1. Basic Vocabulary and Core Concepts

The human rights community, like any other community, has a certain way of speaking. Such speech can at first seem peculiar, or even forbidding, to those not familiar with it. As with learning any language, though, it is both possible and pleasant to learn the human rights language, provided one has a welcoming introduction to it, and one is willing to put in the effort required. The language of human rights is an important one to know at this point in our shared history. It is an especially influential language in moral, legal and political debate, and like other languages is possessed of its own brand of logic and inner beauty. It is, moreover, a language designed to be spoken universally—by each and every one of us—and so we all have reason to inquire into its structure and significance. It is therefore essential, at the earliest moment, to grasp the basic vocabulary and the core concepts employed in the human rights language.

Human

One cannot say "human rights", of course, without saying both "human" and "rights." The assumption will be made, for now, that there is no need to define exhaustively what a human being is: we are, I suggest, rather well acquainted with such creatures. The importance of drawing attention to the "human" component of "human rights" is to introduce a core concept: that of a right-holder. A right-holder, very simply, is the person who has the right in question. Part of the distinctiveness of the human rights idea is the belief that *all* human beings have, or hold, human rights. While this seems to follow rather obviously when one looks at the language, it is actually a bold and substantive moral claim, and one which, when first introduced, went against the grain of history.

For the longest time, a person was considered a right-holder only if possessed of certain select characteristics, like being an able-bodied, land-owning adult male. The contemporary human rights idea, by contrast, suggests that *every* human being—man or woman, rich or poor, adult or child, healthy or sick, educated or not—holds human rights. We are all members of the human community, and so hold any and all of those rights referred to as "human rights". It is astonishing how often even human rights activists overlook this fundamental feature, often referred to as the "universality" of the human rights idea.

Overlooking universality is, of course, the very bread-and-butter of human rights violators, such as repressive governments. Officials in such governments often claim many things for themselves—rewards and resources, access and influence—which they deny to their fellow citizens. They thus fail to grasp, or respect fully, the twin commitments to *universality* and to *a form of equality* inherent in the human rights idea. Particularly vicious human rights violators, like the Nazis, often claim that those whose human rights they violate are not even human, and so are not entitled to claim human rights. The first step on the road to mass human rights violations is, invariably, to denigrate the very humanity of the person(s) targeted. The sad psychology seems always the same: denying the humanity of the hated person(s) dislodges both conscience and sensitivity, which normally prevent innocent people from being brutalized. Crude propaganda is sometimes used to cement such bizarre beliefs about the inhumanity of those targeted for persecution. One thinks, for instance, of the Nazi "news-reels" depicting Jewish people either as rodent-like vermin at the very bottom of the social scale, or else as fat-cat capitalists at the very top.[1] These are not the most consistent set of images, surely, but the crucial point remains that these images, and such beliefs, are at odds with the core commitment to *a baseline level of equality for all* present in the human

rights idea.

This notion—that as human beings we all share a baseline level of equal moral worth in some significant respect—is a thoroughly modern concept. It is morally moving yet surprisingly difficult to defend; it is inspiring yet constantly subject to critical challenge. This is not to suggest that the core commitment to elemental equality has no basis other than raw conviction or personal temperament: human rights advocates offer reasons to justify this commitment. It is, indeed, crucially important to justify it, otherwise the rights violator will ask why he should treat as respected equals those he rejects, spurns, and ultimately abuses and brutalizes. What makes us think that we are all equally entitled to human rights? What makes us think that, just because we were born biologically human, we are entitled to rights, regardless of what further qualities we possess? A fuller discussion of this complex topic, which combines issues of rights holding with rights justification, must wait for a subsequent chapter.

Rights

We turn now to the "rights" element in "human rights." What is a right to begin with? The Oxford English Dictionary (OED) offers a helpful introduction, suggesting a three-fold definition of a right:

1. "that which is morally or socially correct or just; fair treatment."

2. "a justification or fair claim."

3. "a thing one may legally or morally claim; the state of being entitled to a privilege or immunity or authority to act."

We do well here in noting, for the time being, how the concepts of morality and justice in general, and of fairness in particular, are implied in each one of these OED definitions of a right. Central, too, to these OED offerings are references to being entitled to something, to being able to claim something as one's own or as one's due.

It is important to be mindful of a meaningful yet subtle distinction, namely, that between "right" and "*a* right." The difference is that between adjective and noun: "right" is to "a right" what "black" is to "black car". In general, "a right" has a more narrow and concrete reference than "right" does. After all, a correct answer to an exam question is *right* but is not, presumably, something students have *a right* to ask their professor for during exam time. To have a right is to have something more specific and meaningful than abstract rightness on one's side: it is to have a well-grounded and concrete claim on the actions of other people and on the shape of social institutions, in particular governments. Just as we would much rather have a black car than mere blackness, we should much prefer to have a right over mere rightness.

There is considerable consensus amongst rights advocates that a right is well-defined, at least initially, as a justified claim or entitlement. *A right is a justified claim on someone, or on some institution, for something which one is owed.* In general, a right is a justified claim on other people, and social institutions, to a certain kind of treatment from them. The right-holder, in claiming a right, is asserting that he is entitled to be treated in certain ways by

other people and by social institutions. The need for justifying rights is obvious: we cannot be required to jump up and obey on somebody else's mere assertion. A right-holder must offer us sufficient reasons why we should treat him the way he wants. What counts as a sufficient reason is one of the most important issues in rights theory. It is a topic to which we will return and it demands that we offer plausible answers to the following questions: what can we reasonably require of people in social and political life? What, if anything, is so valuable that we can oblige, perhaps even force, other people and social institutions to provide for us?

Rights are Reasons, not Properties

The fact that a person claiming a right must offer the rest of us sufficient reasons why we should respect his claim provides us with insight into the ultimate nature of a human right. A human right, like any other right, is *not* a property of persons, rather, it is *a reason to treat persons in certain ways*. This is a crucial distinction, for on it rests the difference between the dated and discredited theory of natural rights and the more compelling and contemporary theory of human rights.

If one believes that human rights are properties of persons—an essential part of human make-up, as it were—then one is immediately confronted with sharp questions, like "Where are they?" If human rights are literally properties of personhood, then one should be able to display them for all to see. But, of course, nobody can *show us* his human rights. Human rights are, after all, not material things like cars, houses or oil paintings. Nor are human rights more immaterial things like personality traits, or psychological dispositions, which in general are also observable, albeit in a different way, over time. With enough

observation, for instance, one can discern that Jimmy is an angry young man; but all the observation in the world will not allow one to see Jimmy's human rights. This must mean that human rights are either non-visible properties of persons, or else that they are not properties of persons at all.

Older natural rights theorists, such as English philosopher John Locke, tried to suggest that human, or "natural", rights are non-visible properties of personhood. These older theorists, in other words, relied on a metaphysical conception of human nature to ground their claims about natural rights to things like life and liberty. We have rights, they said, in the same way that we have a soul. To have human rights simply comes with the territory, so to speak: the familiar ground of being a member of the human community. The enduring problem with such an approach to natural or human rights is that, as with any metaphysical postulate, it is incapable of being proven true.

Metaphysics literally means "beyond physics", and it denotes a realm of human thought in which physical evidence—observable, demonstrable experience—is either completely useless or, at the very least, insufficient to prove one claim over its very opposite. The existence of God, for instance, is a perennial issue for metaphysics. The fact that this debate endures as one of philosophy's major disputes is precisely because the issue is metaphysical—i.e. necessarily speculative, something which cannot be settled by pointing to physical evidence. The existence of God can neither be conclusively proved nor finally disproved, and so is destined to remain one of the ultimate intellectual teasers. After all, if God's existence could be proven, then what role would there be for religious faith? Faith, after all, is nicely defined as believing in something for which there is insufficient evidence. But God's existence cannot be disproved either: from the fact that we lack evidence of God's

existence it does not follow that there is no God. No evidence of existence is not the same thing as non-existence: the “New World”, for instance, existed even when people in the “Old World” lacked any firm evidence of its existence.

What these considerations indicate is that the older insistence on viewing human rights as non-visible properties of persons is, in fact, a metaphysical proposition which cannot be proven. While it cannot be disproved either, relying on it would threaten us, right from the start, with stalemate or deadlock when arguing over human rights: a far cry indeed from the universal agreement we are striving for. We probably do not want to rest our rights on so flimsy a foundation as metaphysical speculation. Flat assertions about souls or non-visible properties may make for pretty poetry, or inspiring theology, but they fail to persuade those dedicated to sober and compelling thought about hard choices in ethics, law and politics. Locke, for instance, may well have asserted that knowledge of natural rights is “written on the hearts of men” but the rest of us may be forgiven for not being fully satisfied with such a sweeping proclamation. It has great rhetorical force but small substantive content.[2]

Another problem which older natural rights theorists wrestled with was the issue of forfeiture. Many of us want to say that convicted criminals, for example, forfeit—or lose, or give up—their human right to liberty for the duration of their imprisonment. You do the crime, you do the time. But how can imprisonment be justified if human rights are properties of persons, part of the very fabric of their being as people? Some natural rights theorists responded by saying the answer is that imprisonment is thus unjustified, while such others as Locke said that a felon committing a crime somehow renounces his very humanity and becomes "a noxious Creature, like a Wolf or Lyon."[3] Both responses seem unsatisfactory.

There is nothing wrong with sending a convicted criminal to prison as punishment and it is palpably untrue that a criminal can no longer be considered a human being. The most plausible conclusion to draw here is that we should reject the assumption that human rights are properties of persons, woven into the very fabric of our being.

The nail in the coffin of the idea that rights are properties is this: to view rights as natural properties is, mistakenly, to mix up a fact (or description) with a value (or prescription). Make no mistake about it: human rights are *not* facts about us, rather, they are value commitments we have to treat each other in ways we think we all deserve. Human rights do not tell us who or what we are, rather, they tell us how we should treat our fellow human beings. Human rights do not describe our nature; rather, they prescribe our behaviour. *Rights, most generally, are reasons to treat persons in certain respectful ways.* This does not mean that such reasons never refer to facts about the kinds of creatures we are, or about how we are motivated to act. But it does mean that such reasons are not themselves part of our constitution as human beings. We do well here to note Jan Narveson's instructive phrase: "a person's rights are as real as his reasons are strong."[4] When someone says, “Respect my rights!”, we can always respond, “Why should we?” A person’s reasons for others to respect his rights thus become all important. So important, I submit, that after peeling away all the layers we witness that, at the very heart of human rights, is a set of especially powerful reasons informing us as to how we should treat each other and how we should shape our shared social institutions. *In the final analysis, rights are reasons*.[5] This only underlines the importance of considering what counts as a strong reason, how we are to know whether a "justified claim" is, in fact, justified. The forthcoming chapter on the justification of human rights will examine several of the most influential views on this vital issue.

Trumps

Contemporary rights advocates agree that a right is not merely any old claim, justified by a sufficient reason, to a certain kind of treatment, rather, it is an especially powerful and weighty claim. The very word "right" clearly connotes something serious and compelling, something which should not be denied lightly. Many rights defenders agree with Ronald Dworkin's famous declaration that "rights are trumps." Just as, in certain card games, a trump card beats all others, a rights claim "beats" such competing social values as the growth of the economy, the happiness of the majority, the promotion of artistic excellence, and so on. A rights claim is thought to be heavier—a better reason for action, something more deserving of our attention and protection—than these other social goals. Rights stand at the very foundation of political morality in our era. A standard claim about human rights, in this regard, is that respect for them is a necessary condition for a government to be considered minimally just and decent on the world stage. Respect for human rights is the price of admission for political decency; it is the touchstone of legitimacy for those with ambitions to rule.

Dworkin's declaration is sometimes taken to be an expression of absolutism about rights. Absolutism would be the belief not merely that rights are trumps but, moreover, that they are *always* trumps: that under no conditions can rival social goals beat out a rights claim in the competition for our attention, protection and social investment. It is important to note that this is not Dworkin's actual position. In fact, absolutism is an extreme view of rights which is not often defended nowadays. Dworkin's actual position is that rights are trumps *only if other things are equal*. If other things are not equal—if certain exceptional

circumstances hold—then rival social goals may actually have a greater claim on our attention. Consider a case of serious and widespread national emergency, such as war, famine, or epidemic. We might think, for instance in a country being swept by the deadly Ebola virus, that those afflicted should be quarantined and that the antidote, if there is any, should be made available to all who need it. We might think, further, that these things should be done, in such an extreme crisis, even if those afflicted are forced into quarantine against their will and even if the medical supplies have to be appropriated by force from a company which claims them as its property. In truly exceptional cases, such rival social claims as national survival, or the avoidance of widespread disaster, may be compelling enough to outweigh rights claims, maybe even some human rights claims. But Dworkin correctly emphasizes the rarity of such occasions and suggests that, in daily life in a normal society, we still feel the force of the claim that rights are trumps. It is reasonable, then, to note that it adds to our definition of a right to say that it is a *high-priority* justified claim to a certain kind, a respectful kind, of treatment.[6]

Hohfeld's Analysis

More can, and should, be said about the nature of a claim and its connection to the essence of a right. For this, we should turn to W.N. Hohfeld. Hohfeld, a former law professor, is one of the most cited authorities on rights: it would be a real challenge to crack open a contemporary book on rights which does not contain at least one approving reference to him. Hohfeld famously claimed, way back in 1919, that we should realize that a right may be one of four kinds: a claim; a liberty; a power; or an immunity.[7]

The OED informs us that a claim is well-defined as "a demand or request for

something considered as one's due." A Hohfeldian claim-right is a demand for something *from* some person or institution. It is a claim *on* somebody *for* something. A claim-right imposes an obligation on other people and/or on social institutions. In the language of rights theorists, a claim-right imposes a correlative duty. The duty literally co-relates with the right. There is no claim right-holder without a correlative duty-bearer. For example, if I claim that this book is copyrighted by me, I am demanding that, among other things, other people may not copy it without my permission and perhaps even some royalty payment to me. My copyright is a claim on other people's behaviour, as well as upon such social institutions as the legal system. We will return shortly to consider Hohfeld's important assertion that, of the four kinds of rights, only claim-rights are "rights in the strict sense."[8]

A liberty, according to the OED, can be defined as "the right or power to do as one pleases." A Hohfeldian liberty-right is quite different from a claim-right: whereas a claim-right imposes correlative duties, a liberty-right is, so to speak, duty-free. Liberty-rights survive and flourish only in an environment where there are no duties. Hohfeld's technical definition of a liberty-right runs something like this: Bob has a liberty-right with regard to an action only if no one else has a claim on him with regard to that action. Only if Bob bears no duties to refrain from the action can he be said to be at liberty to perform it, should he choose. If there is no claim to tie him down, Bob is a free man. Suppose, for example, that Bob is single and owns his house. Suppose further that, in his basement, he wants to install a private, full-length bowling alley. Now, the rest of us may find this lacking in taste (and may not be surprised that he is single!) but none of us have any claim on Bob that he not go ahead with it. It is, after all, his house; he bears no duties to anyone to refrain from refurbishing his basement in this way. He thus enjoys a liberty-right to do so.

Power's definition, in the OED, is "the ability or authority to do or act." Sally enjoys a Hohfeldian power-right to perform an action if some other person, such as David, can and will—or at least should—be affected by her action. For Sally to enjoy the power-right, David must be in some sense liable to her, in the sense that he is subject *either* to her power (i.e. her actual ability to act) *or* to her authority (i.e. her entitlement to act), or perhaps both. For example, holders of public office, whether it be the local mayor or the President of the United States, enjoy numerous power-rights. They frequently have both the power and the authority to affect our lives in a substantial way: by setting rates of taxation, for instance, or by their decisions about public investment in health care and education, or by sending our soldiers off to fight a war. Parents also have many power-rights over their children, rights which erode over time as the children grow into adulthood.

The OED defines immunity, in the relevant sense, as "freedom from an obligation." Hohfeld himself would be hard-pressed to improve upon this conception. For him, an agent like Jim has an immunity-right from the action of Alison if Alison has no power-right over Jim with regard to the action in question. If Alison has neither power nor authority over Jim, then Jim is immune from Alison's action. An example of an actual immunity-right would be the fact that, in most Western democracies, elected members of public legislatures are immune from being sued for anything they say during a debate in the legislature. Elected members of legislatures do not have to worry about being sued for slander, libel, or fraudulent misrepresentation, for anything they say during the course of a legislative debate. The goal of granting our elected officials such immunity is to encourage the maximum freedom of expression during legislative debates, in the hopes that such will ultimately forward the public good.

There are at least two different ways of interpreting Hohfeld's important argument that, of these four kinds of rights, only claim-rights are rights "in the strict sense." The first way is literal: only claim-rights are worthy of the narrow and high-priority status synonymous with rights, whereas the other kinds of "rights" are merely pretenders to the throne, so to speak. It is only those entitlements which make concrete claims on other people, or institutions, that deserve to be called "rights". The problem with this literal way of interpreting Hohfeld is that, while it makes for a meaningful distinction between claim-rights and liberty-rights, it fails to do so between claim-rights and power-rights, or between claim-rights and immunity-rights. For power-rights also make claims on others—claims of liability—and immunity-rights claim that others either cannot or may not have power over the right-holder with regard to the action at hand. Indeed, even liberty-rights seem to make, or contain, a claim of a kind: Bob, in our example, seems most centrally to be claiming that no one interfere with his liberty to install a bowling alley in his basement.

This leads us to the second, preferred way of interpreting Hohfeld: to say that a right "in its strict sense" has the nature of a claim is to say that, whatever other elements may be present—such as power, liberty, or immunity—the element of a claim *must* be present. A claim that other people, or social institutions, either should do something, or should refrain from doing something, is a necessary condition for a rights-claim. *A claim is at the core of a right*. Consider Peter Jones' compelling idea that, in any familiar kind of right, there is typically found a cluster of Hohfeldian rights:

"(I)f I have a property right in a car, that right is likely to consist of a complicated cluster of Hohfeldian rights. Typically these would include the claim-right that others should

refrain from damaging my car or using it without my permission, my liberty-right as owner of the car to use the car, the power to sell the car or to permit others to use it, and my immunity from any power of others to dispose of the car without my consent. In other words, a single assertion of right might, on inspection, turn out to be a cluster of different types of right."[9]

To this notion, I suggest, we add the further proposition that it is the claim-right within the complex cluster which is necessary; it is what genuinely causes the assertion to strike with the force of a right. It is the concrete claim on our personal behaviour, and on the structure of our shared social institutions, which gets our attention and demands our respect.

Claim, Right, Entitlement

A cautionary note about claiming is in order. The impression should not be gained that, for the rest of us to respect Brenda's rights, she actually has to claim her rights in the strict sense of verbalizing these claims, constantly letting us know what her rights are, with what she's got coming to her. The sense of claim here is not the very narrow one of *uttering* a claim. The sense, rather, is that of *being entitled to utter* such a claim, and to expect that it be fulfilled. We see this clearly when we consider as an example Brenda's being unable to speak, for instance because she is asleep. Her inability to speak, at that point, does not mean that Brenda lacks rights. She still has claims on others even when she is not shouting them at the top of her lungs, or filing a lawsuit in court. Indeed, it seems that verbal claims are necessary *only* when things have gone wrong and when the duty-bearer needs to be explicitly reminded of his duty, or punished for having violated it. It is perhaps most appropriate, then,

to view a right as the combination, or fusion, of *both* a claim *and* an entitlement. (It is interesting to note that the OED underlines this very tight conceptual connection by defining an entitlement as "a just claim, a right.") A right is an entitlement which endures even when the right-holder is not actually making a verbal claim and yet, most crucially, a right remains a justified claim, or demand, on the behaviour of others and the shape of social institutions. In other words, a right is a justified claim which remains justified even in the absence of verbal assertions: the reasons, even if unstated, still exist for the duty-bearer(s) to treat the right-holder in the appropriate way. These observations only underline the key insight that, in the final analysis, rights are reasons. Rights are enduring grounds for treating the right-holder in a respectful way.

Moral vs. Legal Rights

So a right is a high-priority entitlement, justified by sufficient reasons, to something one claims as one's due. But it is important to note that rights, thus defined, can be of two kinds: moral or legal. It is crucial to make this distinction, since far too often the two are run together. Legal rights are those rights, as just defined, which: 1) are actually written into legal codes, such as the U.S. Bill of Rights, or the Canadian Charter of Rights and Freedoms; and 2) when violated have concrete legal remedies, notably lawsuits seeking restitution. An example would be the legal right, codified in the American Bill of Rights, not to be put on trial twice for a serious crime such as murder, provided one has already been found innocent of the same charge in a previous trial. This is the legal right of American citizens not to be put in "double jeopardy."

Moral rights need not be written into actual legal codes: maybe they are, maybe not.

Moral rights exist *either* as rights within social moralities *or* as rights within what we might call a critical, or justified, morality. A social morality is a widely believed and practised code of conduct in a given society. For instance, in most cultures it seems to be a widely recognized moral right not to be lied to: we believe we are entitled to be told the truth and we condemn, criticize and shun those who lie to us. Though there are some cases when we excuse lying, in general nobody praises a liar, and no one enjoys being lied to. Being told the truth is something we feel is a reasonable claim on the behaviour of other people and on social institutions, especially our governments. A critical or justified morality, by contrast, is a complex and well-defined theoretical system of morals: it need not be widely believed and practised. It is more systematic and logically coherent than social moral codes and, at times, criticizes such social codes on grounds of inconsistency, incompleteness or hypocrisy. A prominent example here would be utilitarianism, an elaborate ethical code designed to maximize the greatest happiness for the greatest number of people. Perhaps another example would be human rights theory itself, as developed by professional theorists who devote their careers to understanding human rights and to extending their development.

It is important to note that there may be some overlap between legal rights and moral rights: moral rights, in either sense—but especially the first, social code sense—often find expression in particular legal codes which provide concrete remedies for their violation. For instance, the moral right not to be lied to is at least partially codified in most Western democracies in the form of the law of perjury: lying to a court, while under oath during a proceeding, is a crime for which there is legal punishment. Another relevant observation here is this: the fact that the U.S. Constitution has remained comparatively stable over more than 200 years may well be because the rights which it includes and protects are rights which

Americans largely endorse as part of their actual social morality. Widespread agreement between moral rights and legal rights will lead to relatively stable legal systems, as well as to reinforced social moral codes.

The degree of overlap between legal and moral rights does not diminish the differences between them. Two differences, in particular, must be noted. The first is that moral rights need not have legal codification for their existence and claim on our attention, nor effective legal remedies for their violation. There is no such thing as a legal right for which there is no law; but moral rights, in either sense, can exist and be real for people regardless of whether they are recognized in law. Indeed, changes in laws over time are frequently brought about because there has been a change in the social morality of the people, a change that is often first seen in the theoretical works of the professionals developing critical moralities. An example of a moral right not codified into law might be, say, the right in most Western cultures not to be betrayed sexually by one's partner, unless in the context of an "open marriage." You cannot throw your cheating partner into jail—it is not a legal right—but I suggest that most of us believe sexual fidelity from one's partner is a moral right, a reasonable claim on the behaviour of the partner, unless both have come to an explicit alternative arrangement. The social stigma surrounding adultery counts as some evidence in favour of this claim.

The second key difference between legal and moral rights is that legal rights need not be rights which are morally justifiable, either to the social morality of the particular culture or, perhaps more frequently, to plausible critical moralities. Many of us, for example, would say that the legal rights granted to slave-owners over their slaves in the American South before the Civil War were legal, but not moral. The same holds true for the legal rights

granted to whites, in preference over blacks, during apartheid-era South Africa. It is interesting and important to note that, sometimes, the rights held in social moralities may themselves be subjected to moral criticism from critical moralities. As a critical moralist would say: just because it is widely believed or done does not make it right. Sometimes even society-wide beliefs and actions need critical correction from a gifted expert or inspired leader. Such figures, when successful, are often referred to as “moral reformers” in the history books.

The question arises: are human rights moral or legal? This is a surprisingly difficult question to answer fully. The short answer is both. Many human rights have, in a number of countries, been written into legal codes, and they can enjoy effective legal protection. For example, one of the most codified rights in the various constitutions of the Western liberal democracies is to "life, liberty and security of the person." Claims to personal security and personal liberty are some of the most plausible human rights claims there are. But all too often, human rights are either not written into the laws at all, or are written into laws but not actually protected on the ground. History is relevant here: human rights came into being first and foremost as rights developed by philosophers and theologians in critical or justified moralities. They were then incorporated into social moralities, for instance through the pro-rights revolutions in America and France in the late 1700s. Since the end of the Second World War in 1945—and spurred especially by reaction to the horrors of the Holocaust—social commitment to the idea of human rights has both widened and deepened to the point where it is now one of the most influential moral and political concepts of our time. So, human rights are sometimes, in some places, legal but they began and continue in many places to exist only as moral rights. The contemporary human rights movement has, as

probably its main goal, the effective translation of the moral values inherent in human rights theory into meaningful and concrete legal rights. Making human rights "real", in this sense of translating fine thoughts and warm feelings into guaranteed legal protections, is what animates many human rights activists today.

A word about international law is appropriate at this point. In addition to being written in to the national constitutions of various countries, human rights have been written into the body of international law. International law refers to various rules agreed to by different countries in order to regulate their interactions. Governments come together to sign international treaties endorsing these rules and regulations. They then each return to their own countries and pass these treaties into law within their own borders. This procedure is referred to as “ratifying” the treaty, and in most countries this is done through the various constitutional means for turning a bill into a law. It may surprise some readers to know that there exists something called the International Bill of Rights, composed of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966). Most countries—almost all, in fact—have by now ratified this International Bill. In theory, this means that such countries have committed themselves to making human rights real within their borders. The trouble, though, with calling human rights "legal" in this sense of being codified into international law is that the enforcement mechanisms of international law are very weak, at least in comparison with those of national law. If one lives in a well-run country, one can have considerable confidence in the law being effectively enforced by the police and the courts. But if one’s distant relative lives in a country that is not well-run, then not only is the relative worse off, there is also little that one can do to ensure that the

relative will be treated well by his own government. There just is not the same network of effective social institutions connecting countries together as there is connecting people together within the borders of a well-run country. As a result, it is sometimes said that "international law" does not even deserve to be called "law" in its proper sense, since it is so much more difficult to bring outlaw governments to justice internationally than it is to bring criminals to justice domestically. There are, in practice, precious few international guarantees for the human rights of persons living in countries which refuse to make human rights real within their borders, even if those countries have signed all the international human rights treaties currently on offer. It thus seems justified to suggest that human rights exist first and foremost as rights in critical and social moralities, rights which many people hope to translate into effective legal rights throughout the world's many nations through a process of long-term political struggle, educational engagement and institutional reform.

General vs. Special Rights

General rights are those rights which make claims on all other people and all relevant social institutions. For example, human rights are general moral rights, held against all. No one has the right to violate, or perhaps even to ignore, the legitimate human rights claims of others. Special rights, by contrast, are rights which make claims only against particular persons or institutions, and usually only at particular times and under certain circumstances. A kind of special legal right would be, for example, the set of rights that a landlord in a particular country or state has against his tenants regarding the terms of the lease, and vice-versa. Such precisely defined entitlements are not claimable against all humanity; their scope is specially confined to the particular relationship in question.

Rights vs. Their Objects

It is crucial not to confuse a right, whether it is general or special, with its object. A right's object is sometimes also called the right's substance. The difference, once grasped, should never be lost sight of: a right is a justified claim *to* something, whereas the object of the right is that very something being claimed. Consider a property right, say, in a house. The right is the justified claim, or entitlement, to the house, whereas the house itself is the object of that claim. To use a metaphor, a right is like an airplane ticket: it is one's claim, or entitlement, to get on the plane when the flight is ready to go. But it is the flight itself which is one's main want, or object. This distinction is crucially important for all talk of making rights, especially human rights, real. To make a right real, it is not enough to get the right written into a legal code, nor even to get the majority of people in a culture to endorse it in their social morality. *To make a right real is to bring it about that the right-holder actually possesses the object of his right-claim.* Think of the airplane ticket metaphor: one does not really care about the ticket itself—the small scrap of paper—except insofar as it allows one to get on board the flight, which is what one really wants and why one bought the ticket in the first place. Likewise, one does not care so much about the mere entitlement to one's house or car, to one's raw right to vote in elections, or to enjoy personal security. What one really cares about is actually having a house, a car, a vote, reliable security, and so forth. Rights are always rights *to* something, and it is *the something* which we most want. This does not mean that rights themselves are valueless: try getting on board an airline flight without a ticket. Rights have, historically, proved rather useful in helping us get our hands on the things we want to claim as our due. First came the claim, and the object followed. The point here is that the

value of rights rests mainly in the way they facilitate and help secure our possession and enjoyment of the objects we claim from society as those things which we are owed.

What exactly are the objects of human rights? This is a controversial question, one for which no two rights theorists will offer the same answer. We will examine this question intensively in a subsequent chapter. It has already been suggested that, most generally, rights are justified, high-priority claims to a certain kind of treatment. Human rights, in particular, are justified, high-priority claims to that minimal level of decent and respectful treatment which we believe is owed to a human being. But what exactly is meant by "decent and respectful treatment"? How do we measure it? How do we know when we have received it? How do we know, conversely, when our claim to such treatment has been ignored or violated? It seems fair to say that we tend to measure and rate the calibre of treatment we receive from society by the degree to which we are secure in our possession of the following items: freedoms and opportunities; protections from serious threats; elemental regard and recognition from others; and also concrete objects, such as cars and houses. We know we are being treated decently when we actually possess, or otherwise enjoy, secure access to these important objects. It should, of course, be noted that these objects are not just “objects” in the familiar sense of the term. We can, and do, have just and high-priority general claims to things other than concrete objects: just because an object is abstractly-defined, it does not make it less vital to the minimal level of respectful treatment we are demanding when we demand that our human rights be satisfied. Indeed, we might judge that such abstractly-defined objects as security, liberty and recognition are just as important—perhaps even more fundamentally important—than the more concrete objects of our rights claims. It is, furthermore, quite plausible to suggest that our claims to concrete objects are justified

precisely by the fact that they are connected to the satisfaction of our claims to the more abstractly-defined objects. For example, many people have argued that owning private property is a justified right insofar as it is implied by the prior, more abstract, right to human freedom. One gets to claim the concrete object as a way of making real one's prior claim to the abstract object, which contains the overriding general value and reason for action.

Perhaps the most encompassing description for the objects of our rights claims is that they are important benefits: concrete goods, freedoms, protections, respectful treatment are all beneficial and all things we place great value on. Indeed, they must be: otherwise, why would we bother to claim them as objects of our rights? We deeply want things that benefit us importantly, be they material goods, security from violence, or the freedom to make our own choices in life. Which mixture of these important benefits provides us with the minimum level of decent treatment which every human being can rightfully demand? That is a topic whose answer must await fuller development in a future chapter.

Civil and Political Rights vs. Social and Economic Rights

We saw that, in the International Bill of Rights, there are two International Covenants: one on civil and political rights, the other on economic, social and cultural rights. This split has become controversial in recent times. The notion behind the split is that there are two kinds of human rights, distinguished by the unique set of objects to which each lays claim. Civil and political rights claim various freedoms and legal protections: freedom of personal conscience and expression; freedom of movement and association; freedom to vote and run for public office; reliable legal protection against violence; and the various due process rights, like the right to be considered innocent before proven guilty of a crime and the right to

a public trial before an impartial jury. Civil and political rights are sometimes called "first generation" human rights, because they were the first claimed by human rights activists. Such rights are the classical, traditional, canonical human rights recognized in the history of political struggle in the West. Economic, social and cultural rights, by contrast, claim concrete material goods and various social benefits, such as: a subsistence level of income; basic levels of education and health care; clean water and air; and equal opportunity at work. These rights are sometimes labelled "second-generation" human rights, for obvious reasons: after the first generation had been secured and the Industrial Revolution brought about sweeping social change, different objects started to be claimed by social activists as a matter of human right. There has even been talk, very recently, of a “third generation” of human rights—the latest set of claims, focussing on recognition and equality—but consideration of it is best reserved for later, since the aim in this section is to introduce the storied clash, or so-called clash, between first- and second-generation rights.

Contemporary human rights defenders, led in this matter by Henry Shue and James Nickel,[10] tend to deny that this supposed split, between first- and second-generation human rights, constitutes a split in kind. Most want to say that there is but one correct list of human rights, and it contains objects from both of these supposedly separate "kinds" or lists. Hence their use of the "generations" metaphor: the one set of claims is not utterly different from the other, it merely came later and seeks to complete the same task. More pointedly, the subsequent rights originated from, and remain sustained by, the same family of concepts and core values that are implied by those in the first generation. This inclusive contemporary view, however, remains hotly contested in some circles: there are still a number of theorists who insist that *only* civil and political rights are *really* human rights, whereas socio-economic

"rights" are merely desirable goals dressed up in the more powerful rhetoric of rights. Such skeptics, like Maurice Cranston, argue that if the objects of socio-economic rights were provided to everyone, that would impose outrageous costs on society.[11] Civil and political rights, by contrast, supposedly entail duties which are both affordable and readily assumed. It is not too much to ask for the standard civil and political freedoms, as well as for a well-functioning legal system. But it would cost society far too much, and prove far too burdensome, to provide everyone with drinkable water, basic education and health care, and a subsistence level of income—and that is assuming we could even arrive at an agreement on what defines such a level. The response from defenders of socio-economic rights points out that defenders of civil and political rights also staunchly defend the right to own private property, a right with socio-economic consequences if ever there was one. Furthermore, they suggest that civil and political rights also impose costly burdens: no one can suggest that running the legal system, for example, comes cheap. Yes, realizing human rights costs money, and absorbs real time and resources, but this is a price worth paying, owing to the great importance of providing everyone with the objects they need to be treated decently as human beings.

Negative vs. Positive Rights

This distinction has probably the highest profile, and is also the one that always generates the most discussion and debate. A negative right can be defined as one which imposes a correlative duty which calls only for *inaction* on the part of the duty-bearer, be it a person or institution. The duty-bearer can fulfil his duty merely by refraining from acting. For example, it is sometimes said that all a duty-bearer has to do, to fulfil his duty correlative to the right of

free speech, is not to interfere with the speech of others. One fulfills one's duty by doing nothing. (This does not imply, of course, that one must sit there and listen to the speech; it means merely that one fulfills one's duty by refraining from attempts to suppress the speech in question.) A positive right, by contrast, can be defined as one which imposes a correlative duty which *does* call for action on the part of the duty-bearer. The duty-bearer must do something to fulfil his duty in this regard. For instance, if the right is to a subsistence level of income, then social institutions have to provide that income to those who do not have it. They can do this through such means as social welfare transfers.

Many thinkers in the past, such as Cranston, were tempted to claim that negative rights line up with civil and political rights, whereas positive rights line up with social and economic rights: the former kind only demand forbearance and non-interference on the part of duty-bearers whereas the latter kind demand action, provision, assistance and aid on the part of duty-bearers. These thinkers concluded that, since it is both reasonable and affordable to require non-interference, and both unreasonable and costly to demand provision and aid, civil and political rights are the only genuine human rights in existence. Strictly speaking, this strict equation does not seem sustainable. For example, the construction and maintenance of an effective legal system clearly requires that a series of actions be taken, and yet a well-functioning legal system is something very near and dear to the defenders of civil and political rights. So here is a case of a civil and political right imposing correlative duties which are positive in nature. Thus, the older equation breaks down.

Not all rights theorists agree with the definition of negative and positive offered above. We will consider their objections in a subsequent chapter. The point which the present distinction between negative and positive underlines, regardless of whether or not it is

ultimately sustainable, is this: what duties can we reasonably require of people and institutions? What does respect for human rights really cost—and is it a price we are willing to pay? These issues are fundamental to the human rights debate: who, or what, should bear the duties correlative to human rights? Which exact duties are these? Where should we locate the line between a duty which is reasonable and fair, and one which is excessive and destructively burdensome? Indeed, what objects of human rights claims are so vital that it makes sense to say that we can require that they be made available to everyone, perhaps on penalty of being subjected to force?

Rights Violation

Much of our concern with respecting human rights is to avoid violating them. In general, a human right is violated when a duty-bearer fails to perform his correlative duty without just cause. Since human rights are designed to provide elemental protections and benefits, it follows that just causes for ignoring them, or for putting correlative duties to the side, are few and far between—and must be of exceptional and overriding importance. One is reminded here of our earlier discussion of rights as trumps. Human rights are not absolute: there are very rare personal and social emergencies when the duties correlative to human rights may, with sufficient reason, be put aside. Certain cases of self-defence, or war, come to mind. In the ordinary course of life, however, human rights outweigh all rival claims and inclinations. So for a person to take away an object of one's human rights—be it security or liberty—is for that person to violate one's human rights. Such a person may be resisted, and subsequently subjected to proper punishment. For a social institution to fail to provide the protections or benefits in question would be for it to violate human rights. It is important to consider

whether such failure is intentional and deliberate or not. Intentional failure is the clearest form of violation, and calls for the reform of a morally decrepit and wicked social structure. Non-intentional failure, while still a violation, calls for institutional reform of a different kind. In this non-intentional case, the institution usually lacks the wherewithal to do its part in making human rights real. It may therefore require assistance, or restructuring, or an injection of resources. But it does not deserve to be under the same dark cloud of disapproval as institutions of the first sort. Institutions which intentionally violate human rights are wicked, and have neither legitimacy nor grounds for complaint against those who resist them. Institutions which unintentionally violate human rights are merely disadvantaged, albeit seriously so. These regimes may yet earn their legitimacy by locating and prioritising the resources they need to become rights-respecting. Such disadvantaged regimes may call, in the first instance, for assistance rather than resistance.

Conclusion: Over-all Initial Definition of a Human Right

A human right, then, is a general moral right that every human being has. Sometimes it finds legal expression and protection, sometimes not. This legal variability does not undermine the existence and firmness of the moral right, and actually provides focus for contemporary human rights activism, where the goal is often to translate the pre-existing moral claim into an effective legal entitlement.

A human right is a high-priority claim, or authoritative entitlement, justified by sufficient reasons, to a set of objects which are owed to each human person as a matter of minimally decent treatment. Such objects include vitally needed material goods, personal freedoms, and secure protections. In general, the objects of human rights are those

fundamental benefits which every human being can reasonably claim from other people, and from social institutions, as a matter of justice. Failing to provide such benefits, or acting to take away such benefits, counts as rights violation. The violation of human rights is a vicious and ugly phenomenon indeed; and is something we have overriding reasons to resist and, ultimately, to remedy.

Notes

[1] The connection between hate propaganda and the promotion of brutalities against a targeted group can also be seen, very sadly, in the more recent case of the Rwandan civil war of 1994. Most estimates place the death toll for that near-genocidal strife somewhere between one-half, and one full, million human beings. For more, see G. Prunier, *The Rwanda Crisis: History of a Genocide*. New York: Columbia University Press, 1995. For more on the Holocaust perpetrated by the Nazis against the Jews, and other groups, during the Second World War, see M. Gilbert, *The Holocaust*. New York: Henry Holt, 1987. Most estimates of the death toll from the Holocaust coalesce around the figure of at least six million.

[2] John Locke, "Second Treatise" in his *Two Treatises of Civil Government*, ed. by P. Laslett. Cambridge: Cambridge University Press, 1988. First published in 1688-89. Chapter 2, Sections 8-16.

[3] Locke, "Second", Sections 8-16.

[4] J. Narveson, *Moral Issues.* Oxford: Oxford University Press, 1983, 22.

[5] I first made this claim in my *War and International Justice: A Kantian Perspective.* Waterloo: Wilfrid Laurier University Press, 2000, 90-109.

[6] R. Dworkin, *Taking Rights Seriously*. Cambridge, MA: Harvard University

Press, 1977.

[7] W.N. Hohfeld, *Fundamental Legal Conceptions Applied to Judicial Reasoning*. New Haven, CT: Yale University Press, 1919.

[8] Hohfeld, *Fundamental*, 15-6.

[9] P. Jones, *Rights*. New York: St. Martin's, 1994, 12-24.

[10] H. Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy*. Princeton: Princeton University Press, 2nd ed., 1996; J. Nickel, *Making Sense of Human Rights*. Berkeley: University of California Press, 1987.

[11] M. Cranston, *What are Human Rights?* New York: Basic Books, 1973.