

OXFORD

A painting of a small sailboat on a river. The boat is light-colored with a large white sail. A person in a dark jacket and cap is seated in the boat. The water is calm with a reflection of the boat. The background shows a riverbank with trees and buildings under a pale sky.

# ON HUMAN RIGHTS

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and will fall back on that.<sup>12</sup> So let me leave my brief sketch of the kind of rationality involved in the transition from prudence to morality as a kind of marker: I need a fuller argument at this point, but so too would a relativist who wants to resist the objective tendency of my line of thought.

Let me turn to the second example I mentioned: the human right to life. Does a relativist find a foothold at least here? There is, I said, an element of policy in this right. Such policies are, it is true, social artefacts. All that we can say, though, is that a different society might choose a *somewhat* different policy. There are strong constraints on the policies that can be chosen. The non-arbitrary determinants of the content of the policy are the prudential value of human life, facts about human nature, and facts about how societies work. The great value of life would lead nearly all societies to adopt severe restrictions on deliberately taking an innocent person's life, the severity manifesting itself in reluctance to recognize many exceptions, especially, given what people are like, exceptions that cannot themselves be clearly enough limited or that have to rely on agent's being capable of highly subtle distinctions. Some societies may, even so, turn out to be relatively liberal about the restrictions, while others are relatively conservative. But that fact offers no appreciable support for relativity. If the convention adopted by one society could be seen to be working rather better than the convention of another, then there is strong rational ground for the second to adopt the convention of the first. If, as is common, we cannot tell whether any one convention is working better than the others, then no society would have good reason to resist an obvious solution to the divergence: agreement on a common convention. This sort of difference between societies represents not a different framework of basic evaluations but merely a highly constrained difference in arational opting.

What may we conclude? I have carried my discussion both of the metaphysics of human rights (in the last chapter) and of their relativity (in this chapter) only so far. In the last chapter I did not argue for the reality of prudential values, but only for their factuality: judgements about human interests, I concluded, can be true or false in the way that judgements about an ointment's being soothing can be. In this chapter, I want to conclude that judgements about human interests and about human rights do not offer appreciably more scope for relativism than do judgements about natural facts. But I have already acknowledged<sup>13</sup> that one can be a relativist about natural facts—for example, the sort of comprehensive relativism that Wittgenstein

is sometimes thought to hold: relativity to a form of life. The assessment of this radical form of relativism I again leave to others.<sup>14</sup>

### 7.3 WHAT IS THE PROBLEM OF ETHNOCENTRICITY?

There are those who maintain that, even if ethical relativism were false, the problem of ethnocentricity would remain.<sup>15</sup>

What exactly *is* the problem of ethnocentricity? Perhaps this.<sup>16</sup> Human rights are, or are widely held to be, universally applicable. But if the only available justification for them is in Western terms, then they are not universally authoritative. If this were the problem, it would be overcome by establishing an objective justification of human rights authoritative for all rational beings. An objective justification of this sort would be sufficient, but perhaps not necessary. Certain forms of intersubjective justification might also do.

Still, if such an objective or intersubjective justification were forthcoming, a problem of ethnocentricity might even then remain. Such justification may be a long way off, or may take some societies a long time to come around to, and the language of human rights is something that we use now and have reason to go on wanting to use now. Perhaps we need a case for human rights, or even a variety of cases, not made in what for many are alien Western terms. Perhaps we must still aim to avoid ethnocentricity.

But this does not follow. Hundreds of thousands of Westerners have adopted Asian religions, and not because they have managed to find Western metaphysical and ethical counterparts for these often culturally remote Asian beliefs, but, on the contrary, because they have looked into these religions on their own terms and been attracted by what they found. No one regards their Eastern origin as, in itself, an unscalable barrier. The alien can be baffling, but if this problem can be overcome by Westerners in the case of Eastern religions, why not Easterners in the case of the much more accessible Western human rights?

Full, definitive rational justification aside, there seem to me, as I said earlier,<sup>17</sup> to be two ways to bring about unforced agreement on human rights. One would be to put the case for human rights as best we can construct it from resources of the Western tradition, and hope that non-Westerners will look into the case and be attracted by what they find. The other would be to search the ethical beliefs of various non-Western societies for indigenous ideas

that might provide a local case for human rights, or for something not unlike them. This search is a valuable component of the current debate about Asian values, and many writers have helpfully explored the conceptual resources of Islam, Buddhism, Confucianism, and so on to that end. At first glance it will seem that this second approach (let me call it the less ethnocentric approach) is clearly the better one simply because less ethnocentric. But on a longer look the first approach (let me call it the more ethnocentric approach) is, I want to propose, on balance, preferable.

We now, in these cosmopolitan times, tend to exaggerate the differences between societies; societies change faster than foreigners' pictures of them.<sup>18</sup> It is true that different parts of the world have sometimes had radically different histories, which still exert an influence on their vocabularies, their ways of thinking, their religions, their values. But the influences on the members of virtually all societies are now much more a mix of local and global than they were even a hundred years ago. Since then there has been a massive increase in global communication, convergence on economic structures, homogenization of ways of life due to growing prosperity, and widespread travel and study abroad precisely by the persons most likely to be influential in their society. Too many contemporary writers merely echo Rawls's belief that a pervasive and ineradicable feature of international life is a radical inter-society pluralism of conceptions of justice and the good. But Rawls's reasons for regarding these differences as ineradicable are difficult to find. We exaggerate, in particular, the disagreement between societies over human rights. Several Asian governments emphatically affirmed human rights in the Bangkok Declaration of 1993, though, it is true, also insisting that 'while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historic, cultural and religious backgrounds'.<sup>19</sup> To declare that human rights are 'universal' but qualified by 'particularities' makes one alarmed about what that qualification will be used to justify. Still, there are loopholes in human rights themselves; no human right is absolute. Westerners themselves often contribute to the exaggeration of differences between East and West by exaggerating the strictness of the Western conception of human rights. Much of the flexibility and qualification in the Eastern conception is there, too, in the Western conception, on an accurate account of it. There is a wide variety of conditions that outweigh or qualify human rights: for example, if the very survival of a good government is at stake, or if a large number

of lives can be saved from terrorist attack.<sup>20</sup> And there is a great difference between possessing a freedom and its possession's being of value. This raises the question, also prompted by the Bangkok Declaration, whether social and economic rights have priority over civil and political rights. I myself think that the arguments go heavily against such a priority,<sup>21</sup> but these are all legitimate questions, as the United Nations Universal Declaration (1948) perhaps too amply acknowledged,<sup>22</sup> and they deserve serious answers. Still, these legitimate questions are raised by the 'particularities' not of Asian societies but of any society in certain circumstances of emergency, or at certain stages of development, or in facing certain ethical choices that we all face (e.g. between the values of individualism and the values of community).

How might the less ethnocentric approach go today? An obvious move would be for members of each society to look for their own local understanding of what, according to the United Nations, is the ground of human rights—'the dignity of the human person'. One's local explanation of that idea need not repeat my explanation: namely, autonomy, liberty, and minimum provision. It might also include, for example, forms of justice and fairness and well-being that my account does not.<sup>23</sup> But there is a problem for this whole strategy for reducing ethnocentricity. The less ethnocentric approach, on the present interpretation, would come down to finding local values similar to the Enlightenment values of autonomy, liberty, justice, fairness, and so on. It would look for local counterparts of whatever Western values back human rights. It would then have to rely on the indigenous population's seeing how valuable these values or close counterparts of them are, and how they can serve as the ground of human rights. But this is virtually what the more ethnocentric approach does.

The less ethnocentric approach might, of course, aim for greater independence of the Western approach to human rights. It might look, not for local counterparts of Enlightenment values, but for possibly non-equivalent indigenous values that can serve as that society's own peculiar ground for human rights. The Western ground and various non-Western grounds might turn out to support pretty much the same list of human rights. The advantage, it might be thought, in indigenous societies' aiming for independence of Western ideas, would be that they would then accept human rights discourse more readily. Global conversation in terms of human rights could start straightaway. The drawback, however, is that the conversation would be likely

to break down early. A useful human rights discourse is not made possible just by agreeing on the *names* of the various rights, which is all that agreement on the list secures. We need also to be able to determine a fair amount of their content to know how to settle some of the conflicts between them. Think of how the international law of human rights would be constrained if it knew only their names. To know their content and ways to resolve their conflicts requires knowing what the values are that ground human rights and to reach some measure of agreement on them. That is, international law requires such knowledge if, as I shall argue later, international law aspires, and should aspire, to incorporate basic human rights with ethical weight. It is hard to tell how well the international community could scrape along agreeing only on the names of human rights; perhaps we are not far from that position now, and the discourse of human rights has, none the less, had some undeniably good results. But we should be much better off if we could agree on the contents of human rights and how to resolve their conflicts. And that constitutes a strong case for favouring the more ethnocentric approach, if it were found feasible.

And it is feasible. The deepest cultural divide in history is not between the West and China (e.g. Confucianism, leaving Buddhism aside as an Indian import), and certainly not the West and Islam (Islam is an Abrahamic religion), but the West and India (Hinduism and Buddhism). The West aims at progress, at the growing achievement of the goods of human life; Hinduism at timeless, changeless being. Westerners see understanding as largely analytic—breaking things down into parts and discovering their interaction; for Hindu metaphysicians knowledge is an intuition of an indivisible whole, and differences between things are illusory. Westerners regard knowledge, in large part, as knowledge of the behaviour of external objects, as in paradigmatically that largely Western achievement, the natural sciences; in contrast, Hindus regard reality as a distinctionless, entirely static *nirvana*. And so on.<sup>24</sup>

But this deep cultural difference is not evidence of a serious current ‘problem of ethnocentricity’. It is perfectly proper to use the word ‘culture’ in this context. The differences between the West and India go far back: the European idea of human rights goes back to the late Middle Ages, and the idea that human beings are made in God’s image goes back to Genesis 1: 27. The Buddha was born about 563 BC; Hinduism emerged centuries before that. Each of these religions developed at a time when Europe and India were sufficiently isolated for there to be criteria of identity for their ‘cultures’. But

that was millennia ago. To address *our* problem of ethnocentricity, we must take account of where each of us is *now*.

Also, the ultimate religious ideals are usually considerably different from, and far less influential in ordinary life than, the rules for everyday conduct that they also teach. Buddhism tells us to extinguish the self, but it also has rules for the whole pack of squabbling, thieving, lying ordinary people. Buddhism has its Five Precepts: do not kill, do not steal, do not lie, do not be unchaste, do not drink intoxicants. Jesus set unattainable standards: be ye therefore perfect; love thy neighbour as thyself. But Christianity never abandoned the down-to-earth Jewish Ten Commandments: thou shalt not steal, nor commit adultery, etc. So, though Indians may have heard occasionally about ultimate goals and ultimate reality, most of them, like most of the rest of humanity, lived their lives well this side of the 'ultimate'.

The picture of India as spiritual, mystical, anti-rational, in sharp contrast to a West of science, rationality, and progress, is a gross oversimplification. It became, none the less, the dominant European picture of India, not least because it was a self-serving picture for European colonists in need of a justification for their presumptuous civilizing mission. But, as Amartya Sen and others have shown, India has a long tradition of secular rationality, scientific investigation, and freedom of thought. It goes back at least to Ashoka, Buddhist Emperor of India in the third century BC, and to the late medieval and early modern period—a striking example given by Sen is the liberal thought of Akbar, the late sixteenth-century Mughal emperor of India.<sup>25</sup> And these rational, liberal ideas spread widely among a middle-class elite during the nineteenth and twentieth centuries.

When Indians came in contact with the development of the natural sciences of the West, they had no trouble whatever, despite reality's being unchanging, understanding and contributing to the laws of its change. Similarly, when Indians campaigned for their independence from Britain, they had no trouble at all, despite autonomy's and liberty's being illusions, articulating what their aims were. When they were told by the British that they were not yet ready for self-government, that they would make mistakes, Gandhi replied: 'Freedom is not worth having if it does not include the freedom to make mistakes.'<sup>26</sup> It may well be the case that the Hindu tradition, with its caste structure as the source of rights and privileges, contains no concept of the rights one has simply in virtue of being human.<sup>27</sup> It may also be the case that the Buddhist tradition, with its focus on perfecting the individual through meditation and insight rather than on improving society, also lacks the concept.<sup>28</sup> But

this does not matter. The Hindus (and Muslims) who made up India at Independence seem to have had no trouble grasping the values of liberty and autonomy, and their Constitution (1950) puts beyond doubt that they had no trouble handling the language of human rights.<sup>29</sup> And Aung San Suu Kyi, the determined human rights advocate in next-door Burma, regards human rights as consistent with and as developing Buddhist teaching.<sup>30</sup>

The case of India and the West reveals no serious, present-day divergence in understanding what human rights are and why they are important.<sup>31</sup>

#### 7.4 TOLERANCE

I have already discussed John Rawls's views on human rights.<sup>32</sup> I want now to look at what he says about tolerance between peoples. There may be 'decent' peoples, as Rawls calls them,<sup>33</sup> who reject some of the items on the Enlightenment list of human rights. Some rights may be contrary to deep, sincerely held commitments of theirs—religious beliefs, say, about the role of women. So long as a people counts as 'decent', however, it deserves our tolerance. 'To tolerate', Rawls says, 'means not only to refrain from exercising political sanctions ... to make a people change its ways', but also 'to recognise these non-liberal societies as equal participating members in good standing of the Society of Peoples.'<sup>34</sup> Granting decent, non-liberal peoples this form of respect may encourage them to reform themselves, or at least not discourage reform, while denying them respect might well do so.<sup>35</sup> But there is also a non-instrumental reason to grant them respect: it is their due.

Rawls takes as his example of a decent, non-liberal people an imaginary hierarchical Islamic society, Kazanistan.<sup>36</sup> He attributes the difference in political structure between Kazanistan and a Western liberal country largely to their cultural, particularly religious, differences. For the reasons just given, this seems to me highly doubtful. Rawls's question about tolerance, though, need not be motivated by cultural differences. A decent hierarchical people, according to Rawls, has two defining properties. One is that such a people does not have aggressive aims. The other is that its system of law secures human rights for all, imposes genuine moral obligations upon its members, and its legal officials sincerely and not unreasonably believe that the law is guided by a common good conception of justice.<sup>37</sup> Recall, though, that Rawls substantially shortens the list of human rights and reduces their function.<sup>38</sup> His list omits such typical human rights as freedom of expression, freedom



of association (except for the limited form needed for freedom of conscience and religious observance), the right to democratic political participation, and any economic rights that go beyond mere subsistence. And he reduces human rights to two functions: fixing both the rules of war and the grounds for international intervention.

A great obstacle to our accepting Rawls's shortened list of human rights—especially if, like Rawls, we want a list with a realistic chance of being adopted—is that it would never be accepted by the international community. The United Nations' list of human rights is too deeply entrenched for it to be changed quite so greatly. It could no doubt be amended here and there, but not subjected to Rawls's radical surgery at its very heart. The international community would firmly resist the reduction of the discourse of human rights to Rawls's two functions only; it would carry on using human rights to assess the behaviour of a single nation and institutions within a nation; and many of us, I believe, would go on using them to assess even the conduct of individual persons. Rawls, it is true, does not deny that the rights he drops from the list could appear among a people's 'fundamental' or 'international' rights. They are not, though, human rights proper, he says; they are merely 'liberal aspirations'.<sup>39</sup> But this is a radical demotion in their status, and it is this demotion that would be resisted. That raises a question about a strong, unexamined assumption of Rawls's. 'I leave aside', he says, 'the many difficulties of interpreting ... rights and limits, and take their general meaning and tendency as clear enough.'<sup>40</sup> There is, of course, some clarity to them; they are not nonsense. But my first chapter was devoted to arguing that there is an intolerable degree of indeterminacy of sense in what a human right is—an indeterminacy that leaves unclear the criteria both for what should be on the list of human rights and, even more worryingly, what the contents of the individual rights are. This applies also to all the rights on Rawls's own shortened list: for example, the rights to life, liberty, health, and welfare, each of which I shall come to later.<sup>41</sup> We can make our understanding of these rights adequate for our own thought only with the addition of some further substantive value. It need not be my addition, only *some* addition. Once the value is added, however, it will determine which human rights there are, and they cannot then be restricted in the arbitrary way that Rawls chooses to do.

There is another worry. There are grounds for intervention that are not violations of human rights. I argued earlier that the domains of human rights and of justice overlap, but are not congruent.<sup>42</sup> Some matters of justice—for

example, certain forms of retributive and distributive justice—are not matters of human rights. Imagine, for instance, a country structured socially so that nearly all of its great prosperity goes to a small white colonial elite, leaving the mass of the black native population just at subsistence level. If this gross injustice were also likely to persist for some time, diplomatic or economic sanctions might well be justified. Think of a country somewhat like South Africa under apartheid, but with a decent consultation hierarchy that works well enough to raise the poor to subsistence level but not higher. So far as his theory goes, Rawls is free to amend it to say that serious violation of human rights is sufficient, but not necessary, to justify intervention, and that certain violations of justice (and perhaps yet more) are also sufficient. Actually, Rawls treats observance of human rights as definitive of a decent hierarchical society, without mention of retributive or distributive justice.<sup>43</sup> Admittedly, he does mention as also definitive the possession of ‘a common good conception of justice’,<sup>44</sup> but it is doubtful that this requires acceptance of a principle for distribution of welfare at fairly high levels.<sup>45</sup> Rawls cannot believe that a common good conception requires a society to raise its members above subsistence level, because a decent hierarchical society need not do more than that. My example of the South Africa-like country raises doubts that subsistence level is high enough. A satisfactory case that the level must be higher than subsistence is likely to make appeal to something especially valuable about human status that will not be protected by mere subsistence, and once that special value starts generating rights, no arbitrary stopping points are allowable.

The serious weakness in Rawls’s functional explanation of human rights is that it leaves the content of his shortened list—the content both of the list itself and of each individual right—unworkably obscure. How do we determine, for example, the minimum of welfare required by human rights? If one has a further substantive value to appeal to—say, the value attaching to normative agency—then the minimum would be the somewhat more generous provision of what is necessary to function effectively as a normative agent. But it looks as if Rawls could, if he wanted, avail himself of an altogether different approach to fix the minimum. He could ask: at what level of welfare would its neglect start to provide *prima facie* justification for intervention by other peoples? But confronted with that question, we would not know how to answer. We should need help from some further substantive ethical thought. We might, for instance, appeal to the idea of ‘the dignity of the human person’, but that suffers badly from vagueness. We should lose the

dignity of our normative agency, for instance, before we sank as low as mere subsistence. Subsistence that forced us to labour all our waking hours just to scratch out an existence from the earth, without leisure, reflection, or hope, brutalized by our conditions, would lack the dignity of normative agency. So, if this were our line of thought, we should still need to determine what sort of 'dignity' is at work in human rights. In any case, Rawls does not seem to avail himself of this approach. Instead, as we have just seen, he assumes that 'the general meaning and tendency' of human rights are already 'clear enough'. But, as I have argued, they are not.

I am not trying here to make a contribution of my own to the understanding of tolerance, important though that matter is. My interest now is human rights, and my conclusion negative. We should not follow Rawls's lead in commandeering the language of human rights to explain intervention. The language that he can provide is too indeterminate in sense to do so, and, once its sense is made more satisfactorily determinate, it will contain what is needed to justify the ampler list of human rights that, for so long, the tradition has championed.

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## PART II

# HIGHEST-LEVEL HUMAN RIGHTS

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# 8

## Autonomy

### 8.1 THE THREE HIGHEST-LEVEL HUMAN RIGHTS

Human rights are protections of our normative agency, the personhood account holds. Normative agency has stages. The first stage consists in our assessing options and thereby forming a conception of a worthwhile life, where, as I said earlier,<sup>1</sup> the sort of ‘conception’ I have in mind is not a map of the whole of a good life, which is of doubtful value, but characteristically piecemeal and incomplete ideas about what makes life better or worse. That is what I have been calling ‘autonomy’. To form and then to pursue that conception, we need various kinds of support: life itself of course, a certain level of health, certain physical and mental capacities, a certain amount of education, and so on. I have been calling these ‘minimum provision’. And these are not enough for agency if others then stop us; we must also be free to pursue that conception. I have been calling this ‘liberty’. All human rights will then come under one or other of these three overarching headings: autonomy, welfare, and liberty. And those three can be seen as constituting a trio of highest-level human rights.

### 8.2 THE DISTINCTION BETWEEN AUTONOMY AND LIBERTY

This way of distinguishing between autonomy and liberty is not particularly new, but it is not at all common, either. More commonly philosophers use the words ‘freedom’ or ‘liberty’ to cover both autonomy and liberty, as I shall use the terms, though in recent decades many have then gone on to distinguish usually two, but sometimes more, ‘concepts’ of freedom or liberty. Isaiah Berlin’s much-discussed distinction between two ‘concepts’ of liberty is not at all the distinction I want to draw between autonomy and liberty.<sup>2</sup> My distinction comes about this way. The explanation of why normative agency

is so valuable to us falls into two parts: we have here, I think, two distinct values.

What I want to identify is not ‘autonomy’ as it is used in correct, ordinary speech or ‘autonomy’ in all its varied philosophical employments. My interest is much narrower: namely, autonomy, the particular moral and political value that is the basis of a human right. My interest is, more specifically, the distinction between autonomy and liberty that I have proposed, why this sort of autonomy is valuable, how this value supports a human right, and what the content of that right is.

In the late Middle Ages a gradual but great transformation of ethics began. Previously, mankind had largely been seen as separated from God by an unbridgeable gulf in both knowledge and power. But God, in his goodness, had laid down laws that mapped our road to salvation; our role was to obey them, to submit to God’s will. By the late Middle Ages, however, we began to see ourselves as having a more elevated status—indeed, as having been made in God’s image. The thought that we are made in God’s image first appeared in Genesis (1: 26), but it took time before the Church was ready to draw certain radical moral conclusions from it. We are like God in being normative agents, creators, although we are creators on a limited front; we create ourselves and, to some extent, our personal relations and the world about us. And we are all equal, because equally made in God’s image.

This new egalitarian spirit, this new confidence in human capacities, this new expectation of a more active and independent humankind, reset the moral stage. Our moral role changed from obedience to God-given law to compliance with self-given law.<sup>3</sup> This change, which culminated in the eighteenth century, was the working out of an egalitarian and individualist tendency long latent in Christianity, and its completion made possible the unintended consequence of an ethics without God.

The idea of autonomy that emerged in this transition was just the idea I am concerned with here—self-decision. Not every human decision is autonomous. Many decisions are effectively determined by outside influences: by unconscious drives largely shaped by others, by genetic abnormalities such as males with two Y-chromosomes, and so on. What is meant is a decision that results from one’s exercising one’s capacity to distinguish true values from false, good reasons from bad—in short, the decisions of a normative agent.

Normative agency consists not only in deciding for oneself what is worth doing, but also in doing it. We attach great value not only to the autonomy



of our decisions but also to our accomplishing something with our lives by carrying out our decisions—by actually reducing someone’s pain, say, or raising a child well, or treating people justly. That is, we also value our liberty.

Autonomy and liberty are different values.<sup>4</sup> And their enemies are different. The enemies of autonomy are indoctrination, brain-washing, domination, manipulation, conformity, conventionality, false consciousness, certain forms of immaturity. The enemies of liberty are compulsion, constraint, impoverishment of options in life. An example will bring out the difference. One can be at liberty but not autonomous—say, so conventionally raised that, without thought, one falls in with society’s values, but is still free to pursue them as one wishes. One can be at liberty and autonomous—having chosen one’s values, after deliberation, and being free to pursue them as one wishes. The second is a better life. The value of autonomy is separate from the value of liberty.

Autonomy, in our sense, is a particularly ubiquitous value. People adopt different lists of the things that make an individual life go well, though the lists usually have a common core: for example, accomplishing something with one’s life, deep personal relations, understanding certain moral and metaphysical matters, and living autonomously and at liberty. But nothing counts as an accomplishment (where this is a term of art used here of a particular prudential value) unless it is one’s own choosing. One’s deep personal relations are valuable only if the love or affection they involve is based on one’s recognition of the other person’s value. Understanding, in the relevant sense, can only be autonomous. And obviously one does not live autonomously without autonomy.

### 8.3 THE VALUE OF AUTONOMY

What is so valuable about autonomy? Is not autonomy, in our sense, the root of a socially fragmenting individualism? Is it not the enemy of fraternity, of solidarity, of homogeneous moral community? But this familiar doubt is a doubt about autonomy’s being an unalloyed good, not about its being good. Its value, on my account, is related to its being a constituent of the dignity of the human person. The sense of ‘human dignity’ that I am invoking must also be specified, because there are several acceptable uses of ‘dignity’ not relevant to human rights: for example, the dignity that quite properly should be accorded to a person deep in dementia or even to a person’s dead body.

The sort of dignity relevant to human rights, however, is that of a highly prized status: that we are normative agents.

These remarks do not constitute an argument for the value of autonomy. To adopt the personhood account of human rights is to adopt normative agency as the interpretation of ‘the dignity of the human person’ when that phrase is used of the ground of human rights. It is not at all an eccentric interpretation; it is Pico della Mirandola’s interpretation in his influential work *The Dignity of Man*, and it is the most common interpretation in the tradition.<sup>5</sup> If normative agency is valuable, it is intrinsically valuable. One can only try to make it sufficiently clear what normative agency is and expect others then to see that it is valuable.<sup>6</sup> Nor have I come near to showing that we really are normative agents, or what would be the consequence for the existence of human rights if we were not, though I shall return to that last matter shortly.

#### 8.4 THE CONTENT OF THE RIGHT TO AUTONOMY

The decisions relevant to autonomy, the specific moral and political value that I want to explain, are decisions about the life to pursue, and of course not all decisions are about that. An adult son whose mother still orders his meals in a restaurant, though he would rather do it himself, has less autonomy, in one established sense of the word, but the mother does not infringe her son’s autonomy, in our sense. Restaurant meals are not important enough for that. They could be for some quite unusual persons, but they are not so for most of us. If the son let others take his investment decisions for him or decisions about what to believe in science and mathematics, he might not lose any autonomy, in our sense, either. He might not, even if his letting others take these decisions was not itself an autonomous decision of his. Decisions about investments are not, for most people, part of their thinking about or pursuing a worthwhile life. It can even sometimes be highly desirable—prudent, say, or particularly responsible—to abandon some forms of autonomy. If one were hopeless at science, one’s best way to form scientific beliefs might be to trust the authorities. If, however, the son let his mother decide what he should do with his life, he clearly would lose autonomy, in our sense. He would lose it even if he voluntarily delegated his life decisions to her. Then there are cases where it is less clear what to say. He might be totally wrapped up in his career—novel writing, say—and on election day merely asks his

mother to tell him how to vote. Sometimes, I should say, this would involve no sacrifice of autonomy in our sense, but sometimes it would. When the issues in an election are especially important, one can have an obligation to make up one's own mind, and then not to do so would considerably derogate from one's autonomy, in our sense.

These cases show that there are senses of 'autonomy' in which it is false that the more autonomous we are, the better. Exaggerating the desirability of autonomy can undermine justified deference to authority or trust in others.<sup>7</sup> It can be rational to abnegate autonomy, though none of these rational abnegations will be abnegations of autonomy, in our sense, because they do not abnegate dignity-conferring autonomy—that is, the dignity of being a normative agent. Nor does the person whose surrender of autonomy, in our sense, is itself a paradigm of an autonomous act, also in our sense—say, a monk's surrendering his autonomy to his abbot—lose this sort of dignity.

How demanding are the standards for autonomy, in our sense? In medical practice nowadays, 'patient autonomy' often comes down to 'informed consent', which in turn often comes down to a doctor's explaining to the patient what the proposed treatment involves, its risks and its alternatives, and the patient's then signing a consent form. But this standard is clearly too low. The patient may well be under too much stress to think straight. The doctor's explanation may be too brief or too technical for the patient sufficiently to understand. And the doctor describing the options is likely to be the person who, in the first place, chose the recommended option.

In reaction to this, it is then easy to make the standard for autonomy too high. For example, one might now say that a decision is autonomous if, and only if, the person deciding appreciates fully the weight of all the relevant reasons, all of whose inferences are faultless, and whose decision is not influenced in a decisive way by anything but these reasons and inferences. But this standard is so high that it may rule out autonomous wrongdoing. If an action is autonomous only if it follows from an autonomous decision, and if a decision is autonomous only if all the reasons have been properly weighed and the decision is the correct one, then actions flowing from the incorrect decision are not autonomous, and so not blameworthy. This is an objection often made against Kant. If, as Kant thinks, an autonomous action must rise above the causal network and be determined by no feelings or attitudes or desires or pleasures or pains, all of which are heteronomous, then autonomous doing, it seems, can only be right doing. Many Kantians have tried to rebut this objection,<sup>8</sup> but none to my mind successfully. But even if it is rebuttable,

Kant's sort of autonomy requires a purity of rationality that is unattainable. We exercise our rationality through thought; thought of any complexity requires complex language; and language is a cultural artefact, and thus part of the causal network. It is what the cultural community devised to satisfy various human needs and to reflect its sense of importance. Each language has its own accidents of development, some happy and some unhappy. It is hard for us to know what the accidents of development in our own language have been, so it is hard to know how much one's thought is affected, for good or ill, by them. We have, from time to time, reformed and improved our language in response to distortions we come to detect in it; for example, we stopped talking about 'humours' and developed instead the modern language of physiology and psychology. But at any one time there remain distortions in our language of which we are unaware. These distortions matter less if one has to focus only on blatant failures in rationality, such as contradictions, as Kant does. But Kant needs to appeal to not only contradictions in formulation but also contradictions in the will, and at least our judgements about the latter are likely to be affected by distortions in our language.

Let us therefore look in the logical space between the first, apparently too low standard and the second, apparently too high standard. Think of the common phenomenon of one's shifting one's position in a chair, without at all attending to it, to relieve the growing discomfort of remaining too long in one position. There is usually no conscious registering of the discomfort nor a conscious decision to act to relieve it; we just do it. Cats and dogs do the same, and the human mental process involved may be much like the feline or canine mental process. But does this fact (if it is a fact) make a human being's shifting position in this way heteronomous? Does its cause lie outside a purely rational, conscious centre, the workings of which are undetermined by feelings, dispositions, genetic make-up, and so on. Kant agreed with Hume that feelings, dispositions, and so on exclude reason. Kant was, like Hume, a subjectivist, or intersubjectivist, on judgements about prudential values but, unlike Hume, an objectivist about moral norms. But, to my mind, there are good reasons to think that rationality enters importantly also into the identification of human ends or interests, that judgements about them are subject to standards of correctness and incorrectness, that they can be objective. These are large subjects, but I have discussed them above and in other writings.<sup>9</sup>

If the identification of human interests is indeed a matter of rational decision, then the following would be a paradigm case of an autonomous

decision: I come to understand that one's accomplishing something with one's life, other things being equal, makes one's life better, certainly better than, say, the aimless life I have been living up till now. And if certain conditions obtain, I may, as a result of this understanding, change my approach to life. This paradigm example has the form: registering a value or disvalue and then taking action appropriate to it. And if judgements about what makes an individual better off or what satisfies certain characteristic human desires is subject to standards of correctness and incorrectness, then perhaps such judgements can be autonomous. There is a sense in which my feelings, desires, dispositions, and reactions, as well as my consciously recognized reasons, can be my own. The fact that, as in the case of my shifting in my chair, my feelings, desires, and so on are like those in virtually all other people, and sometimes overlap with those in cats and dogs, and are often genetically based, does not remove all senses in which they are *mine*. They are my perfectly sensible reactions. They display the same form as what I just proposed as a paradigm case of autonomous action: registering a value or disvalue (accomplishment in the one case, discomfort in the other) and responding appropriately to it. Now think of cases much like shifting in one's chair but with increasing elements of consciousness and thought: pulling one's hand away from the tap when the water turns out to be scalding; or closing one's eyes when they tire in the light; or, if one finds that closing one's eyes is not enough, also turning off the light. In all of these cases there is a registering of a disvalue, more or less consciously, and an acting in response to it, more or less deliberately. Are these actions autonomous or heteronomous?

I think that if we employed Kant's way of distinguishing the categories of 'autonomous' and 'heteronomous', we should be hard put to say. But those are not the categories for us to appeal to here. We are interested in autonomy, the moral and political value that is the ground for the human right. There is, on the personhood account, a material constraint on autonomy: we are interested in the autonomy involved in forming a conception of a worthwhile life. The autonomy involved in what I called the paradigm case is certainly the kind we are interested in, while the other examples are not, if only because discomfort in one's lower back or pain in one's hand from the scalding water are on too particular a level. Forming a conception of a worthwhile life typically operates on a more general level—the level of concepts such as 'pain' or 'discomfort'. When natural rights were embedded in a Christian metaphysics, what mattered to our possession of the rights was that we were created in God's image, that we were ourselves creators of our own lives. The

cat's capacity to register discomfort and consequently to shift position falls well short of this God-like capacity. Indeed, no known species but *Homo sapiens* has the capacity that carries autonomy, in our sense. The registering of value and disvalue that contributes the sort of autonomy that supports a human right involves complex language: at the least, the language of prudential values (many of which words involve long-term, even whole-life evaluations) and the language needed for weighing values against one another and for arriving at an all-things-considered judgement about them. If some non-human species have what might count as a rudimentary language, there is not a scrap of evidence that they have language of the complexity needed for normative agency.<sup>10</sup> It is not that the uniqueness of human beings in this regard is important to establish. There may, for all we know, be rational aliens elsewhere in the universe with equally complex languages.<sup>11</sup> But the uniqueness of human beings among known species is enough to justify the ground of human rights that the United Nations has adopted: the dignity of the human person. There is no problem in showing that the autonomy that we are after is highly valuable. It is not the autonomy that we are after unless it *is* highly valuable.

It is common for writers on autonomy to reach for a brief phrase that, they think, summarizes the idea. I earlier called autonomy 'self-decision'. To my mind, we could also, in the sterner spirit of Kant and Rousseau, call it 'self-rule' or 'self-legislation'. But, once autonomy is distinguished from liberty, certain phrases are misleading. The term 'self-determination' suggests not only forming a conception of a worthwhile life but also, to some extent, realizing it. And the phrases 'self-definition' and 'authorship of one's own life' can mislead in the same way.

So the picture of the sort of autonomy that we are after is this: a capacity to recognize good-making features of human life, both prudential and moral, which can lead to the appropriate motivation and action. This autonomy is a threshold notion, with a fairly low threshold. Most adult human beings have this capacity to the degree that confers 'dignity' and 'worth'. It seems to me clear that above the threshold different persons will have different capacities to recognize good-making features; it is just that these further differences no longer matter to the 'dignity' or 'worth' in question.<sup>12</sup> And on this conception there is the possibility of autonomous wrongdoing. A person can have the capacity that constitutes autonomy, yet not exercise it. I might have the capacity to appreciate vividly the value of accomplishing something with my life but, for one of various possible reasons, not appreciate it vividly

enough to stop me from sinking back into frittering my life away. The capacity in question is a capacity not for doing right but for understanding and imagination, which may of course, if exercised, lead to doing right. I should be likely to kick myself for not seeing vividly enough the benefits of accomplishing something with my life, though, as it may seem to me, I clearly could have. And if I had, the conditions may have been such that I would have, in response, changed the direction of my life.

### 8.5 AUTONOMY AND FREE WILL: WHAT IF WE ARE NOT AUTONOMOUS?

If normative agency is not valuable, or we can never rise to it, the personhood case for human rights collapses. It is not that there would then be no reason to protect our capacity for, and exercise of, our deliberation and action; it is, rather, that human rights, on my account, would not be it.

There is nothing in my picture of autonomous action to explain why I failed to understand the value of accomplishment vividly enough, or why in the same situation I failed and you did not. The explanation might be that I am depressed and in some deep recess of my mind harbour the potent thought that I do not deserve a good life. Or it might be that talk of accomplishment reminds me of long-past lectures from my parents about pulling my socks up, and I quickly switch off. There are many explanations that might rightly undermine my belief that, though I failed to, I could have. Perhaps I never could have done otherwise.

There is a way of maintaining the value of autonomy no matter how the free-will dispute comes out. One could claim that personhood in general, and autonomy in particular, are only instrumentally valuable.<sup>13</sup> If so, could we not continue to derive human rights from them as protections of their great (instrumental) value? Indeed, some may find this a pleasingly deflationary account of the value of autonomy. All that one need claim is that it is good for people to have their interests and desires met, and that they are more likely to be met if people take their own decisions, on a less rigorous standard of self-decision than I have hitherto suggested. Still, this deflationary move has its problems. It will eventually require extraordinarily large-scale calculations of consequences, which may be beyond our powers.

Think back to the familiar challenge to freedom of the will. It seems to me that often—perhaps because of depression or a deafness to anything

reminiscent of a parental lecture—a person could not have acted otherwise. What is doubtful is that one never can. Suppose that a friend tells me how important accomplishment is to a good life, that I understand what he means by ‘accomplishment’ and see why it is so valuable, and that this understanding is the dominant cause of my subsequent change in direction. Whatever the truth about freedom of the will is, though, it is too much to try to establish it in this book. I think that the non-instrumental conception of autonomy is the right one to use in an account of human rights, and no doubt enough other people do too for me to go on following this line of thought.



# 9

## Liberty

### 9.1 HIGHEST-LEVEL RIGHTS

I have proposed that we explain personhood in terms of autonomy, liberty, and minimum provision. All more specific human rights can then be seen as falling under one or other of these three abstract headings. Under liberty, for example, fall several well-known freedoms, such as freedom of expression, of religion, of assembly, and so on. My interest here is not any of these specific freedoms, but liberty in general—liberty, the high-level right.

### 9.2 BROAD AND NARROW INTERPRETATIONS OF LIBERTY

There is a broad conception of liberty in circulation—Thomas Hobbes, John Locke, Jeremy Bentham, John Stuart Mill, and Isaiah Berlin, among many others, have used it<sup>1</sup>—that regards any restriction on my doing what I want as a restriction, no doubt often justified, on my liberty. If, for instance, I want to drive the wrong way down a one-way street, then, on the broad conception, the traffic restriction infringes my liberty—though probably justifiably.

There is nothing wrong with this broad use. It is well established both in ordinary speech and in philosophical discourse. But it is not the use relevant to the human right to liberty. There is a material constraint on the human right to liberty. The considerable values that human rights protect do not include our being able to satisfy any wish, even whim, that happens to cross our minds. Rather, they protect our being able to form our own conception of a worthwhile life, piecemeal and incomplete as our ideas will be, and then to pursue it. So liberty protects only what is part of our personhood, and our being free to drive the wrong way down a one-way street is certainly not that. I describe, of course, the material constraint arising from the personhood

account. If a different substantive account were thought better, there would be a different material constraint, but still such a constraint.

There is, as well, a formal constraint on liberty. The case for my having a right to liberty is equally a case for other persons' also having one. At most, each of us has a right to liberty compatible with equal liberty for all. So, to take an obvious example, no one's freedom of religion extends to Thuggee, ritual robbery and murder, practised by the Thugs, a Hindu sect, worshippers of the goddess Kali, which the British quite rightly suppressed in the early nineteenth century. A less extreme case is present-day religious sects that deny women human rights. This constraint, too, considerably narrows the content of the right to liberty.

These arguments for the use of the narrow interpretation of liberty seem to me all right so far as they go, but they do not yet go far enough. We must return to them.

### 9.3 'PURSUIT'

Liberty guarantees not the realization of one's conception of a worthwhile life, but only its *pursuit*. Here is another word that needs explanation. What does society commit itself to in accepting the duty to protect freedom of pursuit?

One can be denied liberty in many ways. One can be constrained—physically by another person, or by a law with swingeing penalties, or by the threatening presence of an absolute ruler, or by severe social disapproval. Or one can be compelled to live in a way that one does not want to—by a state or a church or a family, each with its own idea about how one should live. Or one can find oneself placed in conditions that themselves allow only a very few ways of life, one's own rationally chosen way not among them.

Constraint and compulsion are familiar enemies of liberty, although the forms they take are not always easy to recognize. Denial of liberty need not take the form of active intervention. The mere presence of a powerful agency able to intervene can be enough to cow people into self-censorship. And liberty is not fully satisfied simply by non-interference in the way of life that one has in fact chosen; it requires also that one would not have been interfered with had one chosen another way of life—indeed, any way of life in the protected domain of liberty. However, the third enemy of liberty, paucity of options, is less familiar, and more needs to be said about it.