courageous builders of peace.

17. Let every believer, then, unfailingly contribute to the advancement of a true integral humanism in accordance with the teachings of the Encyclical Letters *Populorum Progressio* and *Sollicitudo Rei Socialis*, whose respective fortieth and twentieth anniversaries we prepare to celebrate this year. To the Queen of Peace, the Mother of Jesus Christ “our peace” (*Eph 2:14*), I entrust my urgent prayer for all humanity at the beginning of the year 2007, to which we look with hearts full of hope, notwithstanding the dangers and difficulties that surround us. May Mary show us, in her Son, the Way of peace, and enlighten our vision, so that we can recognize Christ’s face in the face of every human person, the heart of peace!

From the Vatican, 8 December 2006

