First Steps in an Account of Human Rights

James Griffin

1. The Very Idea of Human Rights

Hillary Clinton, at the United Nations conference on women in Beijing in the summer of 1995, claimed that we all have the right to determine the size of our families.[1] Do we? Does China's one-child policy really violate a human right? Would a five- or a ten-child policy do so too? In Britain, the Prince of Wales claimed that parents have the right to smack their children. But the report of The Commission on Children and Violence, published in Britain in November 1995, proposed a ban on smacking children and the creation of a Children's Rights Commissioner. But is there either a parents' right to smack their children or a children's right not to be smacked? And I saw recently in a newspaper in the United States the claim that we all have a right to be loved. Do we indeed?

The scene in philosophy is not much brighter. Philosophers too, rather in the manner of magicians, pull rights out of nowhere. In the course of a well-known article about abortion, a distinguished American philosopher builds her case on a presumed right to determine what happens in and to one's body (Thomson 1977). Of course, that claim is more plausible than the earlier ones. But do we really have such a broad right? If the government required us to be safely inoculated against some dangerous disease, would our rights be violated? How are we to tell?

That is the problem: we do not know. It is not that the term 'human rights' has *no* content: it just has far too little for it to be playing the central role that it now does in our moral and political life. There are scarcely any accepted criteria, even among philosophers, for when the term is used correctly and when incorrectly. The language of human rights has become seriously debased.[2]

Do I exaggerate? I know that many philosophers and jurisprudents and political theorists will think that I do. Do we not know tolerably well what a human right is? It is a right that a person has, not in virtue of any special status or relation to others, but simply in virtue of being human. Why, then, do I think that the term lacks meaning? *That*, they will say, is what it means.

But 'meaning' is too blunt a term to argue over here. The trouble is this. To apply the term 'human right' we have to be able to tell what rights we have simply in virtue of being human. That is, we have to know what rights can be derived from the relevant sense of *human standing* or *human nature*. And we do not know the relevant sense. All of the examples of human rights that I have given so far, even the contradictory ones, are claimed to follow simply from being human.

European Journal of Philosophy 9:3 ISSN 0966–8373 pp. 306–327

The term 'human right' is less determinate and more disputed than most common nouns; it is what is called an 'essentially contestable concept'.[3] But that a concept is essentially contestable does not relieve it of the need to be tolerably determinate. A concept becomes contestable because it can have different and competing determinate senses.[4] The plausible ways of making the term 'human right' tolerably determinate involve deciding some fairly hefty ethical matters, such as what attracts special protection in human nature and what results in the most helpful ethical language overall, matters over which dispute is hardly surprising.[5] Determinateness of sense is, admittedly, a matter of degree; one can live with some indeterminateness. But if, quite apart from the recognized borderline cases, there are very many other cases in which nothing settles whether a certain term is being correctly or incorrectly used, then the term is seriously defective.

That is the situation with the term 'human right'. The fact that there is *some* settled use does not help much. It is true that we all agree upon a few paradigms: freedom of expression, freedom of worship, and so on. And one might hope to be able to settle harder cases by extrapolation from paradigm cases. But the resources here are too meager. The application of the term would remain largely undetermined.

That is the problem, and in the rest of this paper I want to propose a solution.

2. Different Approaches to Explaining Rights

We need a substantive account of human rights. By a 'substantive' account I mean one that adds enough content to the notion of 'human' in the term 'human rights' to tell us, for any such proposed right, whether it really is one – one that thereby supplies what I shall call 'existence conditions' for a human right.[6]

A substantive account stands in contrast to a structural account, one that characterises rights by certain formal features or by their role in a larger moral structure. For instance, Joel Feinberg's account of rights is a structural one. A right, he says, is a claim with two features: it is a claim, first, *against* specifiable individuals and, second, *to* their action or omission on one's behalf. Or, more strictly, it is such a claim when it is supported by legal rules or moral principles and so 'valid' (Feinberg 1980: chs. 6, 9–11).[7] But this is an account of rights generally, not of human rights. Presumably, an account of human rights in particular will have to add an explanation of what it is about being 'human' in virtue of which all human beings have these rights. Ronald Dworkin's view that rights are 'trumps' over appeals to the social good is also a structural account; so is Robert Nozick's view that they are side constraints (Dworkin 1977: *xi–xv*, chs. 6, 7; Nozick 1974: 28–33). But neither of these views is about human rights in particular, so each needs similar supplement. John Rawls, however, has recently given us an account of human rights in particular, and of their normative force as well, by placing them in the structure of a larger theory of justice between peoples. Human rights appear in this larger theory as part of the political morality that governs relations between

peoples and between the government of a people and its own citizens: their observance is necessary for a society's political order to be 'decent' and is sufficient, along with non-aggressiveness, to render any forceful intervention by other peoples unjustified (Rawls 1999: 80–83). But Rawls does not regard this description of their role as definitional of human rights. He would accept that his assignment of this role, and the relatively short list of human rights that emerges from it (strikingly shorter than the list found in the major human rights documents), themselves need justification. He would no doubt say that they get it from whatever justification the larger setting gets. But we shall not be able to test his larger political theory of justice without having available, among other things, an understanding of how the human-rights tradition, with its more contentful account of 'human standing', can, at its best, determine what human rights there are and how attractive the larger political moralities are that they can be part of.[8]

A substantive account also stands in contrast to a conceptual account, one that maps the connections between 'rights' and such notions as 'duties', 'powers', and 'liberties'. The most famous account of rights in the twentieth century was that of the American jurisprudent Wesley Hohfeld (Hohfeld 1919). He gives analyses of legal rights and of their juridical correlatives (that is, the position of those affected by someone else's possession of the right) that lead him to divide them into four kinds; a legal right can be a claim, a liberty, a power, or an immunity, or a combination of them. Helpful as it is to have the variety of such conceptual relations plotted, they do not give us what we need to decide what rights there are, what their boundaries are, and how we resolve conflicts between rights themselves, or between a right and other kinds of value. What I mean by a substantive account of rights would supply all of that.

There are two general ways for philosophy to go about supplying a substantive account. There is a top-down approach: one starts with an overarching principle, or principles, or an authoritative decision procedure – say, the principle of utility or the Categorical Imperative or the model of parties to a contract reaching agreement – from which human rights can then be derived. Then there is a bottom-up approach: one starts with human rights as used in our actual social life by politicians, lawyers, social campaigners, as well as theorists of various sorts, and then sees what higher principles one must resort to in order to explain their moral weight, when one thinks they have it, and to resolve conflicts between them. The second way seems to me the better. We may not have to rise all the way to the highly abstract moral principles used in the top-down approach in order to explain what needs explaining. We can wait and see. In any case, the top-down approach, as we have just seen, cannot do without some explanation of how the notion of human rights is used in our social life. We need it to test whether what is derivable from these highly abstract moral principles *are* human rights. We need not treat the use of the term in present social life as beyond revision, but we need some understanding of what human rights are independent of the principle from which they are said to be derivable, and their social use is the most likely source.

What content, then, should we attach to the notion of a human right? If we adopt the bottom-up approach, there are two parts to the job. Clearly the content

will be determined to some degree by the criteria, insufficient as they are, that the notion of 'human rights' already has attaching to it. So the first part of our job is to consult the long tradition from which the notion comes and to discover the content already there.

But the seventeenth and eighteenth century accounts, which remain for us the last major development of the idea, left a lot of work still to be done. There is much left for a substantive account to add. Because that is our job, we today are, to a surprising extent, in at the creation both of a substantive account and therefore, to some extent, of human rights themselves. The account that we need will turn out to have a measure of stipulation. That gives us freedom, though freedom under sizeable constraints. There is the constraint of the tradition. And there are the constraints of meeting practical needs and of fitting well with the rest of our ethical thought.

3. The Human Rights Tradition

Let me now give, in summary form, what seems to me the most plausible history of the idea of a right.[9]

A term with our modern sense of 'a right' emerged in the late middle ages, probably first in Bologna, in the work of the canonists, experts (mainly clerics) who glossed, commented on, and to some extent brought harmony to the many, not always consistent, norms of canon and Roman law. In the course of the twelfth and thirteenth centuries the use of the Latin word *ius* expanded from meaning what is fair to include also our modern sense of 'a right', that is, a power that a person possesses to control or claim something. One finds the transition at this time in the poverty debates, which were sparked by the question whether the Franciscans really renounced property. For instance, in these debates one finds the transition from the assertion that it is a natural law (*ius*) that all things are held in common and thus a person in mortal need who takes from a person in surplus does not steal, to the new form of expression, that a person in need has a right (*ius*) to take from a person in surplus and so does not steal. The prevailing view of the canonists is that this new sort of *ius*, a right that an individual has, derives from the natural law that all human beings are, in a very particular sense, equal: namely, that we are all made in God's image, that we are free to act for reasons, especially for reasons of good and evil. We are rational and moral agents.

This link between our freedom and the dignity of our status became a central theme in the political thought of all subsequent centuries. Pico della Mirandola, an early Renaissance philosopher who studied canon law in Bologna in 1477, gave an influential account of the link. God fixed the nature of all other things but left man alone free to determine his own nature. It is given to man 'to have that which he chooses and be that which he wills' (Pico 1998). This freedom constitutes, as Pico calls it in the title of his best known work, 'the dignity of man'.

This same link between freedom and dignity was at the centre of the early sixteenth century debates about the Spanish colonization of the New World.

Many canonists argued emphatically that the American natives were undeniably agents and, therefore, should not be deprived of their autonomy and liberty, which the Spanish government was everywhere doing. The same notion of dignity was also central to political thought in the seventeenth and eighteenth centuries, when it received its most powerful development at the hands of Rousseau and Kant. And this notion of dignity, or in any case the word 'dignity', appears in the most authoritative claims to human rights in the twentieth century. The United Nations says little in its declarations, covenants, conventions and protocols about the grounds of human rights; it says simply that human rights derive from 'the inherent dignity of the human person',[10] but the most plausible interpretation of this use of 'dignity' is that it is still the Enlightenment use.

That, briefly, was the first part of our job: to find what content the tradition might supply. But, I have said, it cannot be the only part of our job. In the late seventeenth century John Locke was still using the medieval framework of argument: from God to natural law to natural right – in particular, from God's having made us equally in his image and equally capable of understanding the significance of that equality to a liberty to live without violations of that dignity. After Locke, appeals to natural law declined. In some ways it was good that they did. Agency is valuable not because God has it; God has it because it is valuable. There is a perfectly adequate case for holding that agency itself is valuable. What is more, natural laws are hard to identify: a natural law is meant to record the workings of certain human dispositions, sentiments, and capacities (including rationality) that God has placed in us to guide us to the good. But it is hard to distinguish tendencies that God has placed in us from those without that provenance. It is not easy, either, to identify tendencies that guide us to the good without first having identified the good, which would get the derivation the wrong way around. But in dropping natural law we shift most of the weight on to the notion of human dignity, which is no more than a promising first gesture at a moral principle. We need fuller, more determinate criteria for identifying the elements of human dignity. Tolerably determinate criteria are less urgent when, as in the eighteenth century, there is fairly widespread agreement on examples of human rights, but that is hardly so now. What some of us philosophers or jurisprudents or political theorists should be doing now is completing the project that the Enlightenment started but left so unfinished.

4. A Proposal of a Substantive Account

The human rights tradition does not lead inescapably to a particular substantive account. There can be reasons to take a tradition in a new direction or to break with it altogether. Still, the best substantive account is, to my mind, in the spirit of the tradition and goes like this. Human life is different from the life of other animals. We human beings have a conception of ourselves and of our past and future. We reflect. We form pictures of what a good life would be, often, it is true, only on a small scale, but occasionally also on a large scale. And we try to realize

these pictures. This is what we mean by a characteristically *human* existence. It does not matter if some animals, say the Great Apes, share more of our nature than we used to think, nor that there might be intelligent creatures elsewhere in the universe also capable of deliberation and action. So long as we do not ignore these possibilities, there is no harm in continuing to speak of a characteristically 'human' existence. And we value our status as human beings especially highly, often more highly even than our happiness. This status centres on our being agents – deliberating, assessing, choosing and acting to make what we see as a good life for ourselves.

Human rights can then be seen as protections of one's human standing, one's personhood. And one can break down the notion of personhood into clearer components by breaking down the notion of agency. To be an agent, in the fullest sense of which we are capable, one must (first) chose one's own course through life – that is, not be dominated or controlled by someone or something else (autonomy). And one's choice must also be real; one must (second) have at least a certain minimum education and information and the chance to learn what others think. But having chosen one's course one must then (third) be able to follow it; that is, one must have at least the minimum material provision of resources and capabilities that it takes. And none of that is any good if someone then blocks one; so (fourth) others must also not stop one from pursuing what one sees as a good life (liberty). Because we attach such high value to our individual personhood, we see its domain of exercise as privileged and protected.

5. One Ground for Human Rights: Personhood

That is the central intuitive idea. In what should we say that human rights are grounded? Well, primarily in personhood. Out of the notion of personhood we can generate most of the conventional list of human rights. We have a right to life (without it, personhood is impossible), to security of person (for the same reason), to a voice in political decision (a key exercise of autonomy), to free expression, to assembly, and to a free press (without them, exercise of autonomy would be hollow), to worship (a key exercise of what one takes to be the point of life). It also generates, I should say (though this is hotly disputed), a positive freedom, namely a right to minimum learning and material resources needed for a human existence, something more, that is, than mere physical survival. It also generates a right not to be tortured, because, among its evils, torture destroys one's capacity to decide and to stick to the decision. And so on. It should already be clear that the generative capacities of the notion of personhood are quite great.[11]

My making personhood central helps explain further the way in which my account is *substantive*. Some of the structural accounts that I mentioned earlier also aim to provide existence conditions. But substantive accounts go further; my account, for instance, grounds human rights not in formal features or role in a larger moral structure but directly in a central range of substantive values, the values of personhood.

The fact that human rights are grounded in personhood imposes an obvious constraint: they are rights not to anything that promotes human *good* or *flourishing*, but merely to what is needed for human *status*. They are protections of that somewhat austere state, a characteristically human life, not of a *good* or *happy* or *perfected* or *flourishing* human life. For one thing, it seems that the more austere notion is what the tradition of human rights supports. For another, it seems to be the proper stipulation to make. If we had rights to all that is needed for a good or happy life, then the language of rights would become redundant. We already have a perfectly adequate way of speaking about individual well-being and any obligations there might be to promote it. At most, we have a right to the *pursuit* of happiness, to the base on which one might oneself construct a happy life, not to happiness itself.

What does this tell us about how we should understand the key word 'human' in 'human rights'? 'Human' cannot mean there simply a member of the species *homo sapiens*. Infants, the severely mentally retarded, people in an irreversible coma are all members of the species, but are not agents. It is tempting then to identify 'human beings' with 'agents' and to abstract from biological species entirely. More than just *homo sapiens* can be agents. Some Great Apes may be; aliens emerging from a spaceship would be; God is. But this line of thought is dangerous. It turns the holder of rights into a highly spare, abstract entity, characterized solely by rationality and intentionality. To my mind, this goes too far. One of the features of the spare, abstract agent would be autonomy; that would have to be a feature if the concept of agency were to yield any rights at all. Kant thought that one would be autonomous only if one's actions came from a purely rational, intentional centre, undetermined by anything outside it, undetermined, for instance, by one's biology or one's society. Kant contrasted this noumenal self, of course, with the familiar phenomenal self, which is part of the causal network, shaped by nature and nurture. But rationality requires thought; thought – at least thought about how to live one's life – requires language; and language is a cultural artifact, deeply influenced by the form of life lived by animals like us. If one peels away everything about us that is shaped by nature or nurture, not enough is left.

Autonomy should be explained, therefore, as we find it in the phenomenal world, and we find it there deeply embedded in the causal network. So the kind of autonomy we are interested in will reflect the peculiarly human way of experiencing and conceptualizing the world; it will be shaped by characteristic human concerns and sense of importance. We do not know what it is like to be a Great Ape or a deity. Our aim must be the more modest one of understanding, not the autonomy of a spare, abstract self, but the autonomy of *homo sapiens*. So by the word 'human' in the phrase 'human rights' we should mean, roughly, a functioning human agent. And human rights cannot therefore be ahistorical or asocial.

But just how deeply embedded in a particular history or society must human rights therefore be? Statements about human nature could most easily lay claims to cross-cultural standards of correctness if they could be seen, as classical natural law theorists saw them, as observations of the constitution and workings of part

of the natural world.[12] But, on the face of it, this looks like trying to derive values (human rights) from facts (human nature), which generations of philosophers have been taught cannot be done. But it cannot be done only on a certain conception of nature: namely, the conception that sees nature as what scientists at the start of the modern era thought it was, as what the natural sciences, especially the physical sciences, describe. As such, nature excludes values. On this narrow conception of the natural, the conception of the 'human' that I am proposing is not natural. I single out functioning human agents via notions such as their autonomy and liberty, and I choose those features precisely because they are especially important human interests. It is only because they are especially important interests that rights can be derived from them; rights are strong protections, and so require something especially valuable to attract protection. So my notions of 'human nature' and 'human agent' are already well within the normative circle, and there is no obvious fallacy involved in deriving rights from notions as evaluatively rich as they are.

Still, that defence of the derivation, by drawing the notions of 'human nature' and 'human agency' inside the normative circle, seems to sacrifice a central feature of the human rights tradition, namely, that human rights are derived from something objective and factual and so demanding universal acknowledgement. But it is, of course, much too quick to think that what is evaluative cannot also be objective. It is too quick to think that it cannot also be natural. David Hume's dichotomy of fact and value depended upon his narrow conception of fact. But, to my mind, there is a fairly weighty case for thinking that basic human interests are features of the world, and that these interests' being met or not met are happenings in the world. One of our basic interests is in avoiding pain. In fact, our concept of pain is made up both of how pains feel and how those feelings characteristically figure in human life – that we want to avoid them, to have them alleviated, and suchlike. So, if I say that I am in pain, I make both a statement of fact and an evaluative statement. The most plausible interpretation of the notion of 'nature', I should say, is not Hume's but a more expansive one, including both features such as basic human interests and also events such as their being met or not met. All of this needs much more investigation, some of which I have tried to provide in a book I published a few years ago (Griffin 1997: chs. 2–4). But if this expansive naturalism is, as I think, borne out, it gives hope of restoring a form of that central feature of the human rights tradition: namely, that these rights are grounded in natural facts about human beings.

There are different ways of understanding the ethical weight of personhood. One might, as Kant does, contrast 'persons' with mere 'things': 'things' have 'price' and so have equivalents (the loss of one thing can be compensated by the gain of another of the same value); 'persons', however, have 'dignity'; they are of unique value (they have no equivalents) (Kant 1961: 95–6; pagination of the Royal Prussian Academy ed. 482–9). This would endow human rights with something akin to the power of trumps over any aggregates of material social goods. And it would also help to explain why so many philosophers regard human rights, especially on the personhood account, as essentially deontological. But this is only one

way to understand personhood. Another way is to see our exercise of our personhood – autonomously choosing a course through life and being at liberty to pursue it – as elements of a good life, as features that characteristically enhance the quality of life. They would clearly be highly important features, but none the less not, in principle, immune to trade-off with other elements of a good life – such as accomplishment, certain kinds of understanding, deep personal relations, enjoyment, and so on. It is because of the special importance (though by no means necessarily uniquely great importance) of these particular human interests that, on this understanding, we ring-fence them with the notion of human rights.

The choice between these two understandings of personhood is crucial. It settles the source and degree of the resistance of human rights to trade-offs with other values. The best account of human rights will make them resistant to trade-offs, but not too resistant. That, of course, is a mere truism, but still one surprisingly hard to satisfy. It is not altogether problem-free whichever understanding of personhood one chooses. Deontologists can, and do, say different things about trade-offs: a very few say that rights, or some rights, can never be outweighed by the general good; rather more say that they can indeed be outweighed but only rarely, to avoid catastrophe; and many say that they can be outweighed somewhat more easily, provided there is a sufficiently great, and not merely a simple, surplus of the general good.[13] All deontologists have to fix the turning-point, if only to say that there is none, and they have to derive reasons from somewhere in their deontology to fix it where they do. It is the latter part of that job that gives such trouble, at least if one wants an outcome that is also intuitively plausible.

If, on the other hand, one adopts the second understanding of personhood, there is a familiar trouble: trade-offs threaten to become too frequent. But even on the second understanding there are some not inconsiderable resistances to trade-offs. The value of life, say, may be such that agents like us, with all of our limitations of will and understanding, must in general honour the value and not merely promote it. That is, perhaps for the reasons given we must live by the policy of not taking innocent life (though there may be rare exceptions to that) rather than of trying to bring about least loss of innocent life generally.[14] We should have to see how a non-maximizing, value-based norm, such as Don't deliberately kill the innocent, might work in moral thought. We cannot hope to understand how a right, say the right to life, might work without understanding how moral norms more generally work, in particular the closely related norm Don't deliberately kill the innocent. Another source of resistance to trade-offs is what elsewhere I have called discontinuities. That is, there are values such that a certain amount of the one cannot be outweighed by any amount of the other. For instance, it seems to me that, if what is at stake is my being able to live by my reasonable conception of a good life, then no amount of mere upset and distress for members of my community could outweigh it; it would not matter if a hundred people were upset and distressed, or a thousand, or a million (Griffin 1986: ch. 5 sect. 6). Yet another possible source of resistance is simply that the characteristic heavy weight that we attach to the value of personhood will tend also to inhibit trade-offs with other values. Issues about trade-offs should be at the heart of an account

of human rights. I think that the second understanding of personhood is the better, though the justification for that belief can come only bit by bit, as we gradually see its explanatory power.

6. A Second Ground: Practicalities

Could personhood be the only ground needed for human rights? I think not. It leaves rights still too indeterminate. Personhood tells us that each of us has a right to *some* political voice. But how much? In what form? It tells us that we have a right to *minimum* material resources. How much is that? We have a right to security of person. But that just brings us to the question that I asked earlier about a supposed right to determine what happens in and to our bodies. It struck me that the right would not be quite as wide as that, and the personhood ground gives us some idea of why it may be narrower. The right is only to what is necessary for living a *human* existence, and the extensive power to determine everything that happens in and to our bodies goes far beyond that. If my blood had some marvellous factor and a few drops painlessly extracted from my finger in a minute's time could save scores of lives, then, on the face of it, the personhood ground yields no right that needs to be outweighed. The prick of my finger would hardly destroy my personhood. But what happens if we up the stakes? Does my right to security of person not protect me against, say, the health authority that wants one of my kidneys? After all, the few weeks that it would take me to recover from a kidney extraction would not prevent me from living a recognizably human life either. Where is the line to be drawn? What is clear is that, on its own, the personhood consideration is not up to fixing anything approaching a determinate enough line for practice. We have also to think about the society in which we live. There are practical considerations: to be effective the line has to be clear and so not take too many complicated bends; given our proneness to stretch a point, we should probably have to leave a generous safety-margin. So to make the right to security of person determinate enough to be an effective guide to behaviour we need a further ground, call it practicalities. We need also to consult human nature, the nature of society, and so on, in drawing the line.

I think that it is not a case of there being pure, abstract formulations of human rights – say, to security of person and to free expression – determined solely by the personhood consideration that then acquire accretions in different social settings. Without a more determinate line in the first place, we shall be reluctant to say that a right yet exists. What we are after, as I put it earlier, are the existence conditions for a human right. Its existence must depend, to some extent, upon its being an effective, socially manageable, claim on others. So practicalities, I suggest, constitute a necessary second ground.

The practicalities ground gives us a further reason to confine human rights to normal *human* agents, not agents more widely. Practicalities are needed to determine the content of human rights, and the considerations they introduce may well be special to *human* life.

But 'practicalities' is an extremely crude term, and we must eventually understand better what it covers. It covers a heterogeneous group of considerations. Some are global considerations about human nature and the workings of society. Some are the local conditions of a particular society: where a society is now affects what it should do next. My regarding practicalities as a ground of human rights, while allowing them to include some local conditions, looks as if it threatens the universality of human rights. I have just said why I think that *some* practicalities must be part of the existence conditions for human rights. But it is reasonable to expect that universal features, both personhood and those practicalities with universal scope, are sufficient to give us a tolerably determinate notion of a particular human right – so that we can speak of, say, a right to free expression of *all* persons – while the remaining practicalities may justify local variations. The fact that pure values, such as the values of personhood, unmixed with the tangle of considerations I mean by practicalities, yield only highly indeterminate norms, is important for understanding not just human rights but moral norms generally.

7. Is There a Third Ground?: Equality

Is there a third ground? The most likely further ground is equality. The idea of human rights emerged with the growth of egalitarianism, and it is an obvious thought that equality is *a*, or even *the*, ground for those rights.

The trouble that we face in thinking about equality is that there are very many ethically important principles of equality, easily confused. There is moral standing itself, the moral point of view: we are all moral persons and so command some sort of equal respect – call it, for short, the principle of equal respect. This is different from, and may not even imply, a principle of equal distribution of goods, which, in turn, is different from a principle of equal opportunity, and so on.

It is obvious that on one interpretation of 'equality' – namely, equal respect – and on one interpretation of 'grounds', equality is indeed a ground for human rights. Equal respect expresses the moral point of view itself, and human rights, being moral standards, must likewise be expressions of it. Some philosophers have seen equal respect as itself a human right, indeed the one absolute right – a right, for instance, to equal respect in the procedures that determine the compromises and adjustments between all the other non-absolute rights (Mackie 1984: 87). It is absolute because it is moral standing itself, and morality can never recommend suspending the moral point of view. But, it is doubtful that equal respect, being the whole of morality, should be seen as anything so specific as one human right among others. In any case, it cannot be a *ground* for human rights in the sense that I have been using the term here. Ronald Dworkin has spoken of a 'favoured form of argument for political rights', namely their derivation from 'the abstract right to [equal] concern and respect, taken to be fundamental and axiomatic'.[15] Let me concentrate on his invocation of equal respect; the fact that he also speaks of equal concern does not affect what I shall say. The principle of equal respect is extremely vague; it needs content built into it through further

notions, such as the Ideal Observer or the Ideal Contractor, though even those particular notions suffer from no small vagueness themselves. But, on its own, the notion of equal respect is far too empty for us to be able to derive anything as contentful as a list of human rights. And it is not that we must build more content into the notion of equal respect before we try deriving the list, because the way we shall put more content into it is precisely by settling such less abstract matters as what human rights there are. Morality is built at many different levels of generality at the same time. It does not display the sort of priorities that allow much in the way of what we can call 'derivation' of low level ideas from highest level, axiomatic ones. So what we are after now, in looking for the *grounds* for human rights, are the sorts of ideas that will substantially help to settle what rights exist and what their content actually is. Those ideas will, therefore, have to have a lot of content themselves and so are likely to be on more or less the same level of abstraction as human rights.

But surely equality must be somewhere among the grounds for human rights, someone might say, if only because the whole thrust of the historical human rights movement was egalitarian. So it was, but egalitarian on a quite limited front. Human rights are protections of human status; unlike various kinds of social status, we all possess human status, so we all equally have these protections. But the protections at issue are protections of quite specific features of our life: our autonomy, our liberty, and some sort of minimum provision. There is no guarantee, here, of other forms of equality, as important as they often are – for example, of equal distribution of material goods. To say that we are all equally endowed with rights is not to say that we are all endowed with a right to equality, where that means other forms of equality.

Still, someone might persist, do we not have a human right to *some* other forms of equality? And would they not have to be grounded in some background principle of equality? Imagine this case. You and I are seventeenth century settlers in the New World. As our boat beaches, you jump off before me and claim the lush, fertile half of the island, leaving the rocky, barren half to me. When I protest, you point out that my half, if tended, would yield at least the minimum resources necessary for a recognizably human existence, which is all that, on my own account, I have a right to. You can be sure that I would protest, echoing John Locke, that you could claim no more than what left as much and as good for me, that we are moral equals, that my life matters equally as much as years, that I have a claim to as much of the available resources as you. The word 'equality' would come tumbling from my lips, and rightly so. Part of what I am claiming for myself is equal respect and all that follows from it, such as justice and fairness.

But human rights are quite particular moral considerations. They do not exhaust the whole moral domain; they do not exhaust even the whole domain of justice and fairness.[16] If you free-ride on the bus because you know that no harm will come as the rest of us are paying our fares, you do not violate my rights, even though you clearly act unfairly. If when we play our occasional game of penny-ante poker you use a marked deck, you are again acting unfairly, but you are not violating my human rights. That explains why the tradition regards

procedural justice in courts as a matter of human rights, but not distributive justice. Procedural justice protects our life, liberty, and property. Distributive justice, for all its importance, does not bear on our personhood – so long, that is, as the human right to minimum provision is respected. In fact, as most people in most societies never attract the attention of police or courts, their interests are likely to be far more affected by matters of distributive justice than of procedural justice. But matters of justice can be highly important in our lives without being matters of human rights.

To return now to my example, when I complain to you that I should have an equal share of the resources of the island, I am citing a principle of equal distribution, which is a principle of justice, which we can see, as our imagined conversation shows, as involved in equal respect. I am sure that you *ought* to divide the riches of the island equally with me. But to make it a matter of rights would create substantial problems. Where would we draw the line between the moral demands of equal respect, or of justice, that are rights and those that are not, besides where the personhood account has already drawn it? What rationale would be have for drawing it elsewhere? Would the line be clear enough?[17]

I am inclined now, as I have said, to exclude equal respect from the grounds for rights. But this is one of those issues that I mentioned earlier that has an element of stipulation to it. It is a matter of tailoring the language of rights so that it is most useful to us. Given the present unsatisfactory state of talk about rights, I am always attracted, I must admit, by what would give us a clearer, tighter notion of rights. It does not matter that the tighter way of speaking means that some of the most heavy-weight moral obligations have no connection to rights (for example, my entirely justified claim to an equal share of the fertile land on that island). It is a great, but now common, mistake to think that, because we see rights as especially important in morality, we must make everything especially important in morality into a right.

I propose, therefore, only two grounds for human rights: personhood and practicalities. The existence conditions for a human right would, then, be these. One establishes the existence of such a right by showing, first, that it protects an essential feature of human standing and, second, that its determinate content results from the sorts of practical considerations that I very roughly sketched earlier.

8. How We Should Understand 'Agency'

If we adopt the personhood approach, we shall have to sharpen considerably the notion of 'agency' that is at its heart.

Agency can quite reasonably be seen as appearing in degrees. Children become agents in stages. Some adults are better at reflecting about values, or more effective at achieving them, than others. Must a personhood account, then, imply that human rights come in proportionate degrees? Does it justify, in the end, less an egalitarian than a Platonic vision of society, with different

classes having rights appropriate to their different reflective and executive capacities?[18]

This worry seems to me to be employing the wrong conception of 'agency'. As we saw a while ago, our concept of rights emerged at the historic stage when belief in human equality supplanted belief in a natural social hierarchy. Up to a point, egalitarianism is a bundle of factual claims (though usually laced with evaluations). One is the claim that many striking differences between social groups – for example, the far cruder taste and judgement of some – are not ordained by nature but are the brutalizing effect of social deprivation. Another of the factual claims is that there is not much correlation between I.Q. and sense of what matters in life. And these, and many other factual claims in the bundle, are defensible on empirical grounds. Even if differences in taste and judgement persist because deprivation too persists, the overriding moral interest is not in giving them weight but in removing the deprivation. Of course, egalitarianism is an ethical thesis too. What we attach value to, what we regard as giving dignity to human life, is our capacity to reflect on, to choose, and to pursue what we ourselves decide is a good life. Mental defectives present difficult borderline problems here, and there is, of course, the question of when a child becomes an agent. But the vast majority of adult mankind are capable of (a factual claim) reaching this valuable state (an evaluative claim). Anyone who crosses the borderline is equally inside the class of agents, because everyone in the class thereby possesses the status to which we attach value.[19] Any further differences in skill at reflection or action will no longer matter ethically. Ethics has an inevitable simplicity, even crudity, to it. So does the notion of 'agency' that I am using. We easily concede that there must be a certain simplicity in ethical notions that appear on the large-scale, political scene, but so there must be even when they appear on the small-scale, personal scene. Take the case of a family. We neither could feasibly, nor morally would want to, assign differential rights to normal adult members of our family in response to every difference that they exhibited. Nor could we, or would we want to, do so on the social scale.

There is another worry about the notion of 'agency'. An obvious objection to a personhood account is that a person can be denied religious freedom, even be cruelly persecuted, without ceasing to be an agent. Could anyone plausibly deny that at least some of the martyred saints were agents? On the contrary, there is a sense in which persecution can even enhance agency. When Alexander Solzhenitsyn was sent to a gulag, he seems to have become a more focused and determined agent than ever. But that is not the picture of agency at the heart of my account of rights. My somewhat ampler picture is of a self-determiner (that is, someone autonomous) who, within limits, is not blocked from pursuing his or her conception of a good life (that is, someone also at liberty). Briefly, an agent is someone who *chooses* goals and is then free to *pursue* them. Both choosing and pursuing constitute values that we associate with agency; if either is missing, one's agency, on this ampler interpretation, is deficient. What we need is a normative picture of agency: autonomy and liberty are of special value to us, and thus attract the special protection of rights. Further, it is characteristic of human

beings that they do not choose their goals once and for all. People mature; their values change. Liberty is freedom to live this sort of continually evolving life.[20]

9. A Desirable Consequence: The Narrowing of Rights

Now, one consequence of my account of human rights – a desirable one, I should say – is that it yields fairly narrow rights. Take the case of liberty. There is a broad conception of liberty in circulation – Thomas Hobbes, Jeremy Bentham, and Isaiah Berlin have sometimes employed it[21] – that regards any restriction on my doing what I want as a restriction, no doubt sometimes justified, on my liberty. If, for instance, I want to drive the wrong way down a one-way street, then, on the broad conception, the traffic restriction infringes my liberty – though usually justifiably. But I think that it is hard to find any ground for this broad conception. The considerable values that rights protect do not include our being able to satisfy *any* wish, even whim, that happens to cross our minds; rather, they protect our being able to form our own conception of a good life and then to pursue it. So liberty, on what seems to me the preferable narrow conception, protects only what is, in this way, central to our personhood. And my being able to drive the wrong way down a one-way street certainly is not *that*.

The account I am suggesting, centred as it is on the idea of personhood, raises questions about John Stuart Mill's famous harm test. Mill's account of liberty centres on a distinction between a private sphere (that is, an area in which one's actions affect only oneself or, if others, then non-harmfully or with their consent) and a public sphere (the area in which one's actions harm other without their consent). Mill's principle of liberty, what he calls his 'one very simple principle', is that the state may control public, but not private, actions (Mill 1977: ch. 1). What I suggest as the protected area is not the *private* sphere, but the sphere of *personhood*, and they are not the same. Whether or not I wear a necktie now and then will have no effect on my choosing and pursuing a good life. It is too trivial for that. So I should say that necktie wearing falls outside the protected area of liberty. My college requires everyone, whether they want to or not, to wear academic gowns at certain dinners in Hall, but on my account of rights it is not thereby violating anyone's liberty, even a very minor one. The requirement may be tiresome, or stuffy, or conventional, but that is a different matter. Yet, whether or not I wear a gown falls within my own private sphere: I do not harm others by dressing, within limits, as I please. So it seems to me implausible of Mill to take 'privacy' as definitive of liberty. There is no rationale for the privacy test. We do not attach value to the private as such. If I could not care less whether I wear a gown at dinner but in fact do not do so, my being made to by my college is an intrusion into my private sphere, but it is hard to see any ground for my minding. The grounds that one might plausibly advance for minding, Mill's own perhaps, are really covert appeals to personhood. Stopping me from wearing the clothes I want, as inessential as any particular set of clothes may be to my human standing, touches my self-respect. To deny me freedom to express my own taste,

if it goes very far, does begin to threaten my status as a self-determiner. Exactly which clothes I choose may be trivial, but my status as an individual centre of taste and choice is not. This is now beginning to sound like something valuable in a way to attract the protection of liberty because it is getting close to an appeal to personhood.[22]

I said that we do not attach value to the private as such. Mill's harm principle does not touch on the human interest at the base of the right to liberty. But I suspect that something close to the harm principle is likely to emerge as a rule of thumb for legislation. And we need a spelling-out of the right to liberty that will work in practice. That is what the second ground that I proposed, practicalities, is meant to achieve. The personhood ground tends to narrow rights, but the practicalities ground is sometimes likely to work in the opposite direction. Rights must be usable by agents of limited knowledge and motivation in societies where things easily go wrong. Nor is it that anyone, with any conception of the good life no matter how illiberal, is protected in its pursuit. What justifies one person's liberty justifies equal liberty for all. This is just the start of the job of adumbrating the content of the right to liberty, but I suggest that the two considerations, personhood and practicalities, are the ones that we should see as centrally at work.

Accepting the personhood test, however, goes no way towards unseating harm as a ground for intervention. My point is that it is better not to run it together with reasons of liberty.

10. Utilitarianism? Deontology?

One of the most fateful questions facing a personhood account I am leaving unanswered: which of the two earlier explanations of the value of personhood is better? It is not that there is no reasoned answer; it is, rather, that it takes a long while to arrive at it. Suppose, though, that I am right in favouring the second. What is the overall moral nature of the account that would result?

At first glance, my favoured account of human rights may look utilitarian. Living autonomously, for instance, is one thing that contributes to the value of an individual life. But it is only one thing. There are many other elements of a person's well-being, such as enjoyment, deep personal relations, accomplishing something with one's life, and so on. But then the values backing rights look as if they cannot resist entering trade-offs with the other elements of well-being. This looks very much like utility calculation, even if 'utility' would have to be interpreted fairly broadly here.

But, in fact, my favoured account need not, and I want to add should not, be given a utilitarian reading. To my mind, the most plausible form of utilitarianism is a highly indirect one. According to it, we should choose a set of human rights by choosing the set that, as part of the larger social system, most promotes values through society at large and in the long run, and promotes values more than having no system of rights would do. My doubt is whether we could perform the

tremendously large-scale, long-run, cost-benefit calculations that this approach requires, or even arrive at probabilities reliable enough for action. This matter is by no means easy to settle. Still, these highly indirect forms of utilitarianism seem to me an instance of a typical over-confidence in *philosophical* ethics that whatever a theory demands can be supplied. I doubt that we can arrive at a set of rights in this utilitarian way.

To show that a right exists one does not have to show that its recognition has best consequences in society generally and over time. On my account, the existence conditions are much simpler, more direct, and more accessible. One just has to show that a right links with one of the values of agency – with autonomy, say, or liberty. It is true that one of the grounds of rights, on my account, is what I call practicalities. They come in to help make rights sufficiently determinate, and they look very much like including calculations of social utilities. But the burden of this sort of calculation of practicalities is likely to be much less than the burden of the calculation needed in a plausible indirect utilitarianism.

On my favoured account, human rights are not deonotological prohibitions or requirements either. My account grounds human rights, as does utilitarianism, in considerations of what makes a human life good. So, the account that I am suggesting is neither utilitarian nor deontological – and none the worse for that.

James Griffin
Corpus Christi College
Merton Street
Oxford OX1 4JF
UK
jo.cartmell@philosophy.oxford.ac.uk

NOTES

[1] The 'right' is often proclaimed. For example, thirty world leaders, in a statement issued through the United Nations' Secretary General, claimed that 'the opportunity to decide the number and spacing of their children is a basic human right' (quoted in Baylis 1979).

[2] Perhaps only *more* debased than it has long been. ' . . . the eighteenth century was a period (not, perhaps, unlike our own) in which the public's penchant for asserting its rights outran its ability to analyse them and to reach a consensus about their scope and meaning.' (Hutson 1991).

[3] The term was introduced by W. B. Gallie in (Gallie 1955–6).

[4] See Gallie 1955–6: 169; see also defining condition V, 172.

[5] There is nothing that makes dispute necessary; we could come to agree on one fairly determinate sense for 'human right', and I hope we shall. So '*essentially* contestable' puts it over strongly.

[6] I borrow the term from L. W. Sumner in Sumner 1987: 10–11.

[7] See also his earlier Feinberg 1973: chs. 4–6. Similar views can be found in Mayo 1965 and McCloskey 1965.

[8] I am grateful to John Tasioulas for conversation on this subject; see Tasioulas (forthcoming).

[9] I present here what I take to be the current state of scholarship. Useful recent histories of the idea of a right are Dagger 1989, Brundage 1995, Tierney 1997, and Brett 1997.

[10] The most prominent, but not only, uses of the phrase are in the Preambles to both *The International Covenant on Economic, Social and Cultural Rights* and *The International Covenant on Civil and Political Rights*, both adopted by the General Assembly in 1966.

[11] For a modern statement of a similar point, see Sumner 1987: ch. 4 sect. 1. '. . . the criterion for a natural right must itself be a natural property. A natural rights theory therefore must assign (at least some of) its rights to a class of subjects determined by their common and exclusive possession of this natural property [e.g. membership in our species]. . . . what, in this context, makes a property a natural property? . . . First, the property must be empirical and thus whether or not an individual possesses it must be ascertainable by ordinary empirical means' (p. 102).

[12] My stress on personhood will worry many. They will be worried by the fact that not all societies accept the values of liberty and autonomy, that the view that these are highly important values is the product of the European Enlightenment. That, of course, is true. Still, the elements of personhood are valuable for all humans. What seems to me more disturbing than this relativist worry is a pluralist worry. Why restrict the basis for human rights to Western European concerns for the individual? Why not be open to the possibility that other cultures may have their own rather different route to human rights? This openness need not dampen hopes for their universal standing. We should have to wait and see. Perhaps there would turn out to be overlap in the lists of human rights that different cultures produced, resulting in some universal and some culture-bound rights.

One can see how this might work. A theocractic culture might put a high value on autonomy, because no acts in that culture would be of value, not even the surrender of much of one's individual freedom of choice (as with a monk, say, who takes vows of absolute obedience to the head of his community), unless they were autonomous. Perhaps other cultures can justify human rights by a different set of human goods than mine.

I have no objection in principle to this suggestion. We have a large measure of freedom in developing a substantive account of human rights. We should have to see how this development might go. I am sceptical, though. We should want this different set of human goods still to generate a fair number of paradigmatic human rights or else there would be an unacceptably severe rupture with the tradition.

I know, too, that my stress on the individual will worry many. Perhaps the basis for human rights is not exclusively individualist. Perhaps such rights are valuable not just because they protect individual interests, but also because, in doing so, they serve the common good. And perhaps their serving the common good is not just part of why they are valuable or important, but part of what justifies the claim that there is such a right. Sometimes there is such a right, then, not just because it protects a certain individual interest, but because, in doing so, it promotes a common good. Again, I have no objection, in principle, to this suggestion. But how would the justification go? Not all common goods justify a human right: brotherly love is a major good in society, but I do not have a right to be loved by my brothers. So which common goods do generate rights, and which do not? We should need to know much more about how the justification goes. I am sceptical that a satisfactory account will be forthcoming.

I am grateful to John Tasioulas for discussion of these points.

[13] One can find these three views expressed, in order of appearance in the text, in Anscombe 1981; Nozick 1974: 28–33; and Thomson 1990: ch. 6.

[14] For the distinction between 'honouring' and 'promoting' values, see Pettit 1991.

[15] Dworkin 1977: xiv–xv; see also pp. 180, 272–4 (where one finds reference to *equal* concern and respect). Dworkin is himself aware of the problem of the vagueness of the notion (see pp. 180–1).

[16] For an example of someone who wants to include in human rights more of the domain of justice than I should like to do, and who gives a rationale for including it, see Scanlon 1978. Scanlon's rationale is broadly consequentialist, and what worries me about it is the feasibility of the extraordinarily complex calculation on which it depends. Judgements about human rights have to be simpler, more manageable, than this sort of consequentialism makes them. See my discussion of consequentialism in Griffin 1997: ch. 7 sect. 5, esp. n. 7.

[17] Such worries have led some philosophers to give up on personhood accounts, e.g. Joel Feinberg; see Feinberg 1973: ch. 6, sect. 3.

[18] John Rawls makes a very similar point about his notion of 'moral personality' in Rawls 1972: sect. 77.

[19] There is a related issue that is perhaps best taken here. As human rights are grounded in agency, they are possessed by all agents. It is an essential feature of human rights that they are universal. But Joseph Raz has put to me, in discussion, the following line of thought.

Perhaps the requirement of universality undermines almost all supposed human rights. They are not in fact universal, so not human rights. If there are *any* human rights, any that are truly universal to human beings, they are not especially important to us. And what are important to us are the supposed human rights – such as freedom of expression – which, not being truly universal, are not really human rights.

The argument goes like this. Freedom of expression is highly important in certain social settings and quite unimportant in others. Anyone who lives, as we do, in a society with democratic political institutions, culturally heterodox citizens, a complex economy needing mobility of labour and having to absorb fast developing science and technology, vitally needs freedom of expression. But anyone who lives in a small traditional hamlet, with static technology and an unchallenged social tradition, and where necessary skills are acquired just by growing up in that place, will have a relatively minor interest in freedom of expression. The first society, would doubtless want to entrench a right to this freedom deeply in its legal system, while the second might not even regard it as a right. So whatever freedom of expression is, it is not a human right.

But this argument misunderstands what the right to free expression protects. True, we may not need it for the economy of the hamlet to flourish. True, if I am terribly shy and have no wish to speak, I may mind much less that I am not allowed to. But the ground for freedom of expression lies in a normative notion of agency: we are self-determiners; that is part of the dignity of human standing. But to be a tolerably successful self-determiner typically requires an ability to ask questions, hear what others think, and so on. It would not matter to my having the right that I am shy and may not exercise it. Others can ask or offer answers, and that itself would help me. Hamlets too can be grossly oppressive. One might well want to question the sort of life that the land-owner imposed upon one, discover whether others too were discontent, and decide with them what to do. And the elders or the priest might stifle free speech to protect orthodoxy. One's status as a self-determiner is vulnerable in any social setting. I do not deny that there is a raft of problems about attributing this right to the citizens of the hamlet. Applying the right in that setting might produce different sub-principles from the ones that it would produce in a large, modern, industrialized setting.

There would still be a robust enough sense of the identity of the right through the various versions of it needed in different social settings. One's status as a self-determiner, I said a moment ago, is vulnerable in *any* social setting. Does that not raise a problem for me? What of non-social settings: say, hunter-gatherers in family units with no social structure between them? Do human rights even apply to them? Well, why not? There is vulnerability even there: one can still be murdered, enslaved, oppressed by elders. . . . But even if human rights were not to apply to hunter-gatherers, one could just gloss the claim of universality: human rights, one could say, are rights that we all have simply in virtue of being *human beings in society*. That must be, in any case, all the universality that advocates of human rights ever intended. Not even morality, to my mind, applies universally to moral agents regardless of conditions: for example, it does not apply if conditions get desperate enough – *sauve-qui-peut* situations. Despite that, it is perfectly reasonable to go on saying that moral principles apply universally, that is, to us all simply in virtue of our being moral agents (that is, given that morality applies at all).

I have tried to meet the sceptical argument Raz posed by moving up a level: from freedom of expression to the more general consideration about being a self-determiner. And this brings us back to the question that I raise in the text whether various traditional freedoms – for example, freedom of expression and of religion – can be grounded in agency. Freedom of expression does not follow from agency, one might think, because one can still retain one's agency without freedom of expression (people in the Soviet Union still could have rich lives: family, friends, rewarding occupations, and so on). For reasons that I gave before I think that there is a reasonable case for saying that freedom of expression *is* necessary for human standing. If I cannot speak to others, or they cannot speak or publish, I am seriously crippled in forming a conception of a meaningful life – not *having* that life but simply forming a *conception* of it. In the Soviet Union, there was a fair amount of that freedom left: people could get together privately and talk; a lot of the world's literature and art were available. The Soviet Union was not a complete totalitarian state; China during the Cultural Revolution got much closer to that. Of course, what one can derive about freedom of expression from the higher level consideration of agency still leaves the right extremely indeterminate. How much freedom of expression *is* required by it. Is a free press? This is the indeterminateness that I stressed earlier. I said that practicalities have to enter to make a consideration such as freedom of expression determinate enough to work as a right. Practicalities introduce considerations about what agents are like, how societies work, and so on. But there is a role – an initiating role – for these higher level ethical considerations: agency and, on a slightly lower level, freedom of expression.

[20] See Hobbes 1996: 86 (ch. XIV, para. 2), 139 (ch. XXI, paras 1 and 2); Bentham 1970, esp. p. 254 (although Bentham generally equated liberty with absence of constraint, he recognized that the term is used in various ways, e.g. many so-called political liberties are, he thought, securities against interference, and that the term is a particularly rich source of confusion); Berlin 1969: xxxviii–xl.

[21] It might seem that I am overlooking an obvious value attaching to the private sphere as such. The private is defined as the non-harmful (to others), and as harm is a plain disvalue, privacy, or non-harm, is a plain value. But I think that is not so. The private sphere, so defined, contains a large value-neutral area – namely, the area between, on the one hand, the class of my actions that are an essential part of my human standing and, on the other hand, the class of my actions that harm others. An example would be whether or not I wear a gown at dinner. There are often reasons for rules (for example, the rule 'gowns are to be worn for Hall'), where the reasons are not all that weighty (the value of symbolism and ceremonial) but need not be very weighty because there is no considerable value such as liberty to outweigh.

[22] Just as Mill's privacy test is put under strain by the unreasonable, even crazy, things that some people are upset or hurt by, so my personhood test is strained by the unreasonable, even crazy, things people might incorporate into their conception of a good life. Jack might see his life's being good as depending upon his marrying Jill, which is no part of Jill's idea of *her* life's being good. Or Jack's conception might be life in a fundamentalist theocracy, with everyone (Jill included), voluntarily or not (in Jill's case not), living in strict accordance with sacred scripture. There are cases where one person's conception of a good life is incompatible with another person's; liberty for one person, it seems, can mean no liberty for another. But I think that, despite appearances, these are not cases of conflict of liberty. One person's liberty cannot include the denial of the liberty of others. To think otherwise would be to undermine the explanation of anyone's liberty. Liberty is a value to everyone. The only plausible principle of liberty is: equal liberty for all. So Jack's understanding the ground of his own right involves his recognition of Jill's having an equal right. So he cannot claim that Jill's unwilling marriage to him is a right of his. But this is not to argue that there is no conflict of values in these cases, only that there is no conflict of liberty. If Jack does not get what he wants, he may be miserable.

REFERENCES

Anscombe, G. E. M. (1981), 'Mr. Truman's Degree', in her *Collected Philosophical Papers*, vol. III. Minneapolis: University of Minnesota Press.

Baylis, M. D. (1979), 'Limits to a Right to Procreate', in O. O'Neill and W. Ruddick (eds.), *Having Children*. New York: Oxford University Press.

Bentham, Jeremy (1970), *Of Laws in General*. London: Athlone Press.

Berlin, Isaiah (1969), *Four Essays on Liberty*. Oxford: Oxford University Press.

Brett, A. S. (1997), *Liberty, Right and Nature*. Cambridge: Cambridge University Press.

Brundage, J. (1995), *Medieval Canon Law*. London: Longman.

Dagger, R. (1989), 'Rights', in T. Ball, J. Farr, and R. Hanson (eds.), *Political Innovation and Conceptual Change*. Cambridge: Cambridge University Press.

Dworkin, R. (1977), *Taking Rights Seriously*. London: Duckworth.

Feinberg, J. (1973), *Social Philosophy*. Englewood Cliffs: Prentice-Hall.

Feinberg, J. (1980), *Rights, Justice, and the Bounds of Liberty*. Princeton: Princeton University Press.

Gallie, W. B. (1955–6), 'Essentially Contested Concepts', *Proceedings of the Aristotelian Society* 56.

Griffin, James (1986), *Well-Being: Its Meaning, Measurement, and Moral Importance*. Oxford: Clarendon Press.

Griffin, James (1996), *Value Judgement: Improving Our Ethical Beliefs*. Oxford: Clarendon Press.

Hobbes, Thomas (1966), *Leviathan*. Oxford: Oxford University Press.

Hohfeld, Wesley (1919), *Fundamental Legal Conceptions as Applied in Legal Reasoning*. New Haven: Yale University Press.

Hutson, J. H. (1991), 'The Bill of Rights and the American Revolutionary Experience', in M. J. Lacey and Knud Haakonssen (eds.), *A Culture of Rights*. Cambridge: Cambridge University Press.

Kant, I. (1961), *Groundwork of the Metaphysic of Morals*, transl. H. J. Paton, in his *The Moral Law*, London: Hutchinson.

Mackie, J. L. (1984), 'Rights, Utility, and Universalization', in R.G. Frey (ed.), *Utility and Rights*. Minneapolis: University of Minneapolis Press.
Mayo, B. (1965), 'Symposium on "Human Rights"', *Proceedings of the Aristotelian Society*, Suppl. Vol. 39.
McCloskey, H. J. (1965), 'Rights', *Philosophical Quarterly* 15.
Mill, John Stuart (1997), *On Liberty, The Collected Works of John Stuart Mill*, vol. XVIII. London and Toronto: Routledge and University of Toronto Press.
Nozick, R. (1974), *Anarchy, State, and Utopia*. Oxford: Blackwell.
Pettit, P. (1991), 'Consequentialism', in P. Singer (ed.), *A Companion to Ethics*. Oxford: Blackwell.
Pico della Mirandola, Giovanni (1998), *On the Dignity of Man*, transl. Charles Glenn Wallis. Indianapolis: Hackett Publishing.
Rawls, John (1972), *A Theory of Justice*. Oxford: Clarendon Press.
Rawls, John (1999), *The Law of Peoples*. Cambridge, MA: Harvard University Press.
Scanlon, T. M. (1978), 'Rights, Goals, and Fairness', in S. Hampshire (ed.), *Public and Private Morality*. Cambridge: Cambridge University Press.
Sumner, L. W. (1987), *The Moral Foundation of Rights*. Oxford: Clarendon Press.
Tasioulos, John (forthcoming), 'From Utopia to Kazanistan: John Rawls and the Law of Peoples', *Oxford Journal of Legal Studies*.
Thomson, J. J. (1977), 'A Defence of Abortion', in R. Dworkin (ed.), *The Philosophy of Law*. Oxford: Oxford University Press.
Thomson, J. J. (1990), *The Realm of Rights*. Cambridge, MA.: Harvard University Press.
Tierney, B. (1997), *The Idea of Natural Rights*. Atlanta: Scholars Press.