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such as the economic and social rights, cannot be genuine human rights at all. A proponent of economic and social rights may simply challenge the premiss that genuine economic rights are rights *in rem*. Clearly a lot of work has to be done in specifying exactly who or which agency has the duty to provide the goods demanded. In the case of the right to education, for example, duties may be assigned to parents, to tax-payers, to schoolteachers, to local authorities and the state, or to international, intergovernmental agencies. Everything depends on what the right to education is thought to entail in the particular circumstances.

It may look as though the lack of specificity here, in respect of the agent or agency against which the right is claimed, itself marks a striking contrast between rights of non-interference and rights of provision. But this would be a mistake. Take a standard negative right, what looks at first sight to be incontrovertibly a right of non-interference – the right to life, in pristine colours, construed as the right not to be killed, a right claimed against all others. In any realistic circumstances, one who claims such a right will not be satisfied with proscriptions that make it clear that one who violates such a right does wrong. She will require protections more solid than this. She will require, of her government, that such acts are declared illegal. Further, she will require that the institutions of government (in this case, primarily the police), take whatever actions are necessarary to protect her from potential violations. Against explicit threats to herself or to those of her sex, race, ethnic or religious community, special protection may be required. Against a background of general risk, she may demand that the agencies of the state undertake whatever preventive measures may best protect her and all others. Whatever the social background or perceived incidence of danger, citizens may demand institutions to back up the legal proscriptions designed to protect rights. They will insist upon courts of law to judge guilt and penal institutions to inflict whatever punishments the courts deem appropriate. Just as soon as one begins to specify the form of institution required to achieve protection, to guarantee as far as possible the moral space required to pursue whatever activities one claims to be legitimate as of right, one is committed to the provision of resources to finance the protective activities. Characteristically, rights of non-interference are claimable both *in rem*, against all and sundry who

would agress against the individual, and *in personam*, where specific individuals or agencies have duties of protection, prevention or care. We saw above the range of persons and agencies who may be assigned the duty of providing education for the young. Much the same list of agencies may be enlisted as guardians of the security of young people.

A similar reply can be made to those who urge that it is a condition of the existence of human rights that it be practically possible to fulfil the duties to respect them. This is easy, it is claimed for rights of non-interference. These call on agents not to interfere, not to stop others wandering the streets, using their private property, worshipping their gods. There is an infinite number of actions I can be called upon *not* to do. Logically, I can comply with an infinite number of such claims against me. This is not so with respect to duties of provision, since these require resources for their fulfilment – and the resources at anyone's disposal may be limited. This is as true of states as it is of individuals.

This is a striking difference between rights of non-interference and rights of provision. Controversy arises just as soon as this distinction is deemed to coincide exactly with that between the classical liberal rights and social and economic rights, and the social and economic rights are downgraded, judged improper because they are impracticable. As we have seen, rights of non-interference can be very onerous in respect of the costs placed on agencies deemed apt for their protection. As soon as the prevention of crime is judged a proper strategy for those charged with the protection of citizen's rights – and this looks sensible to me – where does crime prevention stop? Many have pointed out that, since the Devil finds work for idle hands, a strategy of full employment is a constructive way for a society to protect the negative rights of its members. We know that most violent crime is inflicted by the desperately poor upon those as poor as themselves. Some believe that more generous welfare provision will reduce the incidence of this sort of rights violation. They may well be right. This is a straightforwardly empirical matter. But again, if as a matter of fact, they *are* right, the resources required for the effective protection of citizens against assault and robbery may need to be massive.

The most reasonable conclusion to draw is not that it is improper

to ascribe rights in circumstances where provision or protection is costly, but that such protection and provision should be effected in a systematic, institutional fashion, and the costs of systematic provision should be widely borne. Of course, *I* should not be responsible for the entire costs of your child's health-care, but then I alone should not be responsible for the costs of protecting your child (and every other child) from assault. All rights, negative or positive, liberal or socio-economic, require institutional support and the costs of such support should be distributed amongst members of the community which is responsible for making provision. Assigning responsibility, and issuing the appropriate tax bills, may be a controversial political exercise but the difficulty of the task should not lead us to devalue the rights which require us to engage it.

The analytic apparatus I have been introducing promises simplicity and clarity in the way we think about claim rights. It does not promise simplicity and clarity in respect of working out what thinly described rights (e.g. the right to physical security) demand of whom in what circumstances or of devising policy proposals for giving them effect.

Powers

The third element of Hohfeld's analysis of legal rights concerns rights as powers. The classic example of such a power is the right to bequeath property. The species of power in question is the power to alter assignments of rights and duties. This may seem a peripheral sense of legal right and its application in the field of human rights may seem even more limited. There are striking examples, though, of human rights or elements of human rights which look very much like powers as Hohfeld describes them.

One element of the right to private property is the right to acquire or take into possession goods that are unowned. There is a very great puzzle here that much exercised John Locke. Think of unowned goods as common stock, unowned land as a common resource. Suppose everyone has a liberty right to use what they can get hold of or work upon. On what grounds may anyone be able

to take goods or land from this common stock, claim it legitimately as his or her private possession and disbar all others from the use of it? This is not a problem we shall take up here – but notice the form of the right claimed by the first occupant or labourer who takes the good into private property. It is presumably the right to alter the rights and duties of all others who may hitherto have had the opportunity to use the resource. If the argument works as follows: Through my useful labour on this unowned land, I acquire the right to exclude all others from its use, I am claiming a right in the sense of a power to alter the rights of others. Hitherto, they had a liberty right of acquisition or occasional use, maybe. Now they have no such right. Indeed my act of appropriation has created for them the duty not to use the land or travel across it without permission.

Another right which looks very like a Hohfeldian power is the democratic right of political participation, construed as the right to take part in political decision-making by casting a vote, either directly for a policy option as in a referendum, or indirectly, for a representative who will have further decision-making powers. It is not easy to see this as a claim right, analysable as negative or positive, a right of non-interference or provision (though voting mechanisms need to be organized and made available as a common service and interference with the citizen's access to this service needs to be prohibited).[12] Perhaps it is best seen as a Hohfeldian power, to institute or alter, along with other voters, the legal rights and duties of fellow citizens.

Immunities

Hohfeld's final category of rights, immunities, is perhaps the least important or least noticed. An immunity, technically, is the obverse of a power. P has an immunity with respect to *x* if no Q has the right, in the sense of a power, to alter P's legal standing with respect to *x*. An immunity is frequently an important element of rights more loosely construed. As Waldron points out, rights which are entrenched as the subject of constitutional guarantees, protected by a Bill of Rights, say, involve an element of immunity: 'not only do I have no duty not to do *x* or not only do others have a

duty to let me do *x* but also no one – not even the legislature – has a power to alter that situation.'[13]

A different example is found in the idea of 'due process'. Law courts, evidently, have powers to alter the rights of those found guilty. Many of the rights which come under the heading of rights to a fair trial in accordance with the due processes of law, can be best understood as immunities, as protections against arbitrariness or excess in the use of those powers. Thus one aspect of the right of silence is best understood as an immunity against the power of juries to draw the inference of guilt or self-serving concealment against defendants who refuse to testify at their trial.

Generic rights and specific rights

Hohfeld's analysis was a virtuoso enterprise. Its success, in forcing us to think through the logical implications of rights claims, throws up a further problem. Declarations and charters, as well as common usage, list rights in very general terms: life, property, worship, association, health-care, education, to list a few. We know that matters are much more complicated than this. We know that the central terms, 'life', 'property', etc. are serving almost as slogans for a complex constellation of Hohfeldian privileges, claims, powers and immunities, in any concrete employment. If we ask, in respect of the positive assignment of rights in any specific legal system, what, say, the right of private property amounts to, we may be given volumes of legal textbooks, detailing case and statute law – all with the proviso that things will have changed since publication: check the latest Law Reports. This is the state of affairs with respect to positive law. Add to it the complexities of unenforceable positive morality concerning private property. This would lengthen the library shelves were it to be codified – which, of course, it could not be. When should we say 'Please . . .' and 'Thank you' and when not?

As philosophers, it looks as though we are faced with two alternatives: Is there in some sense a generic right to be defended or opposed – in this case the right to private property – or do we need to justify, severally, each of a number of specific rights (which may have the character of liberty rights, claim rights, powers or

immunities) which somehow together amount to the right in question, the right of ownership?

Clearly arguments at both levels may be engaged. Waldron, for example distinguishes ideals of collective, common and private property[14] and argues that, at this level of abstraction, the different property systems may be compared under an evaluative schema. This is plausible, or at least recognizable: one philosopher may point to the advantages in point of utility of a system of private property; another may defend a system of common property as necessary for the promotion of freedom. They both agree that it is the property system, thus abstractly conceived, that calls for defence.

But the opposite view is equally plausible. One may believe that the system of private (or common) property can only be justified piecemeal, in a bottom-up fashion. Suppose one believes that the right to private property is a congeries of discrete rules concerning possession, exclusive use, management, receipt of income, capital value, security and transmission, etc. . . .[15] One may require that each of these be vindicated separately. One may endorse rights of bequest – but these may conflict with rights of inheritance. One may insist upon rights of income from property and dispute that these give rise to the liability of payment of tax. What looks to be the core right – exclusive use of what one owns – may be limited or rejected on occasion of national emergency, or because a local authority requires the land for a bypass route or the construction of necessary housing. Individual rights may have to coexist with incompatible national or local rights according to some established system of adjudication. A tidy solution would find a line of justification for the generic right which could be employed to examine the credentials of the separate elements of that right as these are examined. An untidy solution would find one argumentative strategy being employed in defence of the generic right and then different approaches being adopted for whatever specific rights are deemed to comprise it. Thus one may find oneself justifying the generic right to private property as necessary for freedom and yet recognizing that rights of inheritance (as against, perhaps, rights of bequest) cannot be justified in this way. Maybe utilitarian arguments are the only ones which can find a purchase here.

Individual and group rights

There can be no doubt that the traditional rhetoric of natural and human rights focused directly on the rights of individual human agents. Rights are held by individuals against each other and against supra-individual agencies, most particularly the state. Although Hegel claimed that notions of individual rights originate in the concepts of Roman Law, and Richard Tuck, a modern historian, traces their origins to the early Middle Ages,[16] the notion of equal, universal rights first blossomed in the seventeenth century: for some a product of the individualism explicit in Protestant theology (each person having her own access to God and His revelation in sacred writings, unmediated by priests and saints), for others the ideology apt to emergent capitalism, for still others, a political response to the development of the nation-state – and all of these stories have some claim to truth.

Central to all these accounts is the idea of the *person* as the proper subject of rights, where *person* denotes the minimal moral status to which modern individuals do (or should) aspire. *Person* thus becomes a technical term of moral metaphysics, designating the individual human being as the maker of moral claims, the bearer of fundamental rights. To see oneself as a person is to make claims of right and, an important corollary for most rights theorists, to recognize the equivalent claims of others. Hegel characterizes this conception of morality in his commandment of right: 'be a person and respect others as persons.'[17] For Hegel (not frequently, and for good reason, thought to be one of the classical advocates of human rights), it is a distinctive feature of the modern world that individuals see themselves as discrete and different, atomistic loci of personal moral claims of right, a status asserted against others and recognized when asserted by others. You may well ask: What is the default position? How could persons *not* identify themselves in this elementary and obvious fashion? Hegel's answer is that this reflective perspective on the moral self is an historical achievement. Time was, man's first response to the question: What or who am I? put as an enquiry into one's moral identity, would be answered by spelling out one's membership of a family, tribe or wider community – an ancient Greek polis, perhaps.

We don't need to concern ourselves with this historical debate.

It may be that Hegel is wrong to view the claims of personality as historically emergent and parochial. Maybe individual human beings always, as a matter of fact, saw themselves as discrete human atoms. Hegel himself emphasizes that this is at best a partial and incomplete conception of the moral self. Nonetheless, as a description of the associated metaphysics of the human rights tradition, this account of the person is spot on. It enables us to see very clearly the foundation of rights claims in a social ontology which emphasizes the moral potency of discrete individuals, since rights claims serve to establish the moral boundaries of distinct persons. Moral rights serve as 'hyper-planes in moral space' for Robert Nozick,[18] partitioning the moral universe into a collection of individual rights bearers. The language of rights, paradigmatically, expresses the distinctive moral vocabulary of the metaphysical perspective of discrete persons. Both Hegel, in his discussion of 'abstract rights' ('abstract' because all that persons have to say for themselves *qua* persons is that they are essentially different from each other – there are no ends or goods distinctive of the sense each has of himself as a person) and Nozick, in modern times, in his discussion of rights as side-constraints (of which, more later) capture the heart of rights talk.

But to say that they capture the heart of rights talk is not to endorse that talk or the metaphysical doctrines it encapsulates, nor is it to claim that this individualistic perspective gives us the whole story about rights. It clearly does not. It explains the force, and for some, the priority of negative rights. It explains the sense in which rights violations are seen as boundary-crossings, but not the sense in which they may be failures of provision. But this is water under the bridge. Our central issue here concerns the typical subjects or bearers of rights, and, according to the account just sketched, these will be individual human beings. There is an intimate connection between a metaphysics of social singularity, social atomism, if you like, and claims of right which demarcate the boundaries of that singularity.

This has been noticed by critics of human rights as well as their advocates. Within the socialist tradition in particular, there has been a marked hostility to human rights talk predicated on this implicit individualism. With respect to Marx himself, this hostility principally derived from the thought that this metaphysics of the

person cut no deeper than economic man, the isolated consumer, producer or party to economic contracts, more particularly, the bourgeois capitalist entrepreneur. So the rights of man are in truth the rights of capital; the morality of rights is the appropriate ideology of capitalist production.[19] But Marx's point is wider than this and has been taken up by many who would repudiate the typically Marxist critique. The more general claim is that the metaphysics of the person, which stands as the foundation of doctrines of human rights, is fundamentally mistaken. This charge comes in a variety of forms. At its most radical it is the thesis that the person, as thus technically construed, is a fiction. There is no such thing as the isolated, atomic, bounded and discrete human agent. We are all of us, through birth and history, members of various communities – families, tribes, nations: whatever living associations frame our identities. This is the central theme of modern communitarianism.[20]

It is obviously true, if we think of the person-as-bearer-of-rights as a solitary individual, a Robinson Crusoe, or as a person bereft of all affective ties to other human beings, recognizing no allegiances or claims of membership, that there are few or none such. The 'unencumbered self' *is* a fiction.[21] But to speak of the person as discrete and bounded should not be taken to express the whole truth concerning the social ontology of individual human beings or their derivative moral or political standing.

The metaphysical debates of liberals and communitarians concerning the proper ontological locus of rights and duties cannot be reviewed here. So let me state my own view without argument and with an invitation to readers to pursue matters further: of course we are, severally, discrete human beings. The further thought that we are *persons* confers moral potency to this, now almost universal, perspective amongst self-conscious agents. As *individuals* we have interests so strong that they require us to impose duties on others. The right to life, taken as an assertion against others that they shall not murder us, is a clear example of this way of thinking. So is the right to health-care, where this is not claimed on the basis of e.g. one's role as family breadwinner, but on the basis of one's own interest in continued living. The right to freedom of occupation, taken as a denial that others may allocate to us tasks which match *their* conception of our abilities,

is another. The nearest we get to an argument here is the thought that such claims as these would be unintelligible were we not to identify them as the demands of individual human beings. But this is not to insist that all human rights claims have this character. The obvious counterexamples are the political rights: standardly the right to vote, but otherwise the various rights which are required by the ideal of participation in the political life of the community – rights to the free expression of opinions, of free access to information, to the free association of like-minded individuals to review, and if necessary amend, their political commitments and to publically agitate on behalf of these – to hold public meetings or otherwise demonstrate their policy proposals. None of these rights make sense as the precondition of individual projects. Each of them presupposes a basic recognition of citizenship: the thought that, alongside others, one has an active part to play in the political life of the community. Political rights, for the most part, make sense against a background of communal participation in the decision-making processes of the community. The citizen takes part *qua* citizen, in a manner that would be unintelligible if allegiance to the decision-making powers of the community were not understood. It is as citizen, not as person, that one claims political rights.

This idea – that individuals first cite their association with others, then demand as rights whatever this effective association demands, has application over a wide range of characteristically human activities. Not only do we think of individuals having rights as members of groups, we think of groups of people having rights themselves. Talk of families having rights, or clubs, or churches, or firms, or still wider communities being rights bearers, is not metaphorical, nor does it reduce to a concatenation of individuals' rights. The relation between the rights of a community and the rights of individual members may be complex and distinctive. A crofting township has exclusive rights of land use. Only members may graze cattle on the common land. Individual crofters have inclusive rights; each may graze up to five cattle, let us say, without infringing the grazing rights of other crofters.[22] Often the articles of association of groups will make provision for individual rights to be assigned upon dissolution of the group. Club members may have individual rights to a share of receipts, should jointly

held property be sold, for example. Individual members of families will be assigned rights to a portion of the family assets should the family dissolve in divorce. It would be a mistake to deduce that the assignment of rights which follows dissolution reveals the basic pattern of rights holding when the association is operative. A structure of inclusive rights is not shown to be exclusive after all simply because exclusive rights are granted when the association is wound up. Following divorce I may expect to claim half the value of family assets. It does not follow from this that I, presently married, own exclusively half the family car.

Group rights are tricky to analyse because groups have radically different normative structures. Still, one interesting thought may be hazarded – that the assertion of group rights always attests the existence of the group as a unit of moral agency, having something of the boundedness and singularity claimed for individual persons. One way of making sense of the notion of an artificial or corporate person is to mark the distinctiveness of the hypothesized group in terms of the legitimacy of rights claims. Families have rights that may be asserted against other families or other institutions. As a parent, I recalled being mildly worried by my children's reports that they had been invited by their class teacher to recite some 'news'. Principle (I insist!), rather than bad conscience or potential embarrassment, caused me to worry that family privacy rights may well be invaded by this practice. Nations, likewise, advertise themselves as units of moral agency when they claim rights of territorial sovereignty against invaders. It would be a mistake to think that politicians who denounce territorial aggression are speaking up as the agents of those individuals whose private holdings are under threat. Does it make sense to speak of the rights of the human race? I can think of no actual cases where it does. Could it possibly make sense? Only, I think, in circumstances where it is recognizable that the interests of the species as a group need to be asserted against outsiders – Martians, say, to use an image from outdated science fiction. It is not suprising that when such talk is used to legitimate the eating of meat or animal experimentation that critics denounce it as 'speciesism', since that is exactly the presupposition: the human species is a distinct grouping with proper interests to defend and promote against the competing claims of other groups.

Mention of group rights gives rise to a special difficulty which should be noted before we move on. I have not so far explained how group rights (or, indeed, any rights) may be defended, having sought to explain only how they may be understood. Recent literature on group rights, motivated in part by efforts to come to philosophical terms with the practical problems of multicultural coexistence, has revealed a distinctive form of conflict between rights claims.[23] This is the conflict between rights claimed by some specific group, generally to live lives in accordance with their distinctive religious beliefs, and rights which members of that group may claim as individuals against that group. The conflict is especially hard where the individual rights equate to or are derived from universal rights such as freedom of conscience. One example that Kymlicka discusses concerns the right of Amish parents to withdraw their children from school before the age of 16, thus isolating them from the attractions of the outside world and better securing their allegiance to the traditions of their community. This practice severely reduces the opportunities for Amish children to determine for themselves whether they wish to continue to subscribe to the faith and lifestyle of their community, since it reduces their ability to canvass alternatives. It poses, for the liberal, the general question of whether individual rights should be assigned priority over group rights, and readers may find many other, less starkly described, cases which raise similar issues. When freedom of worship licenses freedom to indoctrinate the young, freedom of the individual conscience may be effectively compromised. Conflicts of individual rights are endemic. Suppose they can be resolved piecemeal by investigating the relative stringencies of the rights in conflict or the relative importance of the interests that the right claims protect or promote. So long as we accept that group rights may not be decomposed into a set of individual rights (and the existence of conflicts of the sort decribed may itself count as a reason for supposing that they may not), the question at issue may be put as the question of whether group rights are systematically less stringent than individual rights. In advance of broaching more general questions concerning the justification of rights claims, I can think of no reason why they might be – which suggests that we turn immediately to the hard problem of justification.

The justification of rights

Having distinguished, in Hohfeldian manner, the variety of rights and having broached other questions concerning the analysis of rights claims, we can move forward to discuss how rights claims are to be justified. We can make a useful beginning by looking at the classical doctrines of John Locke.

Lockean themes: modes of ownership

As we saw briefly above, Locke offers a most straightforward argument for natural rights. Mankind, he tells us, is God's creation. He made us and He owns us. Our appointed task is to serve His purposes and our life of service requires that we all find equal protection in our independent pursuit of His design for us. Since we cannot act as trustees of His purposes unless our lives, health, liberty and possessions are respected, we have a natural right to these goods, subject to our respecting equivalent claims that other trustees of his purposes make upon us. A natural right is a right asserted in accordance with natural law, that is God's law, prescribed to us as His creation.[24] Hence we can claim against others that (negatively) they do not interfere with our life in God's service and (positively) as parents or, in extremis, fellow creatures, that they provide us with the wherewithal of properly human life.

This is a lovely argument. Grant the premisses and the conclusion swiftly follows: each may claim and all must respect the rights deemed necessary for the achievement of values everyone should endorse. What is more, this line of argument is fertile; it enables us to work through in detail and state limits on the generic rights Locke describes. It enables us to flesh out the right to property and to detail the political rights appropriate to the right of equal liberty. These turn out to include rights of punishment and rebellion, in case these further rights are necessary for the protection of individual rights. Sadly, the argument has no more strength than its premisses bestow, and however much one approves of Locke's conclusions (or looks forward to developing the argument further in directions Locke never dreamed of) one cannot expect all of those to whom claims of right are directed to accept the

theological foundations. Well and good if these premisses find acceptance. But if they don't, and one can expect that for many they won't, other arguments will need to be advanced.

Locke himself believed that the natural law which vindicated natural rights was discernible by reason. It is a matter of scholarly debate how far reason, as Locke construes it, can operate independently of one's acceptance of religious doctrine. If reason is a matter of exploring the implications of truths revealed in scripture, evidently it is not a guide to natural law or morality which non-believers can be expected to trust.

We can put this dispute concerning the interpretation of Locke's doctrines to one side, since some have found in his writings premisses they believe all can accept, premisses which might serve to ground human rights. When, in Chapter V of the *Second Treatise*, Locke tackles the hard problem of the right to private property, he insists that 'every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body and the *Work* of his Hands, we may say, are properly his.'[25] Call this doctrine the Thesis of Self-Ownership.

The self-ownership thesis has powerful friends and creates strange allies. It vindicates Robert Nozick's claim that the taxation of income for redistributive purposes is 'forced labour',[26] and it serves to ground the charge of exploitation of labour under capitalism pressed by G.A. Cohen.[27] The thought that we naturally own ourselves is of the first importance in understanding historical debates concerning the legitimacy of slavery and the frequently associated thesis that legitimate hierarchical social and political relations must have consensual foundations. Some argued that, owning ourselves, we may sell ourselves or otherwise consent to slavery or political subjection. Others claimed that the property we have in ourselves is inalienable – slavery and subjection are thereby unjustifiable. Others argue that, since the self cannot be alienated in the fashion of private property, the self cannot intelligibly be owned – by others or by ourselves.

It is clear that there are vital issues canvassed in these disputes – but I shan't engage them in any depth. I see the vindication of human rights in terms of self-ownership as a kind of philosophical shadow-boxing whereby metaphor, allusion and analogy take the place of argument. Let me explain. Rights of ownership are

generally exclusionary (but not always so – the possibility of *inclusive* rights of ownership should be kept in mind by the sceptic). A standard element of the generic right to private property is the right to exclusive occupation and use. What one owns one may employ for one's private use. Already we have a picture of the owner acting within a space of private possession, which space is determined and bounded by specific rights to assignable property. The picture can be elaborated; if the possession is land, the boundaries of my rights are drawn at my fences. You may not cross without my permission otherwise you violate my rights.

The thesis of self-ownership states that persons stand in a relationship of ownership to themselves. Since we take them to own themselves, there are things which others may not do to them without violating their rights as self-owners. We can trace out a rough symmetry between the rights of self-owners and the rights of owners proper. Just as you have a duty not to destroy, damage, use or invade my property, so you have duties not to kill, injure, enslave or otherwise aggress against me. A thesis of self-ownership is perfectly acceptable if it collects together agreed rights and then operates as a sort of shorthand for them. To say that rape offends a principle of self-ownership will go proxy for an argument to the effect that persons have a right to physical integrity (along with other rights in the self-ownership list) and that rape is a violation of this right, i.e. one right amongst the collection. On this account, one might distinguish rights of self-ownership from rights of collective pursuit, rights to engage in activities alongside others, taking this latter category to include political rights and rights of non-political association. No one can object to a vocabulary which usefully synthesizes a range of operational concepts.

If we think of rights of self-ownership in this way, believing the concept finds useful philosophical employment, who can gainsay it? Unfortunately, though, it may be paraded as a justificatory claim – that persons have such and such rights *in virtue* of being owners of themselves, that claims of right may be *derived* from a person's status as self-owner. This is clearly Locke's strategy in the argument cited above. Suppose one were to make such a claim. Straight away one would face the demand that the right of self-ownership itself be justified. I don't want to insist that this is

impossible, illogical or inconsistent since I don't know how this might be shown. I do insist, however, that this effort would be misdirected. Murder, rape, assault, theft, damage and trespass: each of these should be determined as wrong quite independently of any theory of self-ownership. Rights to life, bodily integrity, and property do not need us to defend an antecedent right of self-ownership.

An open-minded, reflective individual of the sort that is attracted to philosophical speculation may well be stumped by the question: Why is it wrong to murder or rape or steal? I think it is unlikely that anyone such could find an answer that is both convincing and recognizably deeper than the intuitions which prompt their recognition of the moral seriousness of questions such as these. This is blunt assertion. I may be wrong. No doubt questions will multiply. Of one thing I am sure: no one should advance the concept of self-ownership as somehow foundational. And this not because novel doctrines can't turn out to be true or illuminating. Rather, doctrines of ownership are *too* familiar. They carry the baggage of ancient debates concerning property rights – and such doctrines as these have been put in question. It is a counsel of despair to urge that one first settle philosophical questions concerning ownership and then move on to derive a full account of human rights from the conclusions reached.

As suggested above, the idea of self-ownership has shown itself to be particularly attractive to liberals in the context of debates about slavery. For if the self-ownership theory is recognized as a self-evident truth, it challenges straight off the claim that one person may be the property of another, that is, a slave. But this challenge may be met. Some might disagree with the claim that the right to liberty is inalienable, imagining circumstances in which one might literally trade risky or impecunious freedom for well-fattened slavery. If the alternative is death (certainly) or great shame (perhaps), slavery might look an attractive option. These questions are deep and ancient (and modern) philosophers have explored them.[28] At the heart of these discussions is the attempt to characterize a minimal moral status attributable to all (or just about all) human beings – the moral status, as mentioned above, of the person. I claim that the thesis of self-ownership cannot explicate this status. At best, it can summarize the results of

such a conceptual exploration. Is there a better alternative to the Lockean theme of self-ownership? Many will find this in the concept of autonomy.

Autonomy again

We encountered the concept of autonomy when discussing the value of freedom. For many philosophers, discussions of freedom and rights cover the same conceptual terrain. It seems to matter little whether we think of private property, for example, as the object of a human right or as one of the classical freedoms. It would be hard to disentangle discussions of the right to practice one's religion from discussions of freedom of worship. Rights may be described in terms of freedom – the right to free speech is an obvious example. The relation may be even deeper than that evinced by coincidence or connectedness of usage: in a famous paper, H.L.A. Hart argued for 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'.[29] Those who advocate negative claim rights, rights to non-interference, evidently value freedom of action within the space created by the proscription. Positive claim rights, demanding the provision of some good or service, may articulate the requirements of positive freedom. Generally, those who value freedom may express their claims in terms of rights, insisting as a matter of human rights that the valued opportunities be provided or protected. This suggests, albeit at the cost of some strain in ordinary usage, that the languages of rights and freedom are intertranslatable, that liberal values may be expressed as rights or freedoms, that the liberal is given a choice of moral idiom.

Furthermore, one may believe that this conceptual luxury has analytic foundations in the concept of autonomy. We have already noticed how, for some, the value of freedom is founded in the ideal of autonomy and we have given this thesis qualified endorsement. Suppose that one is operating with a simplified model of autonomy characterized as reflective choice.[30] We can now tie the analysis of both rights and freedom to autonomy. An agent's freedom is his capacity to select a way of life that suits him and act in accordance

with this choice. In similar fashion, one has a right in case he is empowered to make a protected choice.

The relation between freedom and rights is a philosophical minefield and the relation of each to grounding considerations of autonomy cautions us to step very carefully. If one employs a simple (negative) conception of personal freedom and restricts rights to negative rights of individual action, one can see straight away that the appropriate sphere of freedom is demarcated by the ascription of rights which impose duties of non-interference on governments and other agencies. At its most basic, the value of autonomy grounds rights claims which impose duties which thereby protect freedom. Freedom is violated when agents transgress the duties required of them in virtue of the legitimate rights of autonomous agents. Would that philosophy were so simple! We have already seen the value of freedom is too complex to permit such swift analysis. We should not be surprised if the same conclusion is forced by our investigation of rights.

Let us advance the thesis that human rights are justified on the grounds that they promote autonomy. One bad argument for this thesis is that it follows directly from a central feature of rights – that rights bearers are essentially in a position of choice with respect to the fulfilment of the duties imposed by the rights they claim. To have a right is to have a choice – which is to express the agent's autonomy. Thus if I have an exclusive right of access to my property, it's up to me whether I grant you permission to walk around it. The element of choice that figures in all rights claims consists in the rights bearer's power of waiving the duties which his possession of the right imposes.[31]

The central claim of this thesis may be disputed. Some rights may be inalienable, their bearers may not be able to waive them. The right to be free has been thought by some to have this status, as mentioned above; one cannot legitimately give oneself up to slavery. The right to life has been thought inalienable, to the point where suicide is proscribed. The alienability of these rights is controversial, but the issues cannot be settled by conceptual *fiat*, by an insistence that no right can be inalienable since rights holders always, by definition, have a power of waiver. A different kind of case, but one making a similar point, concerns those who have the right to vote in jurisdictions where submitting a ballot paper is

compulsory. They may or may not have the freedom to vote – analysts differ on this issue – but voters who do what the law requires of them are acting in accordance with a valuable right. Some may think the right would be more valuable were citizens to be offered the associated right to abstain, but that it is less valuable (if indeed it is less valuable) should not lead us to discount it as a right.

There is a different strand of argument connecting autonomy and rights. The sense of 'autonomy' which is employed is an informal development of the skeletal Kantian account given in terms of a capacity to formulate universally applicable moral laws and act in accordance with them or the right not to be treated as a means, merely. As a recent theorist puts it:

> Recognizing autonomy as a right requires us to respect the dignity of the person: to treat others not as playthings or objects or resources that we may use for our own purposes but as individuals who are capable, at least potentially, of forming plans, entering into relationships, pursuing projects, and living in accordance with an ideal of a worthwhile life.[32]

Dagger describes autonomy as the capacity to lead a self-governed life. 'Every other right either derives from it or is in some sense a manifestation of our human right to autonomy.'[33] This echoes associated themes familiar in the work of other celebrated modern liberals: rights reflect the fact of our separate existences, the fact that there are distinct individuals, each with his own life *to lead* (Nozick); they require us to take seriously the distinction between persons (Rawls); persons equally have a right of moral independence (Dworkin). Such rhetoric is frequently heard in discussions of utilitarianism, which is held, through its principle of aggregation, to violate our recognition of the discreteness of moral persons – and we shall return to this issue later. But whether directly, in celebration of autonomy, or indirectly, by way of the refutation of utilitarianism, such arguments highlight the conceptual linkage between the notion of the person as a separate and self-governing agent and the normative language of rights.

Take Dagger's claim at its most ambitious. Is the value of autonomy strong enough or clear enough for us to be confident that it can deliver a full derivation of human rights? There are certainly

human rights which seem to manifest the value of autonomy. In the case of the right to life, if we construe this as requiring others not to kill us, it is easy, too easy perhaps, to see why killing us would violate our autonomy. An autonomous life is a life after all. No life, no autonomy – just as the most effective way to stop me breathing is to kill me stone dead. Suppose we think of the right to life as a positive claim right. Again, I won't be autonomous (or much else, apart from a corpse) if you deny me the life-saving medicine. If there is an oddity here, and I think there is, it lies in the thought that what is wrong with killing a person is the denial of their autonomy. Take someone who is not autonomous. Whatever capacities underly autonomy, rationality say, or the ability to abstract from and appraise, then control, her desires: if these are absent through some psychological condition, the wrong of killing her cannot be a function of the denial of her autonomy. Whatever horrible example we have in mind – the baby, the severely handicapped adult or the demented old person – theory has got out of hand if we deny them the right to life which is accorded to other (more real?) persons. And most readers will recognize an *ad hoc* solution in the claim that to kill them would be wrong, but for reasons other than that they have a right to life which we claim for ourselves – as though to kill us would be to double the wrong which is inflicted on such poor souls, or be wrong for more reasons.

Think, to make a different point, of my right to physical integrity which would be violated were you to punch me on the nose as you passed me in the street. You hit me and pass on. I clear myself up and make my way home. I can think of lots of reasons why you have done me wrong. Your violence has cost me – some pain and a dry-cleaner's bill to take the blood off my suit. Have you diminished my capacity for self-governance? Have you altered my plan of life? You may or may not have done. If you reduce me to a timid, housebound wreck, you surely have. But I may not be thus affected. I may regard a mugger's assault as yet another cost to be borne by those unfortunates like myself who, all things considered, choose to work in the inner city. In such a case, I may well deem that my rights have been violated yet regard my autonomy as intact. I may resolve not to alter my route to work. Don't let these people win, I say, sensibly or otherwise, whistling in the wind.

There are clearly wrongs done to individuals which may impair

or eliminate their autonomy which are not wrongs only, or primarily so, on just these grounds. And there are violations of rights which may, but may not, violate their autonomy. My hunch is this: if we construe respect for rights as respecting autonomy and then think of the violation of autonomy on Kantian grounds, as treating folks not as ends but as means merely, of course my rights are violated when you treat me as a punchbag. But then (and this is also a thought many Kantians endorse) this is the mark of all wrong-doing.[34] This conclusion strikes me as too strong (as does the lesser claim associated with Nozick and Dworkin that all political morality lies within the domain of persons' rights).

At bottom, my worry is that the value of autonomy is being asked to do too much work when it is employed as the foundational value of *all* ascriptions of human rights. If one uses a thin (Kantian) conception of autonomy, the line of derivation from the claim that persons are ends-in-themselves to the justification of human rights is likely to be too attenuated to be convincing. If one uses a thick conception of autonomy – and we have seen how Dagger amplifies the core Kantian insights – the autonomous life becomes, quite generally, the life well led, a life distinguished by plans, projects, relationships and ideals. If we demand: Which plans, projects etc. . . . count as expressive of autonomy? we can expect both a formal and a substantive answer. The formal answer may restrict plans and projects to those that are compatible with others' pursuit of their plans and projects; my autonomy should not be purchased at the cost of the autonomy of others. This strikes me as overly restrictive. Why should Jane not interfere with Jill's pursuit of the relationship of her choosing if they've both selected Jack as the best father for their children? The substantive answer to the question will require an inspection of candidate projects and ideals to see if they pass muster. What tests do we have available? I'm sure there are plenty. One question to be asked concerns the harmfulness of the canvassed project or ideal. Remember, as we noticed in Chapter 3, it isn't a good feature of a career of child abuse that it is autonomously pursued. Racial supremacy is another rotten conception of the good life, but if it is mine own, can I call in the value of autonomy to support me in its pursuit? Surely not.

None of this is meant to demonstrate that human rights cannot