## *Environmental Rights*

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# Introduction

The idea for this thesis grew out of a dichotomy in the way that environmental problems are often discussed. Politically, there is an increasing demand that we frame environmental problems in the language of rights and justice, with 'environmental rights' forming the content of declarations and bills of rights. This appears to clash with a view presented by some environmental philosophers that the language of rights is simply not up to the task of addressing environmental problems. It is claimed that the way that we characterise individual rights is part of the problem, not part of the solution. This is because rights are often formulated from an individualistic and overly humanistic stance which will not enable us to see beyond the concerns of white western human individuals.

Each of these views has a certain appeal. The everyday language of rights has a nuance of importance and urgency. It is one thing to say that we *ought* to protect the environment for the sake of the inhabitants of this planet, but to say that those inhabitants have a *right* that action should be taken sounds like a call to arms. This particular 'ought' makes a special kind of moral and political demand that cannot be ignored. Rights have been employed to good effect in many struggles for equality, freedom and recognition, and it may appear that they should be employed in this way once again, especially when the scale of right-violations that might occur appears to be so great. Related to this is the fact that many environmental problems affect some communities and geographical areas to a greater extent than others. The inhabitants of some areas of Africa will probably experience the impact of climate change in a much more devastating way than the inhabitants of some areas of Europe. This suggests that the demands of *justice* call upon us to address these problems. Not to do so would be to exploit certain groups of people for our own material comfort, and to deny

them their right to equal treatment, or to the kind of liberty that they would require to lead flourishing lives. This would suggest both that rights are an indispensible element of the way that we articulate environmental concerns, and that they could be a powerful tool in environmental activism.

The opposing view is also compelling. It might be suggested that we cannot address the environmental problems without looking to their root causes, and that one such cause is a dominant ideology based on putting the human individual ahead of community and global concerns, and ahead of our responsibility to other creatures, ecosystems and the planet. It might then be said that if the concept of rights is necessarily bound up with such a world-view, then we cannot properly address environmental concerns unless we either jettison the role of rights altogether or give them a much more minor role than they currently play in moral and political deliberation. There is a popular view in the field of environmental ethics that many conventional moral theories such as utilitarianism, Kantianism and so on are not the appropriate tools for considering the interaction between mankind and the natural environment. Instead, many environmental ethicists seek to employ ways of talking about our relationship with the world that are less humanistic, individualistic and anthropocentric. Rights theories occupy much of the same ground as these conventional moral theories, often epitomising the features that many environmental ethicists critique. They are generally centred on human activity and moral status (some theories do this more than others, as we shall see) and are usually concerned with the relationships between individual human beings *with respect to* aspects of the world, rather than with relationships between people *and* the natural world. As right-holders, people are to an extent alienated or set apart from other features of the planet, something which apparently contradicts the holistic nature of environmental ethics. Thus a consideration of the compatibility of rights-theories and

environmental ethics might lead to further things we can say about the general question of which types of moral theory can properly be applied to environmental questions.

**Purpose and Methods**

The objective of this thesis is to examine moral and political environmental issues in the context of rights, particularly moral or natural rights. The central question will be whether anyone can have a right to a particular kind of environment or minimal environmental standard. I will also consider which beings (if any) can have their moral demands articulated in this way. While I am largely concerned with the idea of moral rights, I hold that when we employ rights-talk, the moral and the political cannot be fully extricated from each other. This is partly down to the history of rights, which gives them a distinctive dual moral and political character, and partly that when dealing with issues of widespread moral concern, the moral is rarely entirely separable from the political. However, I will not look in detail at the task of *implementing* such rights through political and constitutional systems. My interest is rather in the underlying justifications of such rights and how they should be articulated.

I aim as far as possible to remain neutral between different moral theories, since working within a particular theory would significantly narrow the application of the thesis. The methods used also do not strictly conform to any one school or style of philosophy. In much of this thesis a broadly analytic approach is applied to the questions that are being considered, but in other places different approaches are appropriate, both in terms of the method employed and the sources used. I would argue that were we to adhere too rigidly to one approach, there is a danger that adherents of opposing views would often simply 'speak past each other' and fail to engage with the substantive issues upon which they differ.

**Chapter One**

A large portion of the first part of the thesis will be historical in character, examining the development of the various theories of rights that exist today. The first chapter will be

concerned with the early history of rights theories and their development into a form roughly equivalent to modern-day theories. I will say a little more at the start of the chapter about why this approach is justified, arguing that we must have some understanding of the historical origins of rights theories in order to understand what purpose they serve and how they should be understood in the present day. I also address some of the difficulties with taking such an approach.

In this chapter I identify some prominent features that we can see in many theories of rights, and trace their emergence. One of the major conclusions of this chapter is that the concept of rights is broad, varied and dynamic. It would therefore be a mistake to consider the question of environmental rights in terms of one narrow conception of what a right can be. We must therefore adopt the considerably more ambitious task of examining the possibility of environmental rights of many different kinds, even accepting the possibility that new ideological challenges may prompt further developments and refinements of the concept of a right.

**Chapter Two**

Chapter two moves on to look at two of the famous critiques of rights, offered by Jeremy Bentham and Karl Marx. I argue that the objection that rights have no foundation because there is no natural lawgiver would require more justification than we can find in the works of Bentham, but that it does raise important questions about whether there can be a natural basis to rights that I engage with later in the thesis. Marx's claim that they are a socially divisive force is in many ways more of an obstruction, especially to the project of assigning environmental rights. This leaves us with a number of options. One would be to go against Marx and claim that the individual must be the sole locus of concern, while another would be to modify our theory of rights so that it can account for the rights of groups. A final option

would be to apply different moral concepts alongside rights in a way that might account for the value of community and collective goods.

**Chapter Three**

Chapter three is largely an outline of some of the forms that more recent theories of rights have taken. This is necessary in order to furnish us with the detail we need when applying these theories to environmental problems. While the notion of moral rights has been around for a very long time, it is only really in the twentieth century that rights were integrated into rigorous and complex formulations. This approach has the advantage of allowing us to apply a more detailed and formal analysis to specific questions about who might have rights and what those rights might be, but it also arguably has the disadvantage of applying an overly dry and rigid structure, more suited to legal questions than to aspects of our moral lives. I explore the concept of right-based moralities (and Raz's criticism that they cannot accommodate an adequate account of 'collective goods') and Dworkin's concept of rights as 'trumps'. I examine the distinction between 'choice-based' and 'interest-based' theories of rights, which will have a strong bearing on the remainder of the thesis. I also look at some of the different types of rights that we may have, particularly the distinctions between positive and negative rights and active and passive rights.

**Chapter Four**

Chapter four begins to articulate what we might expect a theory of environmental rights to be. In order to do this, I consider how we might go about attributing environmental rights to presently existing human individuals. This involves articulating what 'environmental' might mean in this context. I choose to focus on the sense of 'environmental' that applies to the environment of the person in question, rather than to wider and more nebulous senses of *the* environment. This is not to undermine the importance of global environmental causes and issues, since they will impinge on the environments of many people. I also distinguish

between two different things that we might mean when we talk about an environmental *right*. We may mean a right to life, liberty, property or one of the other 'conventional' rights when they are violated or honoured through environmental means. I call such rights 'instrumentally' environmental rights. I also suggest here that there may be a sense of an environmental right that cannot be articulated in terms of other more widely discussed rights. I call these 'essentially' environmental rights. I examine two arguments for instrumentally environmental rights, concluding that environmental rights based on interest theories of rights may be more promising than those based on choice theories. I also address the question of how we might deal with environmental rights that are in conflict with other rights, focusing in particular on the right to liberty and Mill's 'harm condition'. I conclude that if rights theories are to have any broad or global applications, then there can be instrumental environmental rights. I maintain that it is also at least *plausible* that there are some essentially environmental rights.

**Chapter Five**

Following from chapter four, which examines the environmental rights of currently existing human individuals, chapter five considers whether we can attribute rights to what I regard to be more difficult human cases: future people and groups. This involves an examination of some of the usual problems afflicting the attribution of moral status to future people, and a consideration of whether these are particularly problematic for theories of rights. I suggest that if we are to do this adequately, we must give some consideration to their ontological status. This involves giving some attention to the metaphysics of time. This is not examined in detail here, but some opposing views about the ontological status of future people are mentioned, and the possible moral implications of these views are drawn out. I argue that an interest based theory of rights is the most promising approach if we want to talk about the rights of future people, and also that questions concerning the rights of future people become

less problematic if we adopt an approach to rights that grounds people's identities in relationships and networks of social meaning. I also argue that allowing groups to be considered right-holders might help with some of these difficulties, because groups that currently exist may then be said to have rights concerning their futures, even when the future memberships of those groups are not yet determined. I examine some possible problems with the concept of group rights, but suggest that each of these either presents a problem only for choice theories of rights, or for theories of group rights which are formulated in such a way that they eclipse the rights of individuals.

**Chapter Six**

Chapter six explores what rights we may be able to attribute to non-human animals. I note that questions of animal rights are not always in line with wider environmental concerns, but that animals play an important role both as elements of our environments and as fellow inhabitants of them. I also observe that there is no easy leap from a view that attributes moral status to animals to one that claims that they are subjects of rights. I argue that the choice theory of rights, combined with a view that rights are 'trumps' or very demanding requirements of some other kind, cannot sufficiently account for the interests of non-human animals when they conflict with certain human interests. Instead I suggest that an interest theory of rights, or a theory of rights based on benefit, might do a better job of capturing the moral demands that animal place upon us. However, even some accounts of interests may not be able to account for many animals. Theories of interest that rely on notions of autonomy or agency may not be able to hold that non-human animals can have interests.

**Chapter Seven**

The aim of chapter seven is to pull together many of the strands that have been examined in the previous six chapters, summarising many of the key problems and suggesting what forms solutions to them might take. I suggest that the problems that we have encountered with the

attribution of environmental rights (and the attribution of rights in general to the 'hard cases' explored in chapters four to six) rely on a notion of rights which displays certain features. None of these features, I argue, are essential to what I identify in chapter one as core concepts of the notion of a right. I argue that rights are focused on particular subjects (right-holders), that they are to the advantage of those subjects, that they do not rely on legal or political frameworks and that they entail duties. They are also often *associated* with rationality, autonomy and individualism. The latter three are however merely associations, and are not evident in *all* theories of rights, and might be regarded as accidental nuances of rights, rather than core features. I propose that one conception of rights that might do the work that we require is one that is based on *needs*, with needs understood in terms of the *identity* of the right-holder.

**Chapter Eight**

Chapter eight starts to unpick how we might understand the identities of right-holders, and makes the case for essentially environmental rights based on the fact that environment is crucial to (and in some cases partially constitutive of) identity. I examine biological, psychological and narrative understandings of identity, and explore the crucial role of environment on each of these levels, as well as the fact that the three levels are often inextricably entangled with each other. I argue that narrative and psychological identity can certainly be thought to confer essentially environmental rights, but also raise the possibility that we *may* also be able to derive them from biological identity too (although these would necessarily be less demanding than rights founded on an interweaving of narrative, psychological and biological identity). Nonetheless, such an account would accommodate the rights of future people, groups and some non-human animals, and would help to explain the ways in which other elements of our environments can be part of the *content* of our rights even if they are not instrumental to more conventional rights.

The account that I will provide in the following chapters leaves a number of questions unanswered, some of which I will mention in the conclusion as avenues for further investigation. In many ways the thesis sets up what we might expect from a theory of environmental rights, rather than attempting to develop all the details of one. There are many questions still to be asked about the resolution of conflicts of environmental rights, and about whether such rights are negative or positive, active or passive, and so on. The theories of identity explored in chapter eight also require further elucidation, together with an examination of whether biological identity can confer rights (a question that I do not commit myself to answering in this thesis). However, I hope to have begun a process of bridging a gap that currently exists between the two positions that I mentioned at the start of this introduction. It seems at least possible that we can describe environmental problems in terms of rights and justice without embracing an overly human-centred or individualistic world-view.

# Chapter 1 – Historical Introduction

## 1. Rights and History[1]

As I mentioned in the introduction, this chapter will be concerned with the history of the language of rights. The historical approach needs to be defended, since it is not an approach favoured by everyone. Mary Midgley picks out this example from Ted Honderich's memoir:

> Would philosophy not be better if it was like science, which left at least most of its past behind in museums? (Honderich 2002, p. 164)

While the strictest of analytic approaches might discard the history of ideas from moral theory in favour of pure conceptual analysis, I feel that this would be a serious mistake. Moral theories are deeply rooted in the specific cultural and political contexts in which they developed, and a real understanding of rights must involve an understanding of why they were thought necessary or useful in the first place. As Midgley argues, the history of our ideas has explanatory power:

> The past has a special importance of its own because it helps to explain the present. Past thought always has much more influence than we recognize on current ideas- including the ideas of those who most sharply disown it… There could be no such thing as a philosophy that was purely contemporary. (Midgley 2005b, p. 69)

Our current social and political life is shaped by history, and a failure to understand the development of moral and political terms in times that were crucial to the formation of our current moral and political thinking could lead to an impoverished understanding of the society that we currently inhabit. We cannot have a full and rich understanding of moral terms such as 'right' without some insight into their development and the historical background of our ethical frameworks in general. The importance of regarding ourselves as

[1] Many thanks for the helpful comments and suggestions I received after presenting papers on this subject to Eidos (Durham's postgraduate philosophy society) and to Durham's Early Modern Postgraduate Discussion Group.

beings situated in a world and society with a past, present and future will be a recurring theme throughout this thesis.

*(1a) Pitfalls to Avoid*

There is a tendency in the history of rights theory (and the history of ideas in general) to attempt to find the one true originator of the modern understanding of the term in question and to make the case for that thinker's unique role as the father of the concept. In the literature on the history of rights, various people have had this honour attributed to them, ranging from ancient Greek and Roman thinkers, through medieval philosophers such as Aquinas and Ockham, to the more familiar candidates such as Grotius, Hobbes and Locke.

While it makes for a snappy soundbite to argue that Joe Bloggs was the founder of modern rights theories, I am not convinced that this would be either useful or possible. Firstly, this is because there is not one unique modern theory of rights. Jeremy Waldron's excellent anthology *Theories of Rights* shows how broad the range of contemporary rights theories can be, and if anything the last twenty-five years has proved to broaden this range (Waldron 1984). Any attempt to argue that these theories have one single common originator would immediately seem doomed to failure.

Secondly even if there were a single current understanding of rights, it could be suggested that attempting to identify the point at which it sprang into existence would be rather like attempting to identify the point at which a man becomes bald. In other words, the Sorites paradox might apply here. I suspect that much of what has been said about vagueness might apply very well to the evolution of terms such as 'right' and 'modern meaning of right'.

Thirdly, it would be both misguided and arrogant of the philosopher to claim that he is the sole progenitor of meaningful moral and political discourse. The way that we use moral and political language changes, sometimes imperceptibly, over the years, decades and

centuries, and many people have a causal influence on this process. Our current use of language in philosophy (as well as in the everyday discourse to which philosophy often bears very little resemblance) is shaped not only by the history of philosophy, but also by the histories of politics, economics, religion, the media, mythology and of course by the history of the language spoken by all sorts of ordinary people. For these reasons, any attempt to find a sole father of modern rights among the books on the philosophy shelves would be a fruitless search. Even if we could arrive at a 'best candidate', this would be to present a flimsy representation of the history of rights.

Another thing which is best avoided is the tendency to look at the word 'right' or its equivalent in isolation. We are not searching simply for a history of dictionary definitions. This would do very little to enlighten us about the role or nature of the concept. Instead, we need a much thicker, more nuanced understanding, placed in the context of the surrounding ideas and theories of the time. As Richard Tuck puts it "the meaning of a term such as *a right* is theory-dependent" (Tuck 1979, p. 2) and thus requires examination in terms of relevant theories in order to understand its meaning. However, this can only be done to a small extent in the whistle-stop tour of rights that is possible in a single chapter, and for histories of rights examined in the detail that they deserve, we must turn elsewhere.[1]

*(1b) Understanding the Past*

Another difficulty arises when we ask whether we can understand how moral language was employed in the past. However desirable the historical approach might be, we cannot gain this thicker understanding of moral language unless it is actually possible, at least to some extent, to understand how this language was used. Moral life is emotional and nuanced, and thus deeply entangled with culture. Is it possible to understand moral terms without being deeply entangled in that culture ourselves? The culture of the distant past, although it has

[1] See, for example, Tuck 1979, Brett 1997 and Tierney 1997, and for a briefer summary, see Kelly 1992, pp. 144-147, 226-233, 268-282 and 425-432.

shaped our own, differs dramatically from it. As L.P. Hartley famously said, "The past is a foreign country, they do things differently there" (Hartley 1953). Of course, if the past *is* a foreign country, it must be seen as one with extensive cultural and economic ties with our own. As I have argued, we are not living in an isolated bubble called the present. Our current culture and the world around us are products of our history. However, societies, cultures, and the language that accompany them have changed dramatically over time, so there is a certain problem of inaccessibility.

A useful approach may be (as I will attempt to do) to identify particular features of the modern concept of rights, and trace the emergence of those features in older concepts. This does not commit me to saying that there was a particular point at which a *definitive* modern rights theory emerged, but it does allow me to attempt to shed light on what is distinctive about contemporary theories of rights. However, what this does not do is explain how we can truly understand the older concept with all of its nuances, social connections and meanings. Even if we can see how some external features of the historical concepts might resemble those of the contemporary ones, this does not deal with the extreme 'otherness' of past cultures, and how we are to gain a nuanced understanding of them[1]. To some extent, this task must be left to those who are examining the historical issues here in more detail, as I cannot do justice to the richness of this language (especially given that much of it was originally written in Latin). However, as the themes of otherness and continuity, and of the relationship

[1] I will make several references to 'the other' or 'otherness' in this thesis. However, it is a slightly slippery term that can be used in a multitude of ways, and is sometimes used to muddy the waters when theorists do not wish to be too specific about what they mean. Among other things, 'the other' can sometimes refer to:

a) A constructed view of the negative aspects of those people or ideas against which the self wishes to assert itself. These are parts of the social environment of the self, and so not entirely alien.
b) A rejected or unacknowledged aspect of the self, which is projected onto others but subconsciously recognised as part of the self (Jung calls this the 'shadow' (Jung 1919)).
c) Something opposed or antipathetic to human life as a whole (such as dragons in mythology). Some have taken this 'other' to represent biological death or hostile nature.

I am grateful to John McKinnell for discussing these distinctions with me. A fuller discussion of these ideas can be found in his book *Meeting the Other in Norse Myth and Legend* (2005) especially in chapter two. I will use the term to refer to something which is assumed to be external to the self, and sometimes more generally external to the human or the rational. However, it is important to remember that this concept can hide a multitude of distinct ideas.

between past, present and future, will recur throughout this thesis, something must be said about this.

Questions concerning 'otherness' have arisen in political and environmental philosophy as well as in many other subjects, but probably above all other subjects, social or cultural anthropology recognises the difficulty with encountering and understanding 'the other'. To take a slightly outdated cliché of the anthropologist, can the white middle class academic really understand the language and other cultural practices of the native tribesmen who he encounters? The historical problem of understanding rights seems to share some of the same features, but without the advantage of direct contact with the people concerned. Clifford Geertz examines questions of cultural distance, both geographic and temporal, in his book *Available Light*:

> Postmodernists have questioned whether ordered accounts of other ways of being in the world - accounts that offer monological, comprehensive, and all-too-coherent explanations - are credible at all, and whether we are not so imprisoned in our own modes of thought and perception as to be incapable of grasping, much less crediting, those of others.(Geertz 2000, p. 102)

Obviously, the anthropologist can have no chance unless he attempts to fully immerse himself in the language and culture of the people who he studies, and it seems that the same must be the case for attempting to understand the past meanings of moral terms. To take an example, someone wishing to gain a thick and nuanced understanding of Aquinas' usage of the word *ius* (which we will look at shortly) must have a command of medieval church Latin, a knowledge of the practices and theology of the Dominican and Benedictine orders, of Aristotelianism and of Islamic philosophy and theology, and a familiarity with the contemporary art and literature of the time. Sadly I don't qualify on those counts, and few people would qualify on all of them. Perhaps the best that we can say is that we should do the best we can in the time that we have to access the surrounding culture of a figure that we study, and that the more we do this, the deeper our understanding of their thought will be.

But this still doesn't really escape the charge that we are 'imprisoned' in our culture. It may still be the case that our insight is too coloured by our own culture to be of any use. Geertz does not see this as too much of a problem. We should try to immerse ourselves in the culture concerned, but also acknowledge our own cultural perspective:

> We look back at these two "peoples," [the eighteenth century Hawaiians and European navigators] and their legendary "first contact" encounter, through the haze of the modern order of life (or, now that the Euro-American empires and the "East-West" world divide have weakened or disappeared, that of the postmodern order). We look back on them, moreover, from our particular positions within that order. We make of them what we can, given who we are or have become. There is nothing fatal in this, either to truth or fairness. But it is inevitable, and foolish to pretend otherwise. (Geertz 2000, pp. 104-5)[1]

It should also be said that even if the culture of the past *is* very different from the one we experience today, it is not so radically different that it is unrecognisable. After all, I only began to consider the history of rights in order to make sense of our current understanding of them. To continue Hartley's 'foreign country' metaphor, our modern cultural wealth has come to us on trade winds blowing from the past. We have some understanding of the way that things once were, because without this we would have no understanding of who we are. So we must understand ourselves to understand our history, and vice versa.

So there do seem to be ways in which we might approach a solution to these apparent problems of thoroughly understanding moral concepts from the past. We must immerse ourselves in past culture while acknowledging our own viewpoint, and accept the otherness of the past without treating this otherness as total alienation. However, even if this points the way forward, it makes very demanding claims on us; claims that most moral philosophers do not have the time or skills to meet. If it is true that an understanding of present moral concepts hinges on an understanding of past ones, then it looks like a good moral philosopher may also have to be a good historian and a good anthropologist. Either that or moral

[1] In fact, some would maintain that our own subjective perspective is essential to the project of understanding and structuring ideas from other times and cultures. This idea is evident in Gadamer's positive understanding of prejudice as 'pre-judgement' (Gadamer 2004)

philosophers will have to talk to historians and anthropologists a lot more than they do at the moment.

## 2. Some Features of Contemporary Rights Theories

It may be useful to begin by picking out some of the features that we tend to associate with contemporary theories of rights. The idea here is not so much to arrive at a definition of 'a right', according to which we can categorically identify the emergence of the first true 'rights theory', but rather to identify some salient aspects of the ways in which we think about rights that will be useful in tracking the emergence of our current patterns of thought. While I mention these features before I track their emergence, their role in theories of rights was in many cases only evident from looking at the ways in which they developed. The first three features that I mention may arguably be regarded as features of *any* contemporary theory of rights, but the last five may arguably not, although they are frequently observed in theories of rights.

### *(2a) Subjective Rights*

We generally hold that rights are held by or attached to particular people[1]. Such rights are often therefore referred to as 'subjective rights', meaning that they apply to particular *subjects*. Subjective right differs from objective right in that it describes rights which attach to a particular person. When I am owed money, it is specifically *I* who have the right to be repaid. Even when we consider those rights which are held to be universal, we talk about *each person's* right. Rights to life, liberty or the pursuit of happiness are thought to be held individually by each person.

Objective right (an older notion) is more like our use of the adjective 'right'. It refers to the right thing to be done and does not attach to any individual (in that there is no

[1] I use the word 'people' here for the sake of simplicity, although in later chapters I discuss the possibility that there are subjects of rights that we do not necessarily regard as people. For example, I look at the rights of groups (chapter five) and animals (chapter six).

identifiable right-holder of an objective right).[1] The words 'subjective' and 'objective' are not ideal in this context, as it might be taken to suggest that the debate concerns moral subjectivism, with which this idea has no connection. However, as it is employed in so much of the literature I will use it to avoid confusion.

*(2b) Advantageous to the Right-Holder*

It is generally thought that the content of a right (i.e. what it is a right *to*) must be to the advantage of the right-holder. For example, it is commonly thought that all people have rights to things like life and liberty, but it would generally be considered odd to say that I have a right to pay taxes. As we shall see later on, this aspect is sometimes central to the way that the concept of a right is formulated. So-called 'interest theories' and 'benefit theories' of rights say that a person has a right when some other person, a group of people, or people in general have an obligation to do something (or refrain from doing something) in order to benefit the right-holder or serve their interests.[2]

*(2c) Linked with Duty*

This brings us on to a third feature of rights. Rights are correlated in some way with duties or obligations. This is not the same as the claim that 'with rights come responsibilities', which suggests that the holder of rights also has duties or obligations.[3] What is meant here is that if an individual has a right, some other person, group, or people in general have a duty. My right to be repaid a loan implies a duty of the borrower to repay me, and my right to life implies (at the very least) a prima facie duty of everyone else not to kill me. Rights that correlate with a duty held by a specific person or group are known as rights *in personam*, and rights that correlate with a general duty imposed on everyone are known as rights *in rem*.

As we have seen, benefit or interest theories of rights articulate the connection

[1] This distinction is nicely summarised by Lahey (1997)
[2] See, for example, Lyons (1969).
[3] Although some theories of rights do maintain that in order to be the type of being that can have rights, one must be the type of being who can have duties, obligations and moral responsibility (see chapters four, five, six and seven)

between right and duty in terms of the benefit that the duty confers on the right-holder, or the extent to which the duty serves the right-holder's interests. Another prominent theory is the 'choice theory' of rights, which articulates it in terms of the power that the right-holder has over the duty that corresponds to her right.

*(2d) Moral/Natural Rights*

While the concept of legal rights is very much in use today, rights are also used in a moral sense. Statements such as 'Everyone in the world has a right to be educated', 'Women have a right to equal treatment with men' and 'The people of North Korea have a right to freedom of speech' are perfectly coherent, even if the speaker acknowledges the absence of legal rights to ensure these things.[1] Traditionally these kinds of rights are regarded as *natural* rights, rights that we have in virtue of being born, and which are contingent on some important feature of the right-holder, such as rationality, sentience and so on.

*(2e) Linking Ethics to Justice, Law and Politics*

These moral rights are often thought to be prior to legal or political institutions in the sense that they can override laws and obligations that such institutions impose. This means that (according to some theories) where the state violates or fails to protect our rights, we are entitled to commit acts of civil disobedience or rebellion. Even if we hold that rebellion or civil disobedience are not justified, we might see rights as one of the ways of measuring the extent to which a government is legitimate, or doing the things that it ought to do.

In this sense, moral rights are often linked to institutions of law and politics to a greater extent than other moral concepts. Rights serve as limitations on how governments ought to behave and as benchmarks for the standards that they ought to meet. This is especially the case with the concept of human rights, which acts very much as a bridge between moral and legal concepts.

[1] Unless one adopts a Benthamite stance, arguing that non-legal rights are incoherent. Even so, the Benthamite would understand the meaning or intent of the statements.

*(2f) Moral Urgency/ Strength*

To say that someone has a *right* to something seems to be a stronger statement than maintaining that they ought to have it or have a moral claim upon it. Sometimes rights are characterized as 'trumps' over other moral considerations. In other theories, rights can be prima facie. They can be defeated in extreme circumstances, but these circumstances are ones in which other rights or moral considerations have great strength. To say that I have a right to something means that either the person who is denying me the content of my right must dispute my right, or (for theories under which rights are defeasible) that he must provide extremely good reasons for denying me the content of my right.

*(2g) Liberal Individualism*

Rights are generally associated with a tradition that is both liberal and individualistic. The language of rights is usually less popular with the communitarian left.[1] Perhaps this is because of Marxist criticisms that rights are responsible for creating boundaries between individuals which force us to hold each other at a distance, and thus contribute to alienation. This is a criticism that we will examine in more detail in the next chapter. Some conservative thinkers are also sceptical about the language of individual rights, due to arguments (like one made by Bentham) which state that the emphasis on individual rights dissolves or undermines the associations that we have with the state and the law of the land. Thus rights are often thought to sit most comfortably in the liberal camp, as they are thought to be too individualistic to fit with theories that advocate strong communal links or a strong identification with one's nation, government and cultural heritage.

*(2h) Autonomy, Liberty and Rationality*

Relating to the association with the liberal tradition, rights are often associated to some degree with notions of autonomy, liberty and rationality. This is not just in the sense that

[1] See, for example, Guttman (1985) and Mulhall and Swift (1992).

people are seen as having rights *to* liberty: many theories of rights have the notion of liberty and autonomy at their very foundation. Rationality is closely linked with these concepts. The importance of liberty is often stressed because of the ability of human beings to make rational autonomous choices about how to live their lives.

## 3. *Ius* and Subjective Right

Having made these points, we have a difficulty with where to start. I have said that the modern view of rights did not one day spring fully formed from the mind of one philosopher. It would be very strange if it had done. Rather, we can trace the ancestry of modern rights back as far as the emergence of thought, or as recently as the latest published paper which makes a new contribution. Ultimately, as with any moral concept, the historical origin of 'rights' must be in the broader sense of 'right', good or obligation, since nearly all theories of rights, whether they are legal, moral or political, depend on a concept of something being right.

The emergence of ideas of right and wrong is probably lost forever in the mists of pre-literate time[1], but until comparatively recently in human history most western moral codes have regarded the term 'right' or its equivalent as an *adjective* to be applied to a person or an act, not as a *noun* applying to what can be held or claimed by a particular individual (as has often been pointed out, there are ten commandments, not ten rights[2]). The closest early approximation of our noun 'right' that is used in the Western literature is probably the noun *ius* in Roman jurisprudence, which some people translate as 'right'. Rather pleasingly, it can also refer to a soup or broth, but there are also alternative legal interpretations of the term. The study of law and its application became very important during this period, as the rapid expansion of the Roman empire prompted questions about how law and order should be upheld and maintained. Roman jurists developed new systems of law, and these systems

[1] Although for some discussion of this, see Midgley (1991)
[2] For example, see Fortin (1996, p. 364)

relied on a glossary of carefully articulated legal terms.

*Ius* was later adopted and interpreted by many medieval thinkers as they tried to make sense of and develop the ancient texts, and it is a term which has as much of a place in medieval church Latin as it has in classical Latin texts. As we have seen, there are a number of different dimensions to the debate concerning when and whether the concept *ius* became equivalent to our concept of a right. One such dimension concerns the notion of subjective and objective right.

*Ius*, by a standard interpretation, has classically been used in the objective sense in jurisprudence, in order to describe the right or just state of affairs. In these uses, it does not attach itself to particular individuals, but rather to what should be done. It is perhaps useful here to make a distinction between *ius* and *lex*, the two components of Roman law. There is much debate concerning the distinction between these two components, and in some places they appear to be used synonymously. However, some suggest that *ius* can describe the state of affairs that the law should protect or bring about, while *lex* describes the laws which govern this. These terms might thus be considered roughly similar to their descendents 'justice' and 'legislation'. The salient point here is that the objective sense of *ius* is that which the institutions of law should bring about.

Michel Villey (1975) and Brian Tierney (2002) among others argue that there is no subjective sense of *ius* in Roman jurisprudence. Villey, who believes that the modern sense of rights came from William of Ockham in the fourteenth century, claims that *ius* cannot be meant subjectively in the Roman texts (particularly focusing on the work of Gaius and Ulpian) because the term *ius* simply would not make sense in many contexts if we translated it to mean subjective right. He also makes the more philosophical argument that the notion of individual subjective *ius* is associated with nominalism, the view that there are no universals and only individual entities are real. Brian Tierney disputes the association between

subjective *ius* and nominalism, and instead describes an earlier genesis of subjective *ius* as occurring gradually, beginning in the twelfth century in commentaries on Gratian's *Decretum.*

Complicating the debate about the origin of subjective rights even further, John Finnis argues that the concept is evident in the work of St Thomas Aquinas (Finnis 1998 and 2002). Aquinas follows Aristotle in his conviction that human nature is the basis for understanding how human behaviour should be directed. This is the basis of Aquinas' *ius naturale* or natural law theory, thought by some to be the basis of natural rights. This was part of the scholastic project of connecting the role of political institutions with divine will, and was based in the concept of God's eternal rationality, which ordained that we should pursue the good for humanity in accordance with our God-given human nature.[1] *Ius* here can be understood in two ways: we can take it to mean a rough equivalent of a scientific law, simply describing the rules of human behaviour, or how we naturally *do* live. However, Aquinas' natural law uses the notion of human nature to describe what is a *good* human life, so this *ius* takes on moral aspects as well: God's eternal law which prescribes how we *should* live. Aquinas also stresses the need for human laws, although these should always be in accordance with the natural law (in this sense he is a precursor to thinkers like Grotius and Locke).

Again, there is dispute over whether Aquinas' *ius* is equivalent to modern concepts of rights. With Michel Villey (1975), Tierney (2002) argues that, as with the work of the Roman jurists, Aquinas' meaning is objective, not pertaining to a subject, with *ius* simply meaning "what is just" or "what is right" (p. 391).[2] He also argues that there are further

[1] Much of Aquinas' thought on *Ius naturale* is presented in the *Summa Theologiae* (Aquinas 2006)

[2] Although it is important to note where Tierney and Villey diverge significantly here. As we will see later, Villey argues that subjective rights are incompatible with Aquinas' natural law theory. Tierney argues that, while Finnis does not demonstrate adequately that Aquinas employed rights theory, he has shown that rights theory and traditional natural law theory are not incompatible. This contention will be discussed later when we look at rights in the context of natural law theory.

aspects of current rights theory which are not embraced by Aquinas' usage. Subjective rights, he argues, are generally conceived to be something that are of benefit to the right-holder, and are associated with autonomy. This is not so with the Roman concept of *ius* embraced by Aquinas:

> Aquinas's own definition did not have any reference to other persons' rights. Finnis therefore emphasised another usage of Aquinas, his acceptance of the Roman law definition of justice as a steady willingness to give others "what is their right" {*ius suum*}." But the word *ius* as used here did not have the same meaning as our English word "right" used in a subjective sense. The modern word implies a certain freedom of choice, a freedom to act or not to act in the relevant sphere. The *ius* of an ancient Roman, what was due to him, might be a punishment. (Tierney 2002, p. 392)

Finnis responds that Tierney's analysis is lacking for three reasons (Finnis 2002). He suggests that Tierney makes the mistake of suggesting that if something is objective (pertaining to an object) then it cannot also be subjective (pertaining to a subject). He also thinks that Tierney's analysis of Aquinas scrutinises the language at the expense of having a regard for its intellectual context. He also suggests that Tierney "employs a simplistic understanding of the modern idea of rights" (p.407). He argues that Aquinas uses the term *ius* in a subjective sense *as well* as an objective one. He takes Aquinas' thought that "justice is distinguished by directing us in matters that concern *other* persons" (p. 407) and develops this to argue that the *ius*, being a requirement of justice, is a requirement owed by an agent to another person:

> Thus the Tierney-Villey characterization of *iustum* (and so also of *ius*) as the "right thing or state of affairs… that justice [seeks] to achieve" omits an essential element in Aquinas's conception: one cannot properly think of *ius* without thinking of *the other* to whom an act, forbearance, or acceptance is, in justice, owed. (Finnis 2002, p. 408)

Finnis backs up this assertion with the evidence that Aquinas makes frequent reference to a person *having* a particular *ius*, which matches the current usage of the term right, which has the same syntactic relations. However, this point is a fairly weak one. The words 'grudge', 'debt', 'crush' or 'photograph' might be used in similar ways (i.e. describing something that someone *has* against, on, or of another person). Finnis has demonstrated that *ius*, at least in

some sense, is used in Aquinas to describe the relations between people, and that it has a syntactical role which is compatible with this, but this is not tantamount to saying that it is the same as the modern concept of rights. As we have seen, Tierney argues that subjective rights involve freedoms, and the Roman *ius* (adopted wholesale, he claims, by Aquinas) does not.

## 4. Rights and Duties

However, it might be argued that Tierney is adopting a rather narrow conception of what it is to have a right. Tierney is using H. L. A. Hart's definition of a right as being strongly associated with autonomy and freedom[1], but as Finnis argues, this is not a universally accepted modern way of understanding rights (Finnis 2002, p. 409). There are many rights cited in modern declarations of rights which do not make reference to freedom and autonomy. Finnis gives the examples of a right to life and a right not to be tortured.

> Even advocates arguing in court for suicide and euthanasia make little or no attempt to claim that the autonomy they are pleading for is entailed by the logic of the modern concept of "a right to". Judges, lawyers, and contemporary legal theorists, thoroughly attuned to "modern thought," know that rights are simply not constrained within the straitjacketed conceptual structure which Tierney, Villey, Strauss, Fortin et al. assert is "the modern concept of rights" (Finnis 2002, p. 409)

However, it could still be difficult to argue that Aquinas' concept is identical to any of those modern theories. As I have mentioned, and as we will see in more detail when we examine the range of the modern literature on rights, most major contemporary rights theories divide into the two categories of 'choice' theories of rights, and 'benefit' or 'interest' theories of rights. The 'choice' theories explicitly involve the notion of autonomy. Having a right implies that one has a power over the duty that corresponds with the right. So if I have a right to be returned the book I lent you, and you therefore have a duty to return it, I am entitled to release you from that duty if I so choose. Obviously this is incompatible with the Thomistic *ius* that has been discussed, since an *ius* can also be a punishment that I am

[1] See, for example Tierney (1997, pp. 68 and 79). Hart's approach, originally mentioned in *The Concept of Law* (1961) will be discussed further (and largely rejected) in chapter four and later chapters.

'owed', and punishment is not usually something that can be chosen by the person who is owed the punishment.

Similarly, if the Thomistic *ius* is to be interpreted as a subjective right, we cannot understand it in terms of benefit theories. Benefit (or interest) theories are based on the idea that a duty is correlated with a right where (among other things) the performance of the duty will benefit the right-holder, or be in their interests. Again, we can see that *ius* cannot refer to a right by this understanding, since it is not always beneficial to, or in the interests of, the person whose *ius* it is.

## 5. Moral and Political Rights

So while something vaguely similar to a right seems to have existed in Roman jurisprudence, this was not modern subjective right in the sense that it is commonly understood. By some stage in the high to late middle ages the notion of right has been lent a subjective sense. However, more than this is needed to characterise some of the senses in which the term 'right' is used in the present day.

The first clear occurrence of the idea of moral rights is as natural rights. However, when this concept emerged is another area of controversy. As we have seen, Finnis asserts that this notion is present in Aquinas and in natural law theory. The view that natural rights originate with natural law (just as legal rights are considered a product or aspect of human systems of law) is very common, and we will later see how this forms the basis for a family of criticisms of the idea of natural rights.

However, it has also been argued that natural law theory, in the form that it existed in Aquinas, was incompatible with natural rights theory. According to Brian Tierney, Villey "maintained that the idea of subjective rights was "logically incompatible" with the teaching of Aquinas…he wrote that "There is no place in the system of St Thomas for the idea of subjective rights considered as a power or liberty of the individual"" (Tierney 2002, p. 391).

As we have seen, Villey's view, along with Brian Tierney, was that while there was a concept of rights that existed in Aquinas' natural law theory, this was the objective sense of right taken directly from Greek and Roman thinkers, and not a sense that applied to individual subjects. However, Villey's view was stronger than Tierney's in that he proposed that not only was Aquinas' sense of *ius* an objective one, but that a subjective sense would be entirely incompatible with Aquinas' wider natural law theory. It appears that the basis of this argument lies in the fact that Villey makes an association between subjective rights and a nominalist view of metaphysics. This is not the thesis for an in-depth exploration of Thomist metaphysics, so I will leave open the question of whether subjective natural rights could be present in Aquinas. What cannot be doubted is that the Thomist natural law tradition is one of the many strands that have contributed to modern conceptions of moral rights. However, it could be argued that rights as they subsequently developed would not have taken the form that they did without the rise of Renaissance Humanism, which was in many ways a direct reaction to scholasticism. Giovanni Pico Della Mirandola's *Oration on the Dignity of Man*, published in the 1480s, and subsequent works that it influenced, emphasized notions of autonomy and self-creation to an extent that would not have had a place within Thomistic philosophy.

## 6. Vitoria and Grotius – Political Rights in Natural Law Theory

Grotius was among those responsible for cementing the intuitive link between rights theory and the natural law tradition. The major text concerning this topic is *De Jure Belli et Pacis*, or *The Law of War and Peace* (sometimes translated as *The Rights of War and Peace*) which came out in 1625 (Grotius 1625/2005). Grotius draws heavily from earlier thinkers, particularly from Francisco de Vitoria, whose *De Jure Belli* and *De Indis* were published seventy two years earlier (Vitoria 1991). Vitoria helped to edit some of the work of Aquinas, who was a major influence. Vitoria's interpretation of Aquinas' *ius* was much closer to what

was to become the basis of the natural rights theory of the renaissance. Annabel Brett (1997) argues that Vitoria's reading of Aquinas is fairly radical, reinterpreting what appears to her to be only an objective *ius* as a subjective one. Vitoria is also important in that he wrote extensively on international law, largely in response to the conquest of the Americas that was happening at the time. *De Indis* and *De Jure Belli* both deal with the issues raised by the discovery of the Americas and the ethics of colonisation. *Ius* is extended, not just in the theory of *ius naturale*, but also in practical political terms, beyond the boundaries of a single society or legal system (Vitoria's *ius naturale* was applied in his writings on the proper treatment of native people in the New World) bringing us closer to a contemporary political notion of universal human rights.

With Grotius we see an unquestionable (although questionably original) synthesis of many of the strands that we are looking for in a rights theory, and also a new emphasis given to rights as a central concept. Grotius gives us a rights-based theory which is political and moral as well as legal, which espouses individual subjective rights, which is universal to all humans through a universal human nature, and which is discoverable through reason. It is also quite possibly the case that Grotius, as someone involved in both legal and political disputes, was partially responsible for the beginning of the popularisation of the concept of natural rights. In some ways it is unsurprising that a theory of this nature should come from the mind of a man like Grotius. Grotius was a lawyer, and very aware of the classical jurisprudence that informed a great deal of legal practice at the time. *Ius* will have been a very familiar concept to him. In addition, he was a political prisoner and exile, which may have contributed to the sense of individual moral injustice which for some necessitates theories of individual rights.[1] He was also influenced by the growing need for more detailed accounts of property rights. His *Mare Liberum* argued that the sea was international territory

[1] See Butler (2009).

that people of all nations had a right to use for trade (Grotius 1972). This justified the Dutch attempts to use its naval force to break up various trade monopolies that existed at the time. Once again, theories of rights were reformulated to address new political concerns.

Like Aquinas and Vitoria, Grotius is a natural law theorist. Aquinas maintains that God, in his perfect rationality, knows what is the ultimate good, and that he determines the eternal law for the purpose of achieving that good. The eternal law is discoverable to human beings because they can rationally partake in God's eternal reason. This human immersion in the eternal law is what Aquinas calls natural law. By this view, human nature is determined in accordance with God's eternal plan, and God knows our ultimate good and creates a law accordingly. While the natural law is in a sense determined by human nature (because God decides the natural law in accordance with the good for mankind) God is necessary to this view as the ultimate lawgiver:

> If Aquinas's view is paradigmatic of the natural law position, and these two theses -- that from the God's-eye point of view, it is law through its place in the scheme of divine providence, and from the human's-eye point of view, it constitutes a set of naturally binding and knowable precepts of practical reason --- are the basic features of the natural law as Aquinas understands it, then it follows that paradigmatic natural law theory is incompatible with several views in metaphysics… it is clear that the natural law view is incompatible with atheism: one cannot have a theory of divine providence without a divine being. It is also clear that the paradigmatic natural law view rules out a deism on which there is a divine being but that divine being has no interest in human matters... whereas the paradigmatic natural law view involves a commitment to God's existence. (Murphy 2002)

This goal-based view with its emphasis on God's will has its roots firmly in Aristotelianism. Grotius differs starkly on this point. Like Aquinas, he believes in a natural law discoverable to man through reason, but for him this natural law is independent of God's existence.[1] Grotius made the controversial assertion that rights "would take place, though we should

[1] This is true of Grotius' later works, although in his earlier writings he does support the Thomistic view, arguing that natural law is the revelation of God's will. This view is not entirely divorced from his later writings in that he takes God's goal for mankind to be based in man's social nature, but it does still contain the theistic bent of earlier natural law theories. However, by the time of the publication of *De Iure Belli et Pacis*, he had completely abandoned this view in favour of a theory based entirely in human nature. See Tuck (1979, chapter three) for an account of the development of Grotius' thought throughout his career.

even grant, what without the greatest wickedness cannot be granted, that there is no God, or that he takes no care of human affairs" (Grotius 2005, p. 89). Grotius was a member of the Arminian school of theology, which rejected predestination and had a strong emphasis on the freedom of human beings to accept or reject the Word of God and to control the shapes that their lives took. It also held that Christ's death was for *all* people who chose to repent of their sins. This theological outlook has both an emphasis on human autonomy and a universal application. Grotius was also writing against a background of massive religious upheaval and war in Europe. Since Grotius was keen to avoid war, and took an approach that had practical implications for governments, we can understand even more why his approach to rights did not rely on theological origins. While Tierney argues that this idea is not original to Grotius[1] the fact that such an idea has arisen by this point marks a movement into a new secularist realm of ideas that paved the way for modern conceptions of rights. It also marks the beginning of a massive promulgation of works in the theory of rights that is to last more than a hundred years and permanently alter the landscape of political thought and practice.

Grotius distinguishes between the objective right (what is right) and the specifically subjective sense (a right proper). Although we have seen it argued that earlier thinkers held a concept of subjective right, Grotius is certainly the first person to formally categorise the notion of right in this way.[2] In his *Introduction to the Jurisprudence of Holland* he states that rights proper (subjective rights) will be his central concern. He goes on to say that a right proper is a relationship that exists between a rational person and what is appropriate to him through merit or property. The area of rights discourse concerning what is owned, Grotius terms 'commutative justice', and he calls the area concerned with what is merited

[1] He argues that the idea of natural law that would exist independently of God is evident in the work of many late scholastic thinkers, naming Suarez as an example (Tierney 1997, pp. 319-320).

[2] Knud Haakonssen claims that Grotius had a transformative role in the creation of subjective right, although as we have seen there are also earlier contenders (Haakonssen 1985).

'distributive justice', so here we see a notion of rights that involves jurisprudence, moral thought and political thought. It is not so much that Grotius develops individual theories of rights for all of these areas, but rather that for him, all realms of normative thought are intrinsically related:

> an entirely different aspect of Grotius' method concerns his refusal to divide ethics, politics and law into separate subjects. These days, compartmentalization is the norm; ordinarily, we study one of these subjects while paying scant attention to the others. Now, it is true that Grotius does often identify ways in which legal norms differ from moral or political ones (see, e.g., the discussion of laws at the beginning of *DIB* I.1). At the same time, he does not think that law, politics and ethics are entirely distinct domains... A fundamental tenet of his thought is that moral, political and legal norms are all based on laws derived from or supplied by nature. (Miller 2005)

For Grotius, the sociability of human nature furnishes us with natural rights. In political terms, the rights that a sovereign possesses derive originally from these natural rights (they are handed over to the ruler) and this includes the natural right to punish those who disregard the natural law (a view whose origins are often falsely attributed to Locke). Hence we can see how law, politics and morality are essentially parts of the same picture for Grotius, as the basis for each of them proceeds from the natural rights that are held under the natural law.

One central question that arises with regard to Grotius is that of how individual rights can be a direct result of man's sociable nature. As Tuck points out "If we consider those theories that have traditionally stressed communitarian principles (such as classical utilitarianism), we can see that they have been precisely the theories which placed rights in a subsidiary position" (Tuck 1979, pp. 68-69). For example, in the next chapter we will look at Marx's claim that the concept of rights is damaging to communitarian ideas because it sets us apart from each other by giving each of us claims against all the others. Natural rights theorists are often individualists, and communitarians often dislike theories of natural rights. Thus it may seem a little odd to make the claim (as Grotius does) that individual rights have their origin in a shared and sociable human nature.

On the other hand, it might be difficult to see how a theory of individual rights *could*

arise from an extremely individualistic view of human nature, since the concept of natural rights would be empty if there were no possibility of people respecting other people's rights. Theories of rights link people through networks of rights and duties, and this would be a poor way to try and make sense of a human nature that did not link us to each other at all. It would thus appear that a theory of natural rights requires a conception of human nature that is individualistic in the sense that each individual has moral worth or moral status, and communitarian in the sense that each individual has a strong natural social relationship with other individuals, leading us to form communities. This does not narrow the range of philosophers who can hold rights-based theories all that much, as I expect that everyone from Karl Marx to Robert Nozick would acknowledge our individual moral worth and our social behaviour. However, it does perhaps illustrate that Tuck is rather quick to deny that Grotius' theory of 'rights' is akin to a contemporary conception. Grotius argues that rights are derived from our common social nature, and few of us would doubt that we hold theories of rights to be necessary because of our desire to live co-operatively with others.

**7. Hobbes**

Given these points about human nature and individualism, this would probably be a very good point to mention Hobbes. Hobbes' conception of man's natural condition as 'solitary, poore, nasty, brutish and short' is so well known it is almost embarrassing to quote, but it is a good illustration of Hobbes' description of human nature. It would therefore seem unsurprising that Hobbes writes about each individual's 'right of nature' which allows him to aim for his own preservation in the turbulent state of nature, a notion that was probably influenced by the rise of mercantilism with its emphasis on competition for goods. However, this right deserves a deeper analysis, since it is not at all clear that it shares all the features of the rights that we have been discussing up to this point. We also need to consider what rights Hobbes thinks that people retain once they live under the power of a sovereign.

It might be said that Hobbes' 'right of nature' denotes not so much a moral concept, but rather a lack of one. Natural man has a right to do whatever he pleases in order to aim at his own preservation precisely because of an absence of a moral framework imposing restrictions on people's behaviour. Thus it might be said that Hobbes' right is not a moral idea in the sense that natural rights based in the intrinsic moral status of mankind are moral ideas.

But it is not as simple as this. Some rights theorists would claim that many moral rights imply absences of moral restrictions. These would generally take the form of rights to do things. For example, if we were to claim that there is a moral right to bear arms, it would mean that there is no moral restriction on bearing arms. A right to free speech would mean that there is no moral restriction on what I can say, and so on. Rights to perform actions can be seen as implying moral permissions, or absences of moral restrictions. They generally operate in the sphere of actions which are not proscribed but also not necessarily *pre*scribed, and this is one of the reasons why they are frequently associated with liberty and liberalism. This is not dissimilar to what Hobbes had in mind. After all, he regarded law and right as mutually exclusive concepts:

> THE right of nature, which writers commonly call jus naturale, is the liberty each man hath to use his own power as he will himself for the preservation of his own nature; that is to say, of his own life; and consequently, of doing anything which, in his own judgement and reason, he shall conceive to be the aptest means thereunto. By liberty is understood, according to the proper signification of the word, the absence of external impediments; which impediments may oft take away part of a man's power to do what he would, but cannot hinder him from using the power left him according as his judgement and reason shall dictate to him. A law of nature, lex naturalis, is a precept, or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life, or taketh away the means of preserving the same, and to omit that by which he thinketh it may be best preserved. For though they that speak of this subject use to confound jus and lex, right and law, yet they ought to be distinguished, because right consisteth in liberty to do, or to forbear; whereas law determineth and bindeth to one of them: so that law and right differ as much as obligation and liberty, which in one and the same matter are inconsistent. (Hobbes 1985, p. 189)

It might be argued that natural right is an opposite concept to natural law in that natural law

and natural right define each other's boundaries: natural right is the area of natural man's life that is not dictated by a natural law (a view that we will return to shortly). If we were to take a right do something to mean merely the absence of a prohibition against doing it, then this would appear to be the very sense intended by Hobbes when he writes about a 'right of nature'. A moral right taking this form *is* a moral concept, precisely because it describes the ground that is not covered by moral restrictions, just as a legal permission is a legal concept because it defines the area within which we are free to move without legal constraints.

However, this would not be an adequate definition even for the most minimal modern rights theories. A right to perform a particular act must of course imply a moral permission, or absence of moral restriction. But this is a necessary condition, not a sufficient one. The most important feature that a modern theory of rights requires that is lacking in Hobbes is a correlative duty. While the right of nature means that no man is prohibited from doing what is necessary to aid his own preservation, no other man is required to do anything or refrain from doing anything in order to protect this right. It is simply an absence of prohibition and is not active on anyone other that the right-holder. Rights in the modern sense dictate moral relations between individuals, and not simply the sphere of activity of one individual. In this sense we might say that Hobbes' notion of a right is even more individualistic than the rights theories of modern libertarians such as Robert Nozick.[1]

Another way in which Hobbes' right of nature does not correlate with modern rights theories is that it is debatable whether the right of nature is a moral right at all. Let us assume that we understand the right of nature as occupying the area that is not dictated by the laws of nature, and that the domain of morality is to be understood purely in terms of those laws. This would suggest that the right of nature would be a moral right in the same way that legal rights to freedoms are can be said to be legal (because they define the area of human activity

[1] See, for example Nozick (1974).

ungoverned by positive law). However, neither of those conditions has clearly been met.

It is not obvious that the boundaries of Hobbes' right of nature are defined by the boundaries of his natural laws. Additionally, it is not at all clear that the laws of nature themselves are moral concepts. The sole concern of the laws of nature is the survival of the individual, and not the individual's interactions with others. The laws of nature are what reason tells us is best for our own survival, not what is best in terms of the overall good. The egoistic, self-contained and individualistic nature of these laws would seem to prohibit them from being moral laws. Thus even if we could show that laws of nature implied the right of nature, this would not demonstrate that they implied *moral* rights.

## 8. Locke

A good place to end the first part of our story of the development of rights theories is with John Locke. Widely regarded as an important figure in the histories of liberalism and individualism, Locke is massively significant to the development of political philosophy and political practice, and his view of natural rights and their connection with natural law is an essential element of this. However, as we shall see, a great deal of what Locke had to say was more influential than it was original, and most of the central features of his theory of rights were already in place by the time that Locke proposed them.[1]

Locke famously claimed that there were three main natural rights: rights to life, liberty and property, and that these rights were inalienable and thus must be protected within a state as well as in the state of nature. Unlike Hobbes and Grotius, for whom the notion of rights arguably did not depend upon the existence of a deity, Locke's natural rights are explicitly theological in origin. Since God wills man's survival, he ordains natural laws and natural rights best suited to this goal.

However, other than with regard to this theological dimension, Locke shares many

[1] Much of Locke's thought on this is to be found in the *Second Treatise of Government* (Locke 1960)

features with Grotius in particular. For both thinkers, moral, political and legal theories are inseparable and we need to understand all three of these strands in order to understand each of them. For both Locke and Grotius, natural rights are intimately connected with natural law, and in civil society positive law must be aligned with the natural law. In fact, many of the views on natural rights and natural law that Locke is so famous for are distinctly Grotian in character, even down to the 'natural right to punish' those who offend against the natural law.

So why is Locke frequently regarded as such a major contributor to the present-day notion of moral rights? This may well be down to some rather non-philosophical explanations. Locke wrote the *Second Treatise* at a time when some would say that it was badly needed. The exclusion crisis and King James' subsequent unsuccessful reign prompted a need for an account of royal succession other than the concept of the Divine Right of Kings. Locke's view was that earthly rulers and earthly laws and rights were instituted to protect the divine laws and rights apportioned to each citizen. While by no means an original thought, this was voiced at precisely the time that many felt the need for this kind of justification. In addition, like Hobbes, Locke wrote in English. This made his writings accessible to a wider non-scholarly audience. His writing is also exceptionally clear and succinct. This meant that the *Second Treatise* was not only accessible to many people, but it was also easily comprehensible. Locke's language can be seen echoed in the American Declaration of Independence, the French constitution and many other political documents. As is often the case when ideas are clearly articulated, Locke's defence of natural rights has been the subject of many attacks. Two of these traditional critiques of rights will be the main subject of the next chapter, after which we will examine more recent theories of rights.

## 9. Chapter conclusion

Of course, the history of the concept of rights did not end with John Locke, but in a

sense his theory is a clear encapsulation of all the characteristic features of theories of rights that I mentioned in section two of this chapter. Many of the subsequent developments and refinements of theories of rights have been either in response to or catalysts of major historical events, such as the American War of Independence and the French Revolution. As such, people recognized the appeal of rights language as a way of making moral demands on political institutions, and some of the content of rights became more concrete and less abstract. For example, Thomas Paine defended the natural rights to education and an old-age pension. (Paine 1995, pp. 424-425). This has also been the case more recently with the growth of the concept of human rights. This has led to a certain suspicion that there is an unnecessary proliferation of rights, or that the rights chosen are in some sense arbitrary. While policy makers and political theorists have been increasingly concerned with concrete human rights to concrete things, much of the philosophical literature has become increasingly abstract, dealing with the foundations and proper analysis of a right (we will look at the details of this in chapter three). To some extent there has therefore been a divergence between the more practical and the more philosophical rights advocates, with some of the theory of rights moving very far away from the practical concerns and needs that writers like Paine were keen to protect (although there is a lot of evidence that these two strands have started to converge once again in recent years).

This chapter has really only been able to scratch the surface of the ways in which theories of rights have developed. This is partly due to the fact that any thorough analysis of the history of the concept would have to be more heavily contextual than can be achieved in a single chapter. However, several key points have emerged. Firstly, we must recognize that the concept of rights cannot be summed up in one definitive statement or theory. It is a concept with a very mixed ancestry, and as such can vary greatly in meaning and nuance. Perhaps to some extent a 'family resemblance' approach might be the best way to

characterise what a theory of rights must be. For example, Grotian approaches to rights may be less individualistic than we take to be typical of rights theories, but in other senses they have a great deal in common with many of the rights theories in contemporary western liberal thought. It is also an extremely dynamic and alterable concept. Rights have meant different things to different thinkers at different times, varying according to the philosophical inheritance of the thinkers involved, their other background beliefs, but also the social and political contexts of the time. The way that we use moral language varies according to the purposes that it has to serve. There is no reason to suppose that this process has come to an end. We have not reached the end of history, and new problems, challenges and ways of relating to the world may prompt further evolutions in the concept of a right.

# Chapter 2 – "The Second French Disease"[1]

This short chapter focuses on two famous and influential criticisms of the language of rights. These criticisms will highlight some of the problems with rights discourse that will have to be addressed if we are to develop a coherent idea of environmental rights. While the seventeenth and eighteenth centuries saw rights theories gaining popularity and credibility, the nineteenth century was dominated by scepticism regarding the existence of rights and the appropriateness of rights discourse. This criticism was not confined to any one area of the political spectrum, as the two main focuses of this chapter, Bentham and Marx, make clear.

Criticisms of rights tended to fall into two distinct categories: those that maintained natural rights were false, illogical or non-existent; and those that claimed that they were dangerous or harmful in their effects. Bentham rejected rights both on an ontological and a causal level, claiming that rights were both "absurd in logic" and "pernicious in morals" (Bentham 2004, p. 26).

## 1. Jeremy Bentham – 'Nonsense Upon Stilts'

Bentham was famously sceptical (and arguably rather rude) about the notion of moral or natural rights. His first argument, that rights are 'absurd in logic', attacks the theoretical cogency of natural rights:

> It shall be seen, how from *real* laws come *real* rights: and then it will be seen, how from *imaginary* laws, come imaginary ones. *Right,* the substantive *right,* is the child of law: and when once brought into the world, what more natural than for poets, for rhetoricians, for all dealers in moral and intellectual poisons, to give the child a spurious parentage, to lay it at Nature's door, and set it up in opposition against the real author of its birth. Then comes a bastard brood of monsters, 'Gorgons and Chimæras dire'. (Bentham 2002, p. 400)

[1] Bentham's uncharitable estimation of the French understanding of rights (Bentham 2002, p. 400).

Many thanks to the members of Eidos for their helpful comments on a paper that formed the embryonic stages of this chapter.

Bentham's basic argument is that rights are intrinsically legal entities (that is, they are meaningless unless governed by a law) and that there is no natural law. The argument relies on two main premises, firstly that rights depend on a framework of laws, and secondly that there is no natural law. The first would be accepted by many proponents of rights, although we must bear in mind the view that we encountered in chapter one which maintains that natural rights theory is incompatible with the early natural law tradition.

*(1a) Bentham on Duty*

Jonathan Gorman suggests that Bentham's first premise (that right is the child of law) is "supported by the view that rights are claim-rights that correlate with duties, so that they exist only in so far as there are laws imposing those duties" (Gorman 2003, p. 102). The explicit categorisation of rights into groups including claim-rights, and the correlation of those rights with interconnected concepts came along later on in Wesley Newcomb Hohfeld's *Fundamental Legal Conceptions* (1919), but it does have some relevance. As we saw in the first chapter, Grotius made explicit connections between natural rights and moral duties. Bentham certainly did hold that duties, like rights, were an important legal concept, and that they were intimately connected with rights:

> *Right* being one of the fruits of law, and *Duty* another, it occurred to the second set of constitution makers, that a *Declaration of Rights* would be but a *lap-sided* job, without a *Declaration of Duties*, to match it on the other side. A first Declaration of Rights having driven the people mad, a Declaration of Duties, it was hoped, might help bring them to their senses…
> What seems to have been no better understood by the second set of constitution-makers than the first, is that rights and duties are inseparable - that so sure as rights are created, duties are created too, and that though you may make duties without making rights… yet to make rights without making duties is impossible. (Bentham 2002, pp. 380-1)

This would imply that as well as rejecting natural rights, Bentham must reject 'natural duties' on the basis that there is no natural law, and duty - like right - is 'one of the fruits of law'. Certainly, Bentham is consistent with this view in his *Introduction to the Principles of Morals and Legislation* (Bentham 1948) in which the term 'duty' is constricted to the legal

sense. He does accept elsewhere that there may be other ways of using the word 'duty'. In his *Fragment on Government*, Bentham defines a duty as that "which I am liable to be *punished*, according to law, if I do not do" (Bentham 1988, p. 109). However, also in the *Fragment*, he accepts that there are two forms of sanction that are *not* punishments under law, and that these sanctions all correspond to different types of duty:

> 1. One may conceive of three sorts of duties: *political, moral*, and *religious*; correspondent to the three sorts of *sanctions* by which they are enforced…
> 2. Political duty is created by punishment; or at least by the will of persons who have punishment in their hands; persons stated and *certain*,-political superiors.
> 3. Religious duty is also created by punishment: by punishment expected at the hands of a person *certain*,-the supreme being.
> 4. Moral duty is created by a kind of motive, which from the *un*certainty of the *persons* to apply it, and of the species and degree in which it will be applied, has hardly yet got the name of punishment: by various mortifications resulting from the ill-will of persons *un*certain and variable,-the community in general: that is, such individuals of that community as he, whose duty is in question, shall happen to be connected with. (Bentham 1988, pp. 109-110n)

While he emphasises the uncertainty and variability of the persons who apply the moral sanction, suggesting perhaps that it might be weaker than the political or religious sanctions, Bentham still states that there is such a thing as a moral duty that is enforced by this sanction. The moral sanction is a "motive", which is the unhappiness resulting from the disapprobation of society, and when such a sanction is brought, even if it is not governed by an actual law, one can be under a *duty* to perform the act that prevents that sanction from being brought. This being the case, we can conclude from Bentham's position that duty is not simply the fruit of law (or at least of positive law) after all.

However, moral duty does not necessarily mean the same thing as *natural* duty, and it is unclear whether this presumption of a moral duty leads to the possibility of a moral (or natural) right. We'll leave the first question to one side for now, and look at how a 'moral duty' might correspond to a moral right. Bentham's original argument against natural rights takes the form:

1) Right is the child of law

2) There is no natural law

so

3) There are no natural rights

Jonathan Gorman suggested that (1) is supported by the view that rights and duties are correlated and only exist to the extent that there are laws imposing those duties (p. 102). We have concluded that this approximates Bentham's thinking, in that he acknowledges that duty, like right, is the child of law, and that a right cannot exist without a corresponding duty. He does however state explicitly that a *duty* can exist without a corresponding right. This means that the fact of moral duty does not *in itself* prove the fact of moral right, since the moral duty could exist in the absence of moral right. However, it does weaken Bentham's original argument. If we accept (1) that right is the child of law and (2) that there is no natural law and that this demonstrates that (3) there are no natural rights, what are we to make of Bentham's view that there is moral duty? Bentham has already stated that duty, like right, is a fruit of law. We can imagine a parallel of Bentham's argument against natural rights, levelled at moral duties:

1a) Duty is the child of law

2a) There is no moral law

so

3a) There are no moral duties

Bentham explicitly states (1a) that duty is the child of law, but his view as stated elsewhere contradicts (3a) in that he believes that there are moral duties. If Bentham's original argument against natural rights is valid, and the argument above takes the same form, then this must lead to the denial of (2a) that there is no moral law, since the conclusion that there are no moral duties would follow if (1a) and (2a) were both true, and Bentham does not want

to accept this. Bentham, in other words, must hold that there is a moral law if his arguments are to remain consistent. If we accept the existence of a moral law (even if this is different from the *natural* law that Bentham is so keen to deny) Bentham's argument against natural rights cannot be levelled against such things as *moral* rights, since the argument would take the form:

1b) Right is the child of law

2b) There is no moral law

So

3b) There are no moral rights.

We have already established that, given what Bentham says about duty, he cannot accept (2b) that there is no moral law, so (3b) that there are no moral rights cannot be proven in this way. To avoid this and reject moral rights, Bentham would either have to deny that there are duties that are defined according to moral sanctions or devise a different argument against moral rights that did not depend on the non-existence of a moral law. This is not to say that Bentham must accept the existence of moral rights, all we have demonstrated is that his argument against *natural* rights cannot be used against *moral* rights if we are to accept what he says about a duty that is subject to a moral sanction.

*(1b) The Moral and the Natural*

So is there a distinction between *moral* rights and *natural* rights? When Bentham talks about *moral* duties, he means duties created by the motive to avoid the disapprobation of society. This means that the precise nature of a moral duty in this sense varies according to social norms. Unless Bentham's view of morality were culturally relative, this would be a very bizarre use of the term 'moral', since it pertains to the nature of society rather than to the nature of right and wrong. However, it is fairly clear that Bentham is not a relativist. Quite apart from the fact that his thinking long predates the rise of relativism in moral theory, much

of his writing is often critical about moral codes and practises in other cultures, in fact his opinions on the growing belief in rights in America and France are good evidence of this. So it seems that what Bentham must mean by 'moral duty' is actually something more akin to 'social duty', something resembling the duty to observe cultural norms and etiquette. This is not what is usually meant by the term 'natural' when applied to natural rights and natural law, although the term itself deserves some fleshing out at this point. 'Natural' could be taken to mean a number of different things. For example, in his *Treatise of Human Nature* David Hume (often mentioned by Bentham, sometimes less than favourably, but certainly an influence) is concerned with whether human virtues are natural (Hume 1985). He discusses different possible interpretations of natural, contrasting what is natural with what is artificial, what is civil, what is cultural, what is supernatural, what is miraculous and so on. Many of these ideas overlap or cover a range of grey areas so it might be helpful to clarify a few specific categories or types of use to which the word 'natural' might be put:[1]

1. A first sense of natural might be 'not man made'. This sense contrasts nature with artifice. It might be argued that Bentham's 'moral duties' are man-made, because they are duties based on sanctions imposed by other people. However, this is fairly ambiguous, because social attitudes and norms, while relating entirely to humans, are not 'made' in the way that we make a knife or a house. They are not the product of any person's (or group of persons') conscious design or plan. Rather, they develop seemingly organically over time. This puts Bentham's moral duties in a rather ambiguous area with respect to this sense of natural. If we regard all human practices as man-made as opposed to natural, this must include such things as hunting and eating. This would seem very odd, since these things are not isolated to humans. Certainly social norms which have sanctions attached to their non-

[1] I am broadly following Hume's analysis here, but it is worth noting that there have been many other attempts to extricate the different possible meanings of 'natural'. In the historical literature for example, Erik Wolf identifies seventeen meanings and Arthur Lovejoy found sixty-six! See Wolf (1964) and Lovejoy (1935) cited in Tierney (1997, p. 48). For a more philosophical analysis of the term, see for example Cargile (1989) and Spiegelberg (1951).

observance are not a purely human phenomenon. We can observe simple versions of this type of behaviour among most social mammals.[1] So this would seem to be a somewhat vague and unhelpful sense of 'natural' for our current purposes.

2. Another sense of 'natural' which might be applied contrasts nature with society. For example, this is the kind of 'nature' that is meant by 'state of nature' in the works of several political philosophers including Hume.[2] If this is what Bentham means by 'natural' when he makes reference to natural law, right and duty, then 'natural duties' are in direct contrast with what Bentham means by 'moral duties'. In fact, when Bentham characterises duties as political, religious and moral, this sense of natural is immediately excluded from the political and moral categories.

3. 'Natural' can also be contrasted with 'supernatural'. That is, what is natural is anything that is not magical or miraculous. This sense of natural obviously applies to Bentham's 'moral duty' and his 'political duty' but possibly not to his 'divine duty', since the sanction on which that is based (divine retribution?) is decidedly supernatural in character.[3] However, many of the natural law theorists on whom Bentham will have drawn characterise the natural law as that which is given by God, and therefore divine. This would suggest that 'not supernatural' is not necessarily what is meant by 'natural' in the case of natural law, natural duty, and natural right, although for some natural rights theorists this is an important

[1] For a discussion of this, see Bekoff and Pierce (2009). Bekoff (a cognitive ethologist) and Pierce (a bioethicist) come to the rather radical conclusion that morality is a trait shared by humans and some other animals. Whether or not we agree with their conclusions, it must be accepted that some non-human animals live in communities with norms, the breaking of which is responded to by violence, isolation or some other 'penalty'.

[2] For Hume the 'state of nature' is used as a merely rhetorical device, since he believes human beings to be naturally social: " 'Tis utterly impossible for men to remain any considerable time in that savage condition, which precedes society; but that his very first state and situation may justly be esteem'd social. This, however, hinders not, but that philosophers may, if they please, extend their reasoning to the suppos'd state of nature; provided they allow it to be a mere philosophical fiction, which never had, and never cou'd have any reality." (Hume 1985, p. 554)

[3] Although if we accept the interpretation that Bentham was an atheist, he may have been referring more to the fear of divine retribution, than the retribution itself. Interestingly this would suggest that a sanction is not needed for something to be a duty (as Bentham's wording seems to suggest) and that the belief that there is a sanction is sufficient.

aspect of their thought.[1]

4. Another sense of 'natural' distinguished by Hume contrasts what is natural with what is mental. What is natural is what exists in the real world, the physical nature outside of our minds. The only one of Bentham's duties which could plausibly be entirely independent of human minds is his 'divine duty', although even this must be understood in human minds to be to any purpose. On the other hand, no duty can be entirely internal, since all duties relate to something that must be done in the physical world (unless we allow for 'thought-crimes'). Certainly, Bentham's concept of a duty as characterised by a correlating sanction requires some non-mental existence.[2]

5. In the Aristotelian tradition 'natural' means pertaining to something's internal nature or essence. This is the sense of 'natural' that is intended in Aquinas' 'natural law' theory. This would not exclude Bentham's 'moral duty' from being 'natural duty' after a fashion. All we would have to accept is that it is human nature to form societies that have social and cultural norms protected by sanctions. We would also have to accept, however, that the precise nature of these norms varies between cultures, and that there is no one set of rules for living that is really true to our nature.[3] If we did not accept this, then Bentham's 'moral duty' would be quite different from 'natural duty', since it depends on the things that a specific society places sanctions upon. Most theories that use this sense of 'nature' do however argue for a single human nature. They also equate the fulfilment of that nature with the good for the person whose nature is fulfilled. Since Bentham is not an ethical relativist, he does not equate the fulfilment of what he calls the 'moral' law with the good for man. So even if Bentham's 'moral duty' is taken to be a 'natural duty' in this sense, it would bear very little

[1] For example, Grotius' assertion that natural rights "would take place, though we should even grant, what without the greatest wickedness cannot be granted, that there is no God, or that he takes no care of human affairs" (Grotius 2005, p. 89).

[2] In any case, I shall argue in chapter eight that the distinction between the 'mental' and 'the world' should not be drawn so sharply as this.

[3] Although some deny that this disagreement is as deep or as widespread as we might suppose. See, for example Walzer (1994) and Küng (1996).

resemblance to natural law theories of this kind, most prominently in the sense that it would not be a moral theory.

This suggests that the 'moral rights' that Bentham cannot easily disprove do not bear more than a passing resemblance to the 'natural rights' that he is very keen to dismiss, unless we are to employ an implausible sense of 'natural rights'. This means that Bentham's premise that right is the child of law is not (as it initially appears that it might be) threatened by his concept of a 'moral duty'. Bentham's moral duties do not resemble what we would normally regard as a moral code, but rather a set of merely social norms, and if there were corresponding moral rights in this theory, they would also be rights given by social conventions. Thus even if we can demonstrate that Bentham's critique of rights cannot apply to such a thing as 'moral rights', these rights would not resemble the ones with which this thesis is concerned.

*(1c) Bentham and Natural Law*

We have got this far by unpicking the notion that Bentham's first premise (1) that right is the child of law, is related to the idea that, as Gorman puts it, "rights are claim-rights that correlate with duties, so that they exist only in so far as there are laws imposing those duties" (p. 102). So what of Bentham's second premise, that there is no natural law? Bentham will have been responding to the kind of natural law theory developed by Locke around a hundred years beforehand, which was very influential in the writings leading up to and surrounding the French and American revolutions of Bentham's time, such as Thomas Paine's *Rights of Man* (Paine 1995). Why then does Bentham reject the notion of such a natural law?

If like Bentham we held that pleasure was the only good and pain the only evil, and that therefore the morally right action was that which maximised pleasure, we could still believe in some form of natural law. In fact, the seemingly normative quality that pain and pleasure display in this view might be seen to present us with a ready-made natural law of a

certain kind. Admittedly, rights that would be granted under a natural law such as this would be fairly limited, including perhaps a right to be given equal consideration in the utilitarian calculus, but utilitarianism does not seem to contradict natural law by its very nature. Rather, it might be seen to support a form of it. Ronald Dworkin makes an argument along these lines, arguing that utilitarianism has what appeal it does because of a fundamental right to equal consideration that lies at the heart of it (Dworkin 1984, pp. 154-159). So, against Bentham, we might want to assert that natural law and natural rights are the basis of what utilitarianism is about.

It has been suggested that Bentham's view that there is no natural law derives from his view that laws require a legislator and there is no natural legislator. Bentham's view that a law requires a legislator is expressed in his 'Of Laws in General'. Bentham states that a law is meaningless unless it is an expression of the will of a sovereign exercised over those to whom his sovereignty applies. The argument that there is no natural law maker, and therefore no natural law is something that is more difficult to track down in Bentham. In a footnote near to the beginning of *Of Laws in General* Bentham just decries 'laws of nature' as an example of "fictitious entities" (Bentham 1970, p. 3n). He does not appear to make the explicit claim that there *is* no divine natural lawmaker, but he does arguably claim that it is a mistake to call upon natural laws when we cannot appeal to God as a lawmaker:

> What is the true source of these imprescriptible rights, these unrepealable laws?- Power turned blind by looking from its own height: self-conceit and tyranny exalted into insanity. No man was to have any other man for a servant: yet all men were for ever to be their slaves. Making laws on pretence of declaring them: giving for laws, any thing that came uppermost and those most unrepealable ones, on pretence of finding them ready made.- Made by what?- Not by a God, they allow of none: but by their Goddess, Nature. (Bentham, 2002 p. 331)

Let us assume that this is Bentham's argument for the non existence of a natural law:

4) A law requires a sovereign (Bentham *does* say this)

5) There is no natural sovereign (It is not clear that Bentham says this explicitly)

Therefore,

2) There is no natural law

There is a hidden assumption here that a *natural* law would require a *natural* sovereign. This would probably be a fairly safe assumption if by 'natural' we mean 'not man made' or 'not social' or possibly 'not mental', but it would not be a reasonable assumption if natural means 'not supernatural' or 'pertaining to the nature of a thing'. If we assume the truth of this hidden premise, then (2) there is no natural law does seem to follow from (4) and (5).

The definition of a law as requiring a sovereign perhaps makes Bentham's argument somewhat shallowly self-validating because it simply defines a law as part of a conventional legal system. Bentham is just stating what it is for something to be a law under a judicial system and then saying that a natural law is not one of those. Perhaps Bentham is claiming that there can be no law without a sovereign (a conventional legal system) and that therefore there is no natural law, but this does not derive anything new from its original premise. The claim that there is no natural sovereign would initially seem to be one that Bentham would accept, since he is widely thought to be an atheist, but even this does not preclude the possibility of there being some other kind of natural legislator, perhaps, for example, human rationality itself.[1] So this argument, often attributed to Bentham, although not easily discovered in his writings, would require a lot more work and argumentation. This will be made especially clear in the next chapter, when we survey the wide range of contemporary moral rights theories, most of which do not depend on a natural law theory, and none of which rely on a natural legislator of a divine nature. However, it does prompt us to ask whether there is a natural basis or grounding for rights.

However, this does not deal with Bentham's claim that rights are 'pernicious in morals'. This related to Bentham's association of the idea of natural rights with much of the

[1] This might be regarded as a Kantian view.

turmoil and chaos that followed the French revolution. Bentham's main contention here is that the idea of natural rights means that there is something more important, and more demanding on people's actions than the law of the land (as is the case in Locke, when the individual has a right to rebel when the state breaches his natural rights to life, liberty and property). This, Bentham maintains, undermines state control and stability, and is likely to lead to anarchy. I will not spend a great deal of time on this claim of Bentham's, because in most respects it is false. When we examine the contemporary world, nations which are built on a strong articulation of natural human rights seem to be among the most stable nations in the world in terms of a lack of violent revolution and political upheaval. However, there may be a sense in which these nations are less successful, namely (in a claim related to but different from Bentham's criticism) that rights make us put the individual over the state or the society in a way that does not threaten political stability, but *is* damaging to communities and communal attitudes. This Karl Marx's claim, which we shall now address.

## 2. Karl Marx – 'The Separation of Man from Man'

Unlike Bentham, Karl Marx did not claim that rights were false or logically absurd. For him it is arguably the case that value systems are relative to the social and economic conditions of the society in which they are held. If we take this interpretation, we can see why Marx is not concerned with whether rights theories encapsulate any genuine moral truths or make coherent claims. His criticism is concerned with the relationship that theories of rights have to his overall critique of capitalism and social atomism. It is not clear whether Marx's criticism is meant to be applied to *any* possible theory of rights, or simply to what he would characterise as a bourgeois capitalist conception of rights.

### *(2a) Some Context*

Marx's critique of rights is closely related to his critique of capitalism in general, and this is not the place for a detailed analysis of Marxist theory. However, the strands which relate

most specifically to Marx's analysis of rights should probably be drawn out at this point. The Marxist concept of alienation has an important part to play here. Marx claimed that under a capitalist system, individuals were alienated in various respects, and that this ultimately resulted from the mode of production. The worker is alienated from his labour, his product, his fellow workers and even from his humanity.

These different senses of alienation are all intricately entwined, but the important aspect for our purposes is the idea of alienation from other human beings. Marx argued that people were alienated from each other because they were participants in a system which they did not own, and which forced them to relate to each other as objects or instruments in a machine, rather than on a genuinely interpersonal level. One of the many ways in which Marx argues that this occurs is in relation to the capitalist urge to acquire property, which results in individuals viewing each other as enemies or obstacles which stand in the way of the acquisition of goods, rather than as fellow human beings. Religion also has a role in Marx's conception of alienation. Marx sees religion as a poor imitation of a genuine interpersonal relation, since all relationships between individuals are arbitrated through God.

This analysis of religion is important to Marx's early writing *On the Jewish Question* in which Marx argues that ultimately people should arrive at freedom *from* religion, instead of freedom *of* religion, and only then would they experience true human emancipation (Marx 1975). The central question of *On the Jewish Question* is whether German Jews can achieve political emancipation (i.e. equality before the law with other German citizens) when they have not yet achieved this human emancipation. The article was written in response to Bruno Bauer's 1843 article of the same name, which argues that Jews cannot be emancipated by granting political rights, since this would simply make them slaves to the German law, which since it had a Christian basis, would be contrary to emancipation. They would simply go from being one type of slave to being another. Thus until the state system had changed, the

Jews could not truly be emancipated whether or not they had equality before the law.

Against Bauer, Marx argues that it is possible to secure political emancipation without having achieved human emancipation (i.e. emancipation from religion). He supports this with reference to countries where religion is taken out of the public sphere and becomes the concern of the private individual, citing France and America as examples. The individual is not emancipated in human terms, because of the capitalist system that he inhabits- he suffers the alienation from his fellow man of which Marx believes that religion is a direct result. Thus freedom *of* religion is only necessary in a society which alienates the individual and prompts him to seek comfort through fantasy. With the emancipation of people from an alienating capitalist system will come true human emancipation and freedom *from* religion. Recall that for Marx, human emancipation is not merely political emancipation (the process of achieving equality before the law).

*(2b) Rights and Alienation*

Here it should already be clear that Marx does not support the system of rights and liberties put forward by thinkers such as Locke. Lockean rights to liberty are worthless if the liberty that is being championed fuels alienation and social atomism, and rights to property are even worse, since ideas such as this give a natural justification for the acquisitiveness and greed which, to Marx's mind, support the capitalist mode of production. Even rights such as freedom of religion will become empty and worthless once capitalism is replaced by a system which will allow people the human emancipation and genuine human relationships which will render religion unnecessary. Marx makes a distinction between the 'droits de l'homme' (rights of man) and the 'droits du citoyen' (rights of the citizen):

> These rights of man are partly *political* rights, rights which are only exercised in community with others. What constitutes their content is *participation* in the *community*, in the *political* community or *state*. They come under the category of *political freedom*, of *civil* rights, which we have seen by no means presupposes the consistent and positive abolition of religion and therefore of Judaism. It remains for us to consider the other aspect, the *droits de l'homme* as distinct from the *droits du*

*citoyen.* (pp. 227-228)

Among the rights of man distinct from rights of the citizen are "freedom of conscience, the right to practise one's chosen religion", which is the main focus of Marx's attention in this text (p. 228). Marx claims that the distinction between the rights of man and the rights of the citizen is itself an alienating one. The fact that a man is encouraged to think of himself as an asocial atomised being who has moral rights that go beyond the rights that he has as a member of his society or political community serves to isolate him from other human beings and fuels his egoism. This is in some respects remarkably similar to the criticism levelled by Bentham when he argues that natural rights are a dangerous concept because they are seen as having priority over the state and legal systems. In both cases, rights are seen as putting individual interests above the interests of the social or political community.

*(2c) Liberty*

This criticism is not confined to the overall analysis of the concept of rights. Marx also applies this on a more detailed level to the content of the individual rights of man. For example, the natural right to liberty is regarded as particularly alienating, because it is based on the idea that a man is an 'isolated monad'. A right to liberty describes the realm in which individuals are allowed to do whatever they want, and this is generally described in terms of avoiding harm to others, or to the rights of others. Thus boundaries are drawn between individuals, marking off their own permissible area of freedom and separating them from one another "just as the boundary between two fields is determined by a stake" (p. 229). Bauer argued that Jews could not acquire the rights of man because their Judaism would transcend their human nature and prevent them from forming any kind of relationship with non-Jews, but on the contrary Marx argues that:

> the right of man to freedom is not based on the association of man with man, but rather on the separation of man from man. It is the *right* of this separation, the rights of the *restricted* individual, restricted to himself. (p. 229)

*(2d) Property*

Unsurprisingly though, one of Marx's biggest attacks on rights relates to the idea of property rights. In fact, one of his biggest criticisms of the notion of rights in general is that all rights are limited by and dependent on property rights. For example, he maintains that the right to equality before the law works in this way because the law exists in order to protect people's property rights, and thus the man with no property has no place before the law. The same is ultimately true of liberty, because in capitalist systems liberty amounts to the liberty to acquire, use and dispose of property at will, so property rights are the only practical application of the bourgeois right to liberty.

Marx argues that property rights are alienating because the right to property means "the right of man to enjoy and dispose *at will* of his goods" (p. 229). Marx suggests that the fact that the right permits men to do this 'at will' encourages them to regard others as mere objects or obstacles that stand in the way of their accumulation of property. People are set apart from each other because instead of seeing other human beings, we only see what other people can provide us with or hinder us from having for ourselves.

*(2e) Marx and Standards of Justice*

There is something of a question of how we can relate all of this to what Marx says about justice. Allen Wood argues that for Marx, standards of justice are relative to the mode of production under which those standards are held (Wood 1972 and 1981). He uses this interpretation to argue, against Ziyad I. Husami (1978), that Marx cannot be calling for the overthrow of capitalism because it is unjust. Wood argues that by Marx's view, a system cannot be unjust so long as it conforms to its own standards of justice.

So where does this leave Marx's analysis of rights? If Wood is correct, then Marx cannot be suggesting that the bourgeois conception of rights is unjust, or that this gives us

another reason to reject capitalism. Perhaps the best approach here is to remind ourselves that rights (at least in the form that Marx is attacking them) are one aspect or element of the bourgeois standard of justice that exists under a capitalist mode of production. Rights are part of the capitalist standard of justice, which itself reflects and supports capitalism, and this is the ground of Marx's critique. However, this does prompt us to ask exactly what Marx's criticism of capitalism, and thus of rights, can be based upon if not an external standard of justice.

However, while this may be a problem for Marx, I do not wish to examine this difficulty, since Marx's criticisms of rights can stand alone without any such presumption of relativism. If we hold that systems of justice can be better or worse according to some standard then we can coherently criticise rights on the grounds that they cause social atomism or alienation, and that this social atomism or alienation is a bad thing.

It might be argued that critiques of rights of this kind have particular relevance to the case of the environment. The claim that certain conceptions of rights fail to take account of the interdependence of people takes on a whole new level when we consider it in the context of environmental issues such as climate change, which is caused by elaborate networks of human actions and affects everyone. This is heightened even further when we consider the role of humanity in general in the complex physical and biological systems which comprise our planet. It could be that any theory that is irretrievably atomising and individualistic is not going to be fit for the purpose of examining global environmental issues, even if it is able to deal with areas of human life that are understandable in terms of simple relationships between individuals.

*(2f) Examining the Marxist Critique*

So what of the general claim that rights theories regard individuals as isolated monads? There is certainly some evidence for this in the contemporary way of characterising rights. A

right can be seen to take the form:

A has a right to x, *against* B

A is the person who has the right, x is the *content* of the right, whatever it is that it is a right *to* (e.g. life, liberty, property etc.) and B is the person who has the corresponding duty, the person whose job it is to make sure the right is not violated. We can see how this might appear to isolate the person whose right it is from the person whom the right is held against. B becomes an obstacle in the way of A being granted his right, someone of whom something has to be claimed or demanded. A becomes someone to whom B owes something, and who stands in the way of A doing whatever he would otherwise be doing if the right was not constraining his activity. It may then be argued that rights are both individualistic and adversarial in character. We can contrast them with relationship-based ethics, for example the feminist ethic of care or maternal approaches to ethics. These are based on reciprocal relationships and communal attitudes which would, it might be suggested, foster social cohesion rather than atomisation and alienation.

But are rights truly adversarial in this sense? It is certainly the case that rights are regarded as things that we can claim from each other, and that we need to grant other people. However, in the case of what are commonly thought to be universal natural rights (rights to things like life and liberty) it may be argued that this is not the case. After all, these are rights that *everyone* holds, and they are held against *everyone else*. It might be suggested that rights that are based on a shared humanity or shared nature draw us together by recognising the moral worth that we all share, and that we grant others their human rights through a recognition of fellow humanity, quite the opposite of granting rights grudgingly with the view that the one claiming the right is a mere object or obstacle. In addition to this, there has recently been quite a lot of published work on the notion of group rights, rights that are held by groups of people communally, such as cultures or nationalities. If these rights are

plausible, it might suggest that rights do not necessarily separate people from each other as isolated monads.

However, in reality it is often the case that rights are used in an adversarial way. The fact that there are situations in which they have to be claimed and are not automatically granted suggests that the one who the right is held against does not grant the right out of some commonly shared sense of humanity. If it were the case that we fulfilled each other's needs and respected each other automatically out of some form of common sentiment, it might be argued that we would have no understanding of a concept such as rights, since it is only necessary to conceptualise rights if those rights sometimes have to be claimed. This would suggest that, even if rights are not in themselves individualistic and atomising, they certainly might be a product of a society that is.

The appeal to group rights is not necessarily going to solve our problems unless we approach it very carefully. If it is the case that individual rights build barriers and divisions between individuals, might it not also be said that group rights build barriers and divisions between different groups? Perhaps the notion of one nation or culture making rights claims of another is a dangerous one that leads people within both groups to regard human life in terms of their people and 'the other', with those who are in the other group merely representing barriers to the needs or desires of their own people. One suggestion for how we might deal with this is to have groups that operate on a number of different levels. We might attribute rights to individuals, families, cultural groups, nations, and even species or ecosystems. This would create a complex network of rights claims that could arguably be at least as cohesive as it is divisive, reflecting the different moral bonds and allegiances that we experience. More will be said about this in chapters five and eight.

However, to the extent that theories of rights do not commonly reflect these bonds, it may be that Marx's claims about the individualistic and atomising nature of rights theories

has some merit. To examine this claim further we must look at Marx's more detailed analysis of the content of many natural rights theories, or what it is claimed that there is a right *to*. One of the major contentions here is, as I outlined earlier, the claim that all other rights are limited by property rights, and then the ensuing critique of such property rights.

The claim that liberty, or freedom *of*, is generally lived out in terms of property rights in capitalist societies seems to have some merit. Freedom is often (in reality) the freedom to make use of one's material possessions in a manner that one desires. An individual's right to liberty is often seen as being breached by legal or physical obstructions to an individual's behaviour, but a lack of the material conditions necessary to live as one chooses is not often seen as a breach of the right to liberty in the same way. There are some rights theories now that have a more welfarist and positive freedom related viewpoint[1] but rights as they stood in Marx's time were understood in such a way that a lack of material wealth would not generally be seen as a violation of the right to liberty.

What of the claim that the right to equality before the law is limited by the right to property? If Marx's intention is to criticise the idea of a general right to equality, then this seems rather less convincing than the general critique of rights that he offers, however it might be a valid criticism of what Marx might have regarded as a bourgeois notion of rights. The argument is that the right to equality before the law is flawed because the law exists only to protect property rights, leaving the person without property with no place before the law. However, Marx clearly thought that protecting private property rights was not the sole reason for which we *could* have laws. Under a socialist system, individual private property would be virtually abolished, and the purpose of the law would be, among other things, to protect this status quo, at least until the 'withering away of the state'. Thus it seems that if this

[1] The literature on this is fairly widespread, but some such ideas are explored by various authors in Pogge's edited volume, *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (2007), and by Elizabeth Ashford (2006).

criticism is to make sense it must be leveled at either a 'bourgeois' political philosophy, or at the idea of rights as considered within a capitalist system. As we have seen, Marx thought that rights were consistent with and contributory to capitalism, and measured up to a capitalist understanding of justice, so the subject of this criticism must be what Marx would consider to be bourgeois political philosophies (but remember that, as we saw in the last chapter, many features of rights predate capitalism).

Locke would appear to be the philosopher most subject to this criticism. His concept of rights and his analysis of the purpose of the law and the state seem to approximate most closely the ideas that Marx is attacking. Locke believed that the reason that the state was initially instituted was because of difficulty in administering justice. Whilst in Locke's state of nature, people would have a natural right to punish those who breached the law of nature, this natural right would ultimately be unable to deal with all disputes. The reason that eventually the natural right to punish would become insufficient is that the invention of money would allow people to accumulate wealth in a way that they were unable to before. In a rush to accumulate more money, people would put more pressure on natural resources, and scarcity would result, leading to more disputes over ownership, theft, and other issues relating to money and property. Thus the state and the rule of law were, according to Locke, created to prevent these disputes.

So in a sense, Locke does maintain that the law exists to protect private property. He implies that without private property or money there would be no need for a state and a human legal system. However, although he thinks that property and money were causally responsible for the creation of legal institutions, he does not regard the protection of private property as the *sole purpose* of the law and the state. He thinks that the invention of money and the resulting scarcity would not just jeopardise the individual's natural right to property, but also his natural rights to life and liberty. The state and the law would have been created

to protect all three of these natural rights and to uphold the corresponding natural law. Thus it would seem that the right to equality before the law would not simply apply to those with property, but to anyone who has an interest in the protection of their life or liberty.

## 3. Chapter Conclusion

It does seem fair to say that, at least in a limited sense, there is some validity in Marx's claim that rights, or at least a certain conception of rights, can be socially alienating. This is hardly surprising, considering the prominent role of rights and the individual in much of liberal political thought, and is perhaps only a major problem if we place a strong focus on the idea of the political or social community. However, most political thinkers regard both the thriving of the individual *and* the cohesion of society at large to be important issues - it needn't be the case that we consider ourselves merely as individualists or merely as communitarians:

> the whole idea of a single favoured, exclusively real unit was mistaken in the first place. *Life goes on on various scales, each of which is real and has to be thought of in its own terms.* (Midgley 2005c, p. 371)

We will also apply theories of rights to environmental ethics, and many of the approaches that are taken in environmental philosophy are deeply suspicious of valuing life only on the level of the human individual. If their suspicion is well founded, then it would seem natural to suppose either that the different levels on which life functions may best respond to different ethical and intellectual tools, or that the ways that we use to think about the individual must be extended to accommodate different 'units' of life. These notions will be considered in greater detail later on, but it may be that rights as they are commonly currently conceptualised are not well suited to considering wider social interests (more will be said about this claim in chapters three and five). We may respond to this either by ruling that rights-talk is inapplicable in certain cases, abandoning it altogether, or modifying or selecting theories of rights in a way that makes them more applicable to these ways of thinking.

# Chapter 3 – Theories of Rights in the 20th and 21st Centuries

The purpose of this chapter is to give a broad overview of some important areas of theories of rights. The aim at this point is not so much to reach a conclusion about the relative merits of the different theories, but rather to pull out dominant features of these theories which can be applied to environmental ethics and politics. Thus the role of this chapter, while critical to a small extent, is more explanatory and expository, providing the groundwork for the applied philosophy which will dominate the next section of the thesis.

From the examination of eighteenth century theories of rights, and their nineteenth century criticisms, we see the emergence of the basic features of modern rights theories that I identified in the last chapters. These are theories espousing rights that are not just legal, but also natural or moral, which are generally applied in political spheres, and which are usually associated with a liberal and individualistic school of thought. We also see a basic idea of the structure of a right outlined: the association of a right with some kind of law or duty which correlates with the right, where the duty is associated with moral agency, and the right with the moral patient or the focus of moral agency.

However, until the twentieth century, this analysis was very crude, based on a vague notion that rights were in some way associated with duties. The precise nature of this relation was still unclear. The twentieth century saw, as with many other areas of philosophy, an increased rigour in the analysis of theories of rights, with the various different connections between right and duty clearly delineated. At the same time, rights parlance has become increasingly popular in everyday moral discourse. Rights have entered the general moral terminology of our society, sometimes perhaps in ways that lead to an unreasonable proliferation of what can be considered the content of a right, but also in ways that have

lasting and important effects upon the ways that social and public policy develops. The idea of rights has become more analytic and abstract within philosophy, and more intuitive and popular outside it. In some ways it is almost as if the concept of moral rights has forked into two distinct strands, each with a life of its own. Having said this, towards the end of the twentieth century and the beginning of the twenty-first, it might be argued that these strands have started to converge again, with an increasing interest in applications of moral rights to concrete moral, political and social issues.[1]

The beginning of the divergence probably occurred with the publication of Hohfeld's *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (1919). Whilst Hohfeld's concern was with legal rights, his categorisation of different types of right and their relation to duties has been very influential on work on moral rights. This raises an important question about how well these detailed legal analyses can be carried over to the field of ethics, which is, some might suggest, rather more fluid:

> We need to recognize that when we apply the Hohfeldian analysis in the moral sphere, we must expect claims about moral rights to reflect the vagueness and indeterminacy afflicting claims about moral duty and obligation in general. Once again, this need not be taken as a criticism of the idea of moral rights, but it gives us fair warning of the degree of precision we are entitled to expect with this subject-matter. (Waldron 1984, p. 8)

Rather than regarding morality as being 'afflicted' by vagueness and indeterminacy, it may be that the plasticity of moral concepts is a reflection of the richness of human experience, something which cannot be easily pinned down by a simple set of formulae. While a theory of rights that accounts for this may be a difficult thing to formulate and work with, it could be suggested that this is as much an opportunity as it is a crisis. There is no reason why we ought to regard morality as a branch of science or mathematics, and it could be argued that even modern science has better resources to deal with vagueness and indeterminacy than

[1] For example, a lot of work has been done in recent years concerning the applications of moral rights in global political theory (see Caney 2005, Ignatieff 2003, and Pogge (ed.) 2007). There has also been an increase in the application of theories of rights in bioethics (see for example Warnock 2002 and Wellman, 2005)

some of the more legalistic approaches to moral philosophy, as we shall see in the final chapter of this thesis.

Another characteristic of the twentieth century rights debate has been the concern with deeper metaethical questions about the grounding or justification of rights, and how this relates to their compatibility with various types of moral theory. Related to this is the notion that a moral theory could be 'right-based' or have rights as its foundational or central concept from which other moral concepts such as duties, goals and virtues are derived. Some theorists find the concept of a right-based theory appealing because it is patient-centred: that is, the concept of a right focuses on the recipient of moral agency rather than the moral agent himself (in this respect, theories of rights share a structural similarity with needs-based moral theories, which are currently being given some consideration).[1] For some, this patient-centred aspect provides a vital justification for moral duties and draws attention to the real purpose of moral obligations and prohibitions. However, as we shall see, it has been argued that a *right*-based theory is an impoverished one which can't capture the richness of moral agency, or indeed the richness of community and the common good.

These criticisms may only apply to a right-*based* morality, and not to the concept of rights altogether. If they are successful, several options remain open. Firstly we could abandon the concept of moral rights as having a role in a moral theory. This may be done for reasons of intellectual economy. Perhaps there can be a perfectly explicable moral theory which is based on a simple principle or set of principles and has no need for the complexity that a theory of rights would introduce (although perhaps given what has been said about the complexity and indeterminacy of our moral lives, we should be suspicious of over-simplistic monolithic moral theories). On the other hand, there may be stronger reasons why we would abandon the concept of rights altogether. Perhaps they are, as Bentham puts it, 'absurd in

[1] See, for example Brock 2004, Reader 2007 and O'Neill, 1998.

logic' or 'pernicious in morals'. We may alternatively wish to retain rights as a derivative or subsidiary notion in a moral theory which is based on something else (duties, goals, needs etc.). Or we may prefer to propose a moral theory which is based on multiple foundational concepts. According to this solution, rights are part of the basis of morality, but they hold this place alongside other moral concepts and principles. We will examine these alternatives towards the end of this chapter.

## 1. The Force of Rights Discourse

What is it that gives moral rights added moral significance that distinguishes them from other morally relevant aspects of the moral patient, such as interests, needs, claims and so on? Rights are often called upon as an argument stopper. Once an individual has appealed to his right to something, the only available responses are to deny that he has such a right, or to acknowledge the duty that the right entails. An acknowledgement of a right often seems to be taken to be the acknowledgement that a certain course of action *must* be taken, no matter what other moral considerations are at stake. Rights then seem to have some special force or demandingness which gives them a particular kind of moral priority over other salient features of a situation.

One way to understand this is to say that rights are absolute. That is, if X has a right that Y performs some action, there can be no outweighing reason why it is a morally justifiable thing for Y not to perform it. If I have a right to something, no other moral considerations can get in the way of the granting of my right. This view of rights captures one of the intuitively appealing aspects of a right, the idea that rights are an expression of some kind of inviolable human dignity, that there are certain aspects of a person which simply must never be trampled on, even as a means to a morally admirable end.[1] Despite this

[1] It is for this reason that some have claimed that a strong doctrine of rights is implicit in the moral philosophy of Immanuel Kant, although he never makes direct reference to rights. See Waldron (1984, p. 1) and Mackie (1984, p. 169), and see Melden (1980, pp. 189-190) for a rejection of this view. It can be argued that while Kant

intuitive appeal, this approach does have its difficulties.

These mostly relate to two points. Firstly, there are sometimes conflicts between different rights (or even between different people's claiming of the same rights). Secondly, there are conflicts between what outcomes or decisions the granting of a right would involve, and those outcomes or decisions that we might regard as preferable for the sake of other moral reasons and justifications which are not rights. If it is genuinely the case that rights can conflict with each other, then it must be the case that not all rights can be absolute in the sense that they must always be granted. However, this would not mean that absolute rights are impossible. It might mean that only some rights are absolute, a position taken by Alan Gewirth (1984).

More complicated in some ways is how we deal with situations in which rights conflict with other principles that we hold dear. An example that is often given is the example of torturing an innocent person to prevent a terrorist attack that will kill thousands. In this case, some would argue that the utilitarian considerations of the situation overcome the individual's right not to be tortured[1]. It could of course be that some rights are not absolute, and can be overcome by these other principles, whereas other rights are absolute and take priority. However, this leads to a further question of what it is that gives some rights special force over others, as well as what it is that gives rights special force over other interests. If some rights are absolute, but others are not, this still does not seem to tell us anything about what the special force of rights is.

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does place central importance on the essential dignity of mankind and the view that one should never be treated as a mere means to an end, that this is not sufficient grounds for recognising his moral philosophy as a right-based or even a right-accommodating theory.

[1] Although it can of course be argued that the terrible thing about the terrorist attack that is to be avoided by the act of torture is the massive violation of rights that it involves, in this case the violation of thousands of individuals' rights to life, so it may be that this is simply a case of a conflict between different rights after all. It could be responded that were we to abstain from torture, we would not be violating anyone's rights, we would simply be allowing the terrorist to do this, but this seems to be straying away from the question of what principles can conflict with rights, and more into the ground of the moral distinction between acts and omissions (or perhaps even the doctrine of double effect) that have been dealt with in plenty of other places.

One solution comes from Ronald Dworkin, who argues that rights act as a kind of 'trump card' in legal, political and moral decision making. Dworkin's writings on rights are largely discussions of jurisprudence, but since he rejects legal positivism and proposes the view that legal propositions are supported by moral propositions about individual human rights, jurisprudence and moral and political philosophy are never far removed from each other in his works. Dworkin proposes that

> Individual rights are political trumps held by individuals. Individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or not a sufficient justification for imposing some loss or injury upon them. (Dworkin 1977, p. xi)

So an individual has a right when his prima facie entitlement should be granted even when it outweighs the prima facie demands of general social (in Dworkin's case utilitarian) considerations.[1] So if we hold that an individual has a right to publish pornography (an example from Dworkin's 'Rights as Trumps' (1984)) this means that it is wrong for political or legal institutions to breach that right, even if doing so would have general benefits in terms of utility for the wider community. In Dworkin's scheme, there is a "background justification for political decisions", namely the good of the community, and rights stand out against this background when deeper underlying considerations deem the individual's interest to take priority (Dworkin 1984, p. 153).

So what are the deeper underlying considerations that underpin both the background justification, and the grounds for making exceptions to it in the form of rights? According to Dworkin there are two answers to this question. Firstly we can adopt a pluralistic approach under which, for example, there are utilitarian principles that show pornography to be a bad thing, but also stronger outweighing non-utilitarian principles which mean its publication should be permitted. Secondly, we can look to the deep principles which justify utilitarianism in the first place, and say that in this case, even though utility is not served by

[1] See also Wasserstrom (1977)

the publication of pornography, forbidding its publication would be in breach of the deeper principles which justify utilitarianism in the first place.

Dworkin takes the second approach, arguing that utilitarianism garners its appeal from its egalitarianism. A utilitarian theory which sought to maximise the welfare, happiness, preferences etc. of an elite would seem to lose all of the appeal of utilitarianism. Therefore there are some cases where, even though the greatest number or the community as a whole would be best served by a particular action, carrying it out would be in contravention of the egalitarianism which is the deeper justification for utilitarianism. Rights act as a kind of buffer, protecting utilitarianism from extremely inegalitarian consequences. However, this is not the same as an absolute right, because such a 'trump' can be overcome by overwhelming considerations of utility. Thus what characterises a right for Dworkin is its ability to contradict the background justification, and what gives it its special force is the underlying consideration of egalitarianism.

The problem with this is that it seems that Dworkin's entire notion of a right is founded upon one presupposed right: the right to equality:

> The force of this underlying right, and of other rights which are derived from it directly, is not captured either by the trumping image nor explained by the external preferences argument[1] (Waldron 1984, p. 17)

This is not necessarily a damning criticism though, provided we claim that rather than a right, it is founded on an underlying interest in equality, or some feature of our humanity or identity that entitles us to equal treatment. It would seem very intuitive to claim that, if they can be founded on anything, rights are founded on those things that we most fundamentally value about human (and perhaps other) life.

Another point to bear in mind here is that while Dworkin's wider moral and legal

[1] There is not time here for the external preferences argument. Internal preferences are the preferences that we have regarding our own welfare or happiness, and external preferences are the preferences that we have regarding the welfare or happiness of others. Dworkin argues that external preferences must not be a factor in legal and political decision making, as they are likely to corrupt the egalitarian character of decisions.

theory should not be regarded as individualistic, his theory of rights is individualistic by its very nature, because it is a theory that tells us which individual interests can be taken as more pressing than the interests of the wider community. It may be possible to adapt this theory to the rights of groups, but it would need to be rephrased in terms which Dworkin himself would not employ. The notion of group rights will be explored in chapters five and eight of this thesis.

Another consideration that we might wish to highlight because of the relevance that it will have later in the thesis is the scope of the egalitarianism which underpins Dworkin's argument. Arguments about equality have been made in western cultures for centuries, but the class of moral patients to be counted as equals has gradually expanded. We no longer consider equality among white middle-class men to be sufficient. So there is a question about who should be included and who excluded as equals. I will explore some of the 'hard cases' for the ascription of rights later in this thesis, looking among other things at animals, future people and groups. If a right is a recognition of equality, it may be that a being cannot have a right unless it is to be considered of equal moral status as other beings to whom we ascribe rights. This make the task of ascribing rights to some of these hard cases rather more difficult.

## 2. Hohfeld's Categories

At this point we need to turn more to the analysis of the structure of a right. Hohfeld identified four main categories of legal rights, and these categories have often been carried over (with a greater or lesser degree of success) to the moral sphere. These types of rights are defined in terms of their relation to duties, and Hohfeld builds a complex interrelation of legal concepts around this categorisation. Most legal rights (and probably also most moral rights) can be seen as combinations of related Hohfeldian rights, but examples of each category can also count as rights on their own. The first category is what Hohfeld terms a 'privilege', or

'bare liberty'. For X to have a privilege to do something just means that X has no duty not to do it.[1] If one of my neighbours leaves a crate of apples outside his gate with a sign reading 'help yourself', I have a privilege to take some apples. However, I have no grounds for complaint if someone comes along before me and takes all the apples. I cannot demand recompense against either my neighbour or the person who has taken the apples, since my privilege relates only to my lack of a duty not to take the apples, and does not imply any duty incumbent on anyone else.

The second category is claim rights. This is when X's right to something imposes a duty on some other agent. Claim rights are probably the dominant sense of 'right' in moral, political and legal thought, and can be further separated into many different categories which we will come to shortly. Claim rights and privileges are what can be understood as 'first-order' rights, relating directly to what people can and can't do and have.

Hohfeld's final two categories both describe 'second-order' rights, which relate to the ability or inability to alter existing rights and duties. The first of these is a 'power' which refers to the ability to alter existing legal arrangements. So in the case of a contract made between two people, each of those people have certain rights and duties under the contract, but one or both parties may have the right to terminate the contract.

The final category is immunities. The immunity in question is an immunity from changes in existing legal arrangements as detailed above. In this sense it is the opposite of a power. If person X has no power to alter existing legal arrangements with respect to person Y, then Y has an immunity. This may be the case when a constitution protects individuals against unfair legislation, or in the case of a customer whose rights concerning their purchase cannot be changed at will by the company that they are buying something from.

[1] Waldron points out that Thomas Hobbes' right of nature is sometimes regarded as a Hohfeldian privilege, although he suggests that it is probably actually something stronger: "the idea that it is perfectly rational for P to do X and that he cannot be criticized in that regard" (Waldron 1984, p. 6).

Hohfeld's analysis then gives each of these four categories a jural opposite and a jural correlative. The jural opposite is what an individual must lack if they have that category of right, so an individual in possession of a privilege *lacks* a duty. An individual who has a claim right lacks what Hohfeld calls a 'no-claim' (which is precisely what it sounds like), an individual who has a power lacks a 'disability' (the inability to change legal relationships), and an individual who has an immunity lacks a 'liability' (the liability to be subject to changes in legal relationships). The jural correlative of each of the categories is what another individual must have if an individual has each type of right, so if A has a claim-right, then B has a duty towards A, if A has a privilege, then B has a 'no-claim' (it is impossible for B to have a claim-right to something if A has a privilege or bare liberty to it), if A has a power, then B has a liability, and if A has an immunity, then B has a disability.

This describes not just how these different categories of rights can be understood in terms of duties, but also how they might relate to each other through the complex relationships of their opposites and correlatives. The focus of most of this thesis will be on claim rights, but it is important to bear in mind that while this is the dominant concept of a moral right, the other senses may creep into our moral discourse. It may be that when people argue about their right to have children, to pick one example, they may be talking past each other because one is talking about a claim-right and the other is talking about a privilege (or bare liberty).

## 3. The Analysis of Claim Rights

As I have already mentioned, most rights (legal and moral) are considered to be largely claim-rights, but involving bundles of interrelated Hohfeldian rights. Leif Wenar gives the example of a property right that you have over your computer (2005, p. 5). In terms of first order rights, you have both a claim against others using your computer and a privilege to use it, but you also have a power to alter these rights (by selling the computer, giving it to

someone else, or simply by letting others use it) and an immunity against others altering these rights (you are the only person who is entitled to forfeit the claim right you have against others using the computer).

*(3a) Rights in Rem and Rights in Personam*

Claim rights, the dominant concept in theories of moral rights, also divide into a number of different categories. We have claim rights *in personam*, and claim rights *in rem*. Claim rights *in personam* are rights held against a particular individual, whereas claim rights *in rem* are those held against everyone. So what we generally consider to be human rights (rights not to be killed, tortured, imprisoned etc.) are rights *in rem*, as is your claim right against others using your computer. An example of a right in personam would be my right that you honour your promise to me, and perhaps rights that we have against politicians, doctors, and other people who are in a position which gives them a particular responsibility to act in our best interests. Whether a claim right is a right in rem or in personam depends on who bears the duty that correlates with that claim right. If the bearer of the correlative duty is some named individual, it is a right in personam, and if it is people in general, it is a right in rem. Of course, if we understand moral rights as 'bundles' of Hohfeldian concepts, they may be rather more complicated than this, implying a range of duties and obligations.

*(3b) Negative and Positive Rights*

Another distinction that needs to be made here (and one which is related to the in rem/ in personam distinction) is between negative and positive rights. Again, this distinction is based on the nature of the correlative duty. A claim-right is positive when it is correlative with a duty to act, and negative when it is correlative with a duty to refrain from acting. Whether this distinction is morally significant depends on one believes there is a morally significant distinction between acts and omissions. This has been the subject of much philosophical discussion (particularly on the question of whether there is a morally significant difference

between killing and letting die) and I cannot do it justice here. As Joel Feinberg observes "Typically, in personam rights are positive, and in rem rights are negative" (Feinberg 1973, p. 59). So usually, if there is a right which is held against everyone, it generally implies that we all have a duty not to kill, not to trespass, not to steal, and so on. If there is a right which is held against a particular individual, it is generally a right that they repay a loan, help a patient, and so on. Whether this is the case with examples such as environmental harm is debatable. It may be that we all have certain positive in rem duties to recycle, to make changes in our lifestyle, etc. (although many of these could equally be translated as negative duties to refrain from dumping in landfill, not to drive short distances, etc.).

*(3c) Active and Passive Rights*

Another distinction that has been made is between active and passive negative rights. The terminology is perhaps somewhat confusing, since positive rights seem to imply activity and negative rights inactivity, but the 'active' and 'passive' labels refer to the role of the right-holder, not the duty bearer:

> Active rights are rights to act or not to act as one chooses; passive rights are rights not to be done to by others in certain ways. Among one's active rights may be such as the rights to go where one will and say whatever one pleases, often referred to concisely as "the right to liberty". Among one's passive rights may be such as the rights to be let alone, to enjoy one's property, to keep one's affairs secret, or one's reputation undamaged, or one's body unharmed. These are often characterized collectively as "the right to security" (Feinberg 1973, p. 60)

Feinberg applies this distinction to negative rights, giving us active negative rights (rights against some other person doing something to restrict our negative liberty) and passive negative rights (rights against some other person doing something to harm our security). However, it is also the case that we can have active positive rights: giving us a right to positive assistance to do something, such as a disabled person's right to be helped to attain an education. Whether there can be a passive positive right is a harder case. This would be a right to positive assistance to ensure that we are not 'done to by others in certain ways'.

Things like the right to police protection and other rights involving duties to prevent harm from third parties might fall into this category, but negative rights theorists in the libertarian spectrum would probably resist this by claiming that we have a negative right against crime, and the police are there to protect that right, rather than it being our right that they are there to assist us actively. However, this does perhaps suggest that, if rights can, in at least some cases, be transitive with regards to the means by which the right is fulfilled, a negative right might imply a positive right: does the negative right to be free from crime imply a positive right to protection from crime? If so, then this may apply to environmental cases. The passive negative right to be free from the harmful effects of climate change may imply passive positive rights (i.e. rights to be provided with the conditions that one requires). These could be held held either *in rem* against everyone else (suggesting that everyone should do something) or in *personam* against governments and other relevant individuals, that they take positive steps to reduce carbon emissions.

## 4. Choice and Benefit Theories

Another debate among rights theorists is between so-called choice (or will) theories and benefit (or interest) theories of rights. These theories differ in the way that they relate rights and duties. In a sense, this is taking the Hohfeldian analysis a step further, since his analysis merely says that if X has a claim right, then Y has a duty: it does not attempt a deeper explanation of this relationship or explain why it operates in this way.

### *(4a) The Choice Theory*

The choice theory, first proposed by H.L.A Hart, states that a person has a right when some other person has a duty which they have a power over (Hart 1973, pp. 196-198). They (and only they) can let the duty-bearer off the hook and discharge him of his duty. In this sense, a right implies a Hohfeldian power of the right-holder, since he can alter the fact of whether his right must be exercised. As Waldron observes, this is not a mere conjunction of Hohfeldian

concepts, since the duty and the Hohfeldian power share the same underlying justification:

> One way of looking at this, I suppose, is to say that Q has a duty and P has a Hohfeldian power in relation to that duty. But it would be a mistake to say that Hart believes that rights are nothing but *conjunctions* of powers and claims. Rather, the point of his analysis is that P can be said to have a right whenever the reasons for holding Q to be under a duty are also in themselves reasons for holding that P's say-so would be sufficient to release Q from the duty. (Waldron 1984, p. 9)

Hart's theory is a theory of legal rights, and he holds that this account cannot work for all legal rights, let alone political and moral rights. As Waldron points out, most of us would be very uncomfortable with the notion that we can in all cases relinquish our rights not to be killed or tortured whenever we choose. It seems to go against the idea that certain rights are 'inalienable' (p. 9). The interesting point about this theory for our purposes is that it is a prominent philosophical example of the notion that rights imply some kind of agency in the right-holder. We hear this daily in political rhetoric when it is said that rights 'come with responsibilities', and also in the idea that certain rights 'must be earned':

> The will theory captures the powerful link between rights and normative control. To have a right is to have the ability to determine what others may and may not do, and so to exercise authority over a certain domain of affairs. The resonant connection between rights and freedom (of a certain sort) is for will theorists a matter of definition. (Wenar 2005, p. 9)

This ties in of course with the concept of active rights - rights that are rights to do something, rather than rights to be treated in particular ways - since the possessor of an active right must be an agent. However, if we are strict adherents to a choice theory of rights, or take literally some notion of rights implying responsibilities, all rights, be they active or passive, must be rights that are held by agents. There are many different theories of what precisely agency consists in, and these cannot be the focus of discussion here, but it is plausible that such a theory of rights would exclude animals and infants (some may take this to be an advantage of such a theory, others a disadvantage). It could also be argued that it would exclude groups (depending on our theories about agency and collective responsibility) and that it would exclude future people (because although the future person will be an agent, she cannot 'let the

duty-bearer off' his duty if her lifetime does not overlap with the time at which he has the duty).

*(4b) Interest and Benefit Theories*

Benefit or interest theories of rights are based in the idea that a right exists in certain circumstances in which the execution of a duty will benefit, or be in the interests of, the right-holder. This may escape some of the difficulties of choice theories, in that we might be able to ascribe interests to animals and infants. Proponents of these views can also maintain that there are rights, such as the right not to be tortured, which cannot be waived, even by the right-holder.

Of course, the theory requires more detail than simply stating that an individual has a right when they would benefit from another's duty. If I carry out my duty to repay a loan to my friend, there are all sorts of people who may benefit from me carrying out my duty. His friends and family might be showered with gifts, and local shopkeepers and publicans might be grateful for his new found liquidity, but none of these people have a right that I repay the loan, only the friend who I repay has that. This problem may be soluble by tightening up our analysis. One way that this can be done is by saying that the duty and benefit are so closely related that the duty will not have been carried out unless the benefit has been conferred (Waldron 1984, p. 10).

However, another problem is that my right to liberty might result in my acting in a way that is not in my own best interests in some circumstances - we've all done things that we know to be ill-judged or stupid. The response might be that, despite these cases, there is a general benefit in having freedom. A general benefit would by this theory suggest a general duty. One question here is how general or specific we choose to be, and when we can include exceptions to narrow the scope of such rights for the sake of an overall benefit. Can we say that all individuals have a right to freedom unless they are drunk, tired or depressed? Where

do we draw the line between saying that we only have a right to do what is, on that occasion, in our interests (which would interfere with a lot of our rights) and saying that we have very broad general rights without exceptions (for example, the right to freedom permitting an insane person with a history of self-harm to have a knife)?

## 5. How Basic are Rights in Moral Theory?

Another way of categorising moral theories which are sympathetic to the notion of rights is by examining what level rights occupy in the structure and justification of such theories, whether rights occupy a central or foundational role in the theory, or whether they are a peripheral or derivative moral concept. Dworkin makes a distinction between theories that are duty-based, theories that are goal-based, and theories that are right-based:

> Political theories will differ from one another, therefore, not simply in the particular goals, rights and duties each sets out, but also in the way each connects the goals, rights, and duties it employs. In a well-formed theory some consistent set of these, internally ranked or weighted, will be taken as fundamental or ultimate within the theory. It seems reasonable to suppose that any particular theory will give ultimate pride of place to just one of these concepts; it will take some overriding goal, or some set of fundamental rights, or some set of transcendent duties, as fundamental, and show other goals, rights, and duties as subordinate and derivative. (Dworkin 1977, p. 171)

### *(5a) Right-Based Moralities*

The distinction between theories that are duty-based, goal-based and right-based is embraced by J. L. Mackie (1984), who argues in favour of a right-based morality[1] and by Joseph Raz (1984), who gives us some reasons to reject one. For a theory to be based on rights, any other moral concepts which operate within the theory (goals and duties) are ultimately justified in terms of a number of fundamental rights which operate at the core of the theory. So, for example, utilitarianism is goal-based. Its ultimate aim and justification is the greatest happiness of the greatest number, or some refinement of that. So a utilitarian like John Stuart

[1] What Mackie is arguing here is not that a right-based theory is *true* as such, but that we should invent one. He denies that rights have what he terms "objective existence" (1984, p. 170). In his famous *Ethics: Inventing Right and Wrong* (1990) Mackie defends an 'error theory' about moral judgements, suggesting that we are mistaken in believing that they have any genuine truth value.

Mill, who accepts a limited notion of rights based on utility, accepts a role for rights within a goal-based moral theory[1]. Mackie rejects duty-based moral theories, because a duty stated simply for its own sake appears to be an empty command. It seems difficult to justify duty simply for the sake of duty, especially if we reject the notion of a higher power that can lay down divine commands.[2]

Mackie takes considerably more trouble over his rejection of goal-based theories, arguing that the only acceptable and coherent moral theory must be right-based as opposed to goal-based. This begins with an examination of utilitarianism, and the commonly observed issue that it can sometimes suggest that the welfare of an individual should be completely sacrificed for the sake of others' well-being. Mackie identifies three main lines of response to this: firstly that we can tough it out and accept these unpalatable consequences; secondly that we can adopt an indirect utilitarianism which will sometimes go against the immediate utilitarian calculus for the sake of a greater overall long-term utility; and thirdly that we should criticise utilitarianism for its aggregative nature and that we should adopt a goal-based theory which places more importance on the notion of individual flourishing. He suggests that the first of these responses is unsatisfactory because there is no strong prima facie reason to adopt simple utilitarianism, that the second response also falls prey to this problem to a great extent and also runs into theoretical difficulties when attempting to keep separate the first and second-order levels of moral thinking, and thus that the third response, a more eudaimonistic approach, is the only possible way forward. Mackie then argues that flourishing involves making one's own choices and having autonomy and self-determination, thus what is central to any acceptable moral theory must be "the right of persons

[1] See Mackie 1984, p. 169.

[2] Kant is sometimes said to be a duty-based theorist, although duty does not appear to be the ultimate justification for his moral theory, even if it is supposed to be the ultimate motivation. While we should be acting out of a sense of duty, this duty is based on notions about the fundamental respect due to rational agents which may arguably be construed as either goal-based or right-based (see the note on page 64).

progressively to choose how they shall live" (p. 176).

There are of course more criticisms that can be made of this view than I can fit into the chapter. There may be sophisticated defences of a duty-based view which quickly overcome Mackie's swift dismissal, and of course there are plenty of refined and varied forms of utilitarianism that have been developed precisely for the purpose of avoiding the difficulties that Mackie identifies. As for the claim that a eudaimonistic ethic is fundamentally based upon a right to liberty or self determination, can it not equally (or perhaps rather more convincingly) be said that a right to liberty or self-determination is a means to the achievement of the fundamental goal of human flourishing, and thus a derivative, non-fundamental concept?

However, it is easy to see in some ways why a right-based theory is so appealing. The fact that a right is based upon the fundamental interests or autonomy of the moral patient seems to lend right-based theories a particular appeal. Surely at least one of the fundamental elements of our moral lives, if not *the* fundamental one, is how we respond to others. If this is the case, then perhaps a theory which is centred around a 'moral pull' from patients is preferable to one that is based upon a 'moral-push' from duties. It may also be the case that Mackie is correct in the sense that, when we examine the rationale behind our moral goals, they turn out to be based in the moral status that we place upon ourselves and others, and thus that they are ultimately also patient-centred moral theories. This is not necessarily a reason to adopt a right-based theory. It is quite plausible that there can be patient-centred theories which are not based on rights. A goal-based theory may have the recognition or respect of moral status in moral patients as a goal without collapsing into a right-based theory, or at least not a right-based theory which conforms to our usual analyses of rights according to the complex categorisations that we have seen earlier in this chapter. It may also be that there are other ways in which a theory can be patient-centred.

Additionally, we have not yet seen a reasonable justification for the view that a moral theory must hold "some overriding goal, or some set of fundamental rights, or some set of transcendent duties, as fundamental, and show other goals, rights, and duties as subordinate and derivative" (Dworkin 1977, p. 171). Why can't it be the case that our moral theory is at heart a mixed one, with a number of different goals rights and duties occupying a fundamental place? Certainly if we can have a 'set' of rights as fundamental (and not just *one* foundational right) it seems just as plausible that the 'set' of principles at the foundation of a moral theory might not all be of the same type.

*(5b) Raz's Criticisms of the Right-Based View*

Joseph Raz supports this view, and puts forward several criticisms of right-based theories (Raz 1984). Raz does not claim to offer a 'proof' of pluralistic theories of the foundation of morality over right-based theories, but merely gives us some reasons to favour a pluralistic account. One important thing to bear in mind before we take a closer look at Raz's arguments is that he endorses the 'humanistic principle' (although in this article he claims that he is doing this merely for the sake of simplicity). This is the principle that things are only good or bad in virtue of their effect on human life. It can be claimed that all rights theories (whether part of a right-based morality or not) are essentially humanistic. We have seen that this may be the case for example if we adopt the choice theory of rights. I will argue later in this thesis that a rejection of the humanistic principle in fact strengthens the type of criticism that Raz makes of right-based theories if we conceptualise rights in certain ways.

Raz begins by giving three examples of cases that he feels are not adequately explained by a right-based account. Firstly, he points to the (common, but not universal) view that there is a distinction to be made between 'ought' and 'duty'. This is not, he contends, simply a difference of strength, but rather a difference of moral character. Raz

gives the examples of having promised to saw off a branch overhanging my neighbour's garden this week (which makes sawing it off this week a duty) and allowing my neighbour who is locked out of his house to use my phone (an 'ought', but not a duty). He maintains that I probably have more reason in these circumstances to act upon the 'ought' than the duty. The 'ought' is stronger. Duties are of a distinctive character from 'oughts', not just a greater strength. He then argues that right-based theories, since they rely primarily on rights and the duties with which they correlate, cannot adequately explain this distinction.

The second case which Raz offers is supererogation. Supererogation is, almost by definition, that which is 'beyond the call of duty'. Those actions which it is good to carry out, but which we have no duty to carry out. A right-based theory, consisting of rights and correlative duties, cannot adequately identify what it is that is distinctively 'good' about the act of supererogation, just that I have no duty to perform it and no duty not to.

Finally, Raz contends that "right-based moralities cannot allow intrinsic moral value to virtue and the pursuit of excellence" (p. 185). Generally, virtue does not consist merely in discharging one's duties. Even honesty, Raz maintains, cannot purely be explained with reference to rights and duties, since the person who has fully cultivated this virtue will go out of his way not to deceive or mislead, even when this goes beyond duty. Raz is not suggesting that right-based theories can have no room at all for these cases, but rather that they cannot give them adequate importance or explain the richness of morality when dealing with cases such as these. Raz contends that these examples show right-based theories to be impoverished. He then backs this up with more detailed arguments claiming to demonstrate that "the impoverishment involves real moral loss" (p. 186). Raz claims that right-based moral theories are essentially individualistic, and cannot take sufficient account of what he terms as 'collective goods':

> A moral theory will be said to be individualistic if it is a humanistic morality which does not recognize any intrinsic value in any collective good. In other words,

> individualistic moralities are humanistic moralities which hold that collective goods have instrumental value only (p.186)

This bears some resemblance to Marx's criticism that rights are a product of and contributor to alienation, preventing people from having the true communal relationships to which they are better suited. However, Raz's claim is about right-*based* moral theories, and is not a wholesale rejection of rights. So Raz's claim is not as strong as Marx's. Additionally, it does not rely on nearly so detailed and heavy a set of assumptions about social and economic structures.

The 'collective goods' of which Raz feels that rights do not take adequate account are what he defines as 'inherent public goods'. A good is a public good if and only if the distribution of its benefits in society is "not subject to voluntary control by anyone other than each potential beneficiary controlling his share of the benefits" (p. 187). So these are benefits which are open to all in society, and the degree to which we benefit is only in the control of the beneficiary himself. Raz then distinguishes between 'contingent' and 'inherent' public goods. Contingent public goods could, at least theoretically, cease to be public goods and only benefit certain individuals, whereas inherent public goods are things which cannot, even in principle, cease to be public goods. These are such things as benefiting from living in a civilized, educated society with a culture of tolerance and respect. These are the 'collective goods' which Raz thinks cannot be adequately understood by theories of rights.

Of course, one response to this may be simply to embrace an individualistic theory and say that such 'collective goods' can ultimately be understood purely in terms of the good to individuals, but it is important to recognise that this line of thinking would be incompatible with some schools of environmental ethics. 'Deep green' theories emphasise the co-dependence of life on the planet, and it is argued that a coherent approach to ethical consideration of the environment is impossible unless we can embrace a theory of collectivism that reaches beyond the purely humanistic considerations to the level of the

planet as a whole. It may be that right-based theories are simply too individualistic to cope on their own with certain environmental problems. However, whether this is necessarily the case will partly depend on how we formulate the notion of the individual 'self'. I will argue in chapter eight that certain ways of understanding personal identity can make an emphasis on the individual entirely compatible with an equal emphasis on the co-dependence between the individual and his or her environment.

## 6. Chapter Conclusion

This chapter has been a very brief overview of an extremely complex and varied field. The main aim has been to pull out the main strands that will be important for our purposes in the next few chapters. We have also seen how, on a number of different levels, rights might face some problems when applied to environmental cases. This is largely down to a number of hard cases of possible moral patients which are particularly prominent in environmental ethics. Among the particularly strong candidates for consideration here will be animals, future people and groups. Other possible moral patients might be non-sentient organisms and systems, such as plants or even Gaia. Another difficulty that we will face will be the role of collective responsibility- how do we respond to a right when it is difficult to identify who has the correlative duty? Certain theories of rights might make these problems particularly difficult, for example, the choice theory of rights, which requires that a right-holder is himself a moral agent. This problem could be strengthened if we hold that rights are absolute or trump other moral considerations to give a moral theory that is weighted very much in favour of currently existing rational human individuals. However, even if these considerations give us some reasons to doubt the extent to which right-theory can be applied in environmental ethics, this needn't lead us to doubt that rights have a purpose at all. As I mentioned earlier, a theory that is not right-based can accommodate rights either in a derivative role or on an equal foundational level with other moral principles. While some favour monolithic moral

theories, it may also be argued that the best moral theory is one that provides us with a multiplicity of moral tools for different purposes. The judge's gavel working alone may not prove much use in the Amazonian rainforests, which of course does not rule out the possibility that it may be modified to do a better job.

# Chapter 4- Environmental Rights of Current Human Individuals

## 1. Environmental Rights

Having examined the idea of a right as such, the following chapters will be concerned with the more specific question of *environmental* rights, rights to a particular environment or rights concerning aspects of one's environment. This chapter will be concerned mainly with setting up the framework for how these rights are to be discussed. For the sake of simplicity, here we will consider only the environmental rights that we can ascribe to presently existing human individuals. In the next chapter, more challenging human cases will be considered, such as the rights of future people and of groups. After that, the possibility of the application of this thought to non-human cases will be given some consideration.

As we have seen in the previous chapter, there are a number of questions at stake when we ask whether someone has a right. Consider the basic question '*Are there rights concerning the environment*?' What does this mean? we need to consider who has these rights, what type of rights they are in terms of the theoretical analysis of a right, whom the rights are held against, and what are they rights *to* (i.e. what is meant by 'the environment' in this context?) Another question is whether this right would be absolute and inviolable, and whether it would be at the foundation of a moral theory. These are difficult questions, and will not all be answered here, but the remainder of this thesis may begin to draw out some tentative conclusions about these questions.

For the time being, we will suppose that such a right is a universal one (or at least universal in as much as it is held by all presently existing human individuals) and that it is a right held equally by all of these people. There obviously may be rights that specific individuals have concerning their environments, rights that they hold in virtue of their

inheritance, their culture, or specific agreements or contracts. However, our main concern for now will be with environmental rights as rights of *all*. Let us further suppose that it is a Hohfeldian claim right, or at least a bundle of Hohfeldian concepts of which claim rights form a strong component. The question of whom the right is held against (who bears the duty that correlates with the right) has a number of possible answers. It could be a right in personam (held against a particular person or group of people). Environmental rights will take this form when they are rights against governments, local councils, landlords and even bin-men: rights that impose a duty on a particular person to carry out their role with respect to our environment, whether this involves adhering to our carbon emission targets, or whether it means taking the rubbish from our back gates. Environmental rights could also be rights that are held in rem, against *everyone* else. Such rights would impose particular duties on other individuals with respect to their treatment of our environment. Joel Feinberg's observation that "Typically, in personam rights are positive, and in rem rights are negative" (1973, p. 59) may not have such a strong application here. Perhaps environmental cases, especially those that relate to the human effect on climate change, prompt all people to act (or at least to change the way that they act presently). If this requirement is a duty which correlates to a right to be protected from the damaging effects of climate change, we may be looking at the rare beast that could (rather cumbersomely) be named a passive positive in rem right, a right which prompts every person to take positive action in order to protect every other person. If this is the case however, it would also be the case that there would be passive negative in rem rights (rights implying a duty on everyone not to harm the environment) and perhaps active negative in rem rights (rights implying a duty on everyone to allow people to *do* things with respect to the environment). Whether or not this latter type of right is one with which we should be concerned comes down to what we consider the environment, and environmental rights, to be. It is also arguable that while the distinction between acts and

omissions is usually a difficult one to discern[1], in cases like pollution the distinction is particularly fraught with difficulties. An obligation not to pollute the environment (an omission) may imply an obligation to take steps to alter my usual course of activity (an act)[2]. If this is the case, then any distinction between positive and negative rights faces the same difficulties. For the time being, the distinction between positive and negative rights will not be treated as having special significance.

*(1a) Global Versus Local Environments*

When people refer to the environment, they often mean the earth and its ecosystems, particularly referring to living things, but also to geology, weather systems, and other natural systems existing on this planet. The emphasis in talk about the environment is often placed on areas of wilderness where few humans live. This is sometimes referred to as 'the natural environment, which people contrast with the 'built environment'. The natural environment is made of things like rainforests, oceans, deserts, and other expanses of 'natural' space (often so vast that we have almost as little comprehension and connection with them as we have when we gaze at the Milky Way).

There is a (quite understandable) tendency in environmental movements and environmental philosophies to appeal to high poetics and wax lyrical about these vast and unfamiliar landscapes at the expense of what is in our own backyards. It may be that the attitude of reverence with which people regard distant wildernesses somewhat undermines the expressions of awe made by those who have a genuine relationship with those environments:

I do not revere or hold sacred the Amazonian rain forest, not because I am irreverent

[1] For further discussions of this issue, see Quinn (1989). Warren Quinn argues, against some thinkers (e.g. Philippa Foot), that we cannot say that positive rights can be treated as more stringent or demanding than negative rights.

[2] Some (e.g. Foot 1978), make a distinction between positive and negative agency, according to which positive agency is initiating a harmful sequence of events, and negative agency is merely allowing one to continue. These distinctions may be useful in understanding the ethical implications of elements of our ordinary lifestyles that we can change if we so choose.

> or profane, but because, never having been remotely engaged with that forest, such a vocabulary is inappropriate coming from my lips. For me to speak that way devalues the same vocabulary when spoken by those whose home the forest is. (Cooper 1992, p. 166)

In addition, it may also be the case that this attitude towards distant parts of our planet may be a distraction from what is right under our noses.

*(1b) Environment and Environments*

Another question that this prompts is whether we are talking about *the* environment or *an* environment. The use of the definite article suggests that it is the earth or biosphere as a whole that is being discussed, whereas to say '*an* environment' is in a way less ambitious. A creature's environment might be equated with its habitat - the surroundings which sustain its life and well being. It may be that I have a right concerning *my* environment without having any rights concerning *the* environment as a whole, even if an improvement in the global environment is the way that this right can be granted to me. Of course, we may wish to argue that such a right can be transitive - implying wider environmental rights - when there is only one way of bringing it about. If I have a right concerning *my* environment, and changes in *the* environment are the only (or the best) way of granting my right, then perhaps I have a right concerning *the* environment.

It could be suggested that it is impossible to draw a line between the two. The intrinsic links between the global and the local make them inseparable. Perhaps, after all, there is no clear distinction between the environment and my environment, since the conditions of my immediate locality depend on there being a gulf stream, a jet stream, polar icecaps and large rainforests halfway around the world from me. The hamster lives in a cage, but it also lives in a house with central heating and human inhabitants who feed it, and in a world that produces sufficient breathable oxygen and absorbs carbon dioxide. Just as the hamster relies on these different layers of environment for its survival, there may be multiple levels of my environment, all of which constitute parts of my environment because they

sustain my need, even if I have never visited many parts of them. Still, this does not mean that we cannot make sensible distinctions between these levels of the environment. Even if the whole universe may in a sense constitute my environment, my *immediate* environment is the medium sized village in which I live, the small university town in which I work, and other areas with which I have a particular familiarity. This is what David Cooper refers to as an 'older conception' of environment, and perhaps in some respects a more plausible candidate for a sense of 'environment' that we have rights concerning.

*(1c) What Counts as an Environmental Right?*

So if we have particular rights concerning the aspects of the environment that in some way impinge on us or have particular significance to us, how do we articulate this? What are these rights? Presumably the violation of such a right, or the performance of its correlative duty or duties, must involve some act or omission which has a direct implication for the environment of the right-holder.

One sense of environmental rights might be the usual suspects in a new guise: rights that we have to life, liberty, health, property, and so on, when the fulfillment of these rights is dependent upon human responses to particular environmental issues. In this sense, we are talking about a broader environmental right, rather than something that is necessarily a right *to* a particular kind of environment. In this case, the environmental rights are instrumental rights which serve the conventional rights. To give an example, certain property rights would fall into this category. A right concerning my property, particularly if the property in question is land or buildings that surround me on a regular basis, is in a sense an environmental right, one that might be violated by a trespasser. In some cases, a right to liberty might also constitute an environmental right. If I am taking my usual route to work, and suddenly discover that someone has built a twenty foot wall around the perimeter of the village in which I live, this could be construed as violating my right to liberty by means of a

physical imposition on my environment.

In some senses though, we might hesitate to class these cases as environmental rights. It is not an essential feature of a property right that it concerns my immediate environment. I could, some would argue, own land on the moon. I could certainly own territory that I never actually visit. Likewise, my liberty can be assured or disrupted through other means than simply placing objects in my immediate environment, for example, we might say that the liberty of the Chinese people is being infringed by the restrictions that the Chinese government places on internet access. Even if it could conceivably be argued that a violation of my liberty would ultimately impinge on my environment, it is not due to any relationship that I have with my environment that this is a right violation. Rather, it is a right-violation precisely because it interferes with my *liberty*, and the interference with my *environment* is merely the means by which this interference takes place, in the sense that the right to a particular environment is only valued instrumentally for the purpose of bringing about some other good. I will for now call environmental rights of this type 'instrumentally' environmental rights. We can probably accept that, if there are any rights at all, there are instrumentally environmental rights of this nature. If I take a gun and shoot you, the bullet hurtles through your environment. If I steal from your house, I am altering your environment against your will. If I restrain you with ropes or chains, I am limiting the ways in which you can interact with your environment.

For something to be an environmental right in the strictest sense (lets call it an 'essentially' environmental right) it must be the case that not only is an interference in the environment of the right-holder the only way to violate the right, but that it is this interference which *makes* the act a right violation. While a property right might be violated by a trespasser or a burglar, the distressing sense that one's home has been invaded by an intruder might constitute the violation of an essentially environmental right. This may

constitute less of a property right, and more something like a *territory* right, or at least a much more nuanced and personal sense of property than can be summed up by the traditional bundles of Hohfeldian concepts that are often supposed to constitute property rights. In the case of a right to liberty, a wall blocking my journey might constitute a violation of an instrumentally environmental right to liberty, if the right concerned is a general abstract right to liberty. However, if what is at stake is a more nuanced relationship that one has with one's surrounding environment, we are talking about something else altogether, again something less coldly abstract and more rooted in an individual's experience than the traditional language of Lockean negative freedoms would suggest; a right to be free-range humans. The wall that blocks my path violates my abstract freedom, but it also violates an engagement with my habitat which is essential to my sense of self. I can no longer access parts of the world that have meaning, significance and familiarity to me. This is distressing and wrong in a very different way from removing my freedom to roam in a foreign land. Our environment is so entangled with our identity that a violation of an essentially environmental right is almost a violation of *self*. What this might mean will be explored further in chapter eight, where I will suggest that essentially environmental rights might be bound up with conceptions of the self.

## 2. Two Arguments for Environmental Rights

Tim Hayward (2005) and Aaron Lercher (2007) both make cases for environmental rights. Both argue from the assumption that there are moral rights to the conclusion that there are environmental rights:

> This section makes and defends the claim that a right to an adequate environment genuinely is, if any rights are, a universal moral right- that is, a moral right that can and should be universally institutionalised. (Hayward 2005, p. 47)

> I shall argue conditionally that if there are any moral rights, then there is an environmental right against pollution. This avoids some questions about where such rights come from, or what their ontological status is. (Lercher 2007, p. 356)

Perhaps it is something of a mistake to think that we can simply sweep questions about the ontological status or origins of rights under the carpet, since our answers to such questions may have a bearing on the types of rights that we adopt, and who the bearers of such rights might be. The problem with sitting on the fence is that one can easily fall off. But for the time being I will put this problem to one side. The right that Hayward defends is "a universal moral right to an adequate environment" (p. 47). By an 'adequate environment', he means "an environment adequate for their [every human's] health and well-being" (p. 27). Lercher's focus is on "a right against being subjected to pollution" derived from a right of any human being capable of choice "that all other human beings refrain from negligently, recklessly or intentionally imposing risks on him or her, except to prevent such negligent, reckless or intentional risk impositions" (p. 356)

*(2a) Lercher's Argument*

Lercher's approach is a development of Hart's 'Are there any natural rights?' (1955) which argues that "if there are any moral rights at all, it follows that there is at least one natural right, the equal right of all men to be free" (p. 77), again an approach that is conditional on whether there are *any* moral rights. Lercher claims that his initial proposal of a right against unnecessary risk impositions is a reasonable adaptation of Hart, in that "such risk impositions have the same moral status as coercion and restraint in Hart's original formula" (p. 356). He also makes the further claim that:

> Any human being capable of choice is at liberty to do (that is, is under no obligation to abstain from) any action that does not impose risks negligently, recklessly or intentionally on other persons. (p. 356)

Lercher's two claims, adapted directly from Hart, replacing his references to 'coercion, restraint and injury' with references to such risk impositions, are illustrated by reference to practical applications. Lercher calls on the example of a neighbour who is spraying pesticide while Lercher's study windows are open. The pesticide is of a type that imposes a risk to

Lercher's health and well-being, but no immediate danger or harm. He also supposes that this risk imposed on him is outweighed by the benefits to his neighbour's garden.

Lercher then goes on to suppose that his neighbour had warned him in advance about his pesticide spraying, and that Lercher had agreed that it was alright to go ahead with the spraying. Lercher's claim is that it makes a moral difference that the neighbour had spoken to him about it in advance. He is at liberty to agree to the spraying, and the fact that he does agree to the risk imposition makes it the case that his environmental risk against pollution has not been violated:

> The first of my formulas says that it is morally necessary that my concession be justified somehow, since otherwise my neighbour's spraying imposes risks on me and thus violates my environmental right against pollution. In this case, my concession is justified by my agreement. (p. 357)

This hinges on a choice theory of rights, where it is an essential feature of a right that the right-holder is able to waive their right and let the duty-holder off the duty that corresponds to the right. A right against pollution following this theory of rights would make sense of Lercher's example. It would explain why Lercher's agreement makes a moral difference to the situation even though it makes no difference to the level of risk imposed upon Lercher. The implication is that posing risks to someone without consulting them is coercive, in that they have no choice over whether or not the risk is imposed. If they are consulted, and agree, then the coercive element is removed and the individual's right to freedom is not violated. It is in this sense that Lercher believes that negligent, reckless or intentional risk imposition is morally equivalent to coercion in Hart's formula. Lercher claims that this right is confirmed by the analysis of concrete environmental cases, taking as an example the case of Love Canal in New York, whose residents discovered in 1978 that they were living on top of a huge toxic waste dump. Despite this, it has not been clearly demonstrated that any harm to any of the residents resulted. Lercher contends that his right against 'negligent, reckless or intentional risk imposition' makes sense of the intuitive claim that the residents were nonetheless

wronged by the dumping of toxic waste.

*(2b) Hayward's Argument*

Hayward defines a universal moral right as "a moral right that can and should be universally institutionalized" (p. 47). He claims to establish this right by appeal to Maurice Cranston's three tests of a genuine right: "moral paramountcy, universality, and practicability" (Cranston 1967) claiming that if the liberal rights traditionally espoused pass these tests, then so does a right to an adequate environment. He does not give a detailed analysis of what is intended by an 'adequate environment' (although he does indicate that work on this area has been done elsewhere).

These rights are, Hayward maintains, of paramount moral importance since the interests that they protect are vital to human flourishing, and the absence of an 'adequate' environment leads to suffering, pain and death just as the torturing of an innocent human being might lead to these things. In this sense, if a person's interest in not being tortured is of paramount moral importance, then so is the individual's interest in having an adequate environment for health and well-being. It seems fairly uncontroversial to accept that, in as much as human activity can secure or destroy it, an adequate environment is an interest of fundamental moral importance, and thus a duty to provide it must be, at the very least, a reasonable topic for serious moral consideration. Thus it seems plausible that a right to an adequate environment could pass the test of moral paramountcy.

Hayward points out that a right of this kind is *universal* in that the interest that it protects is one shared by all human beings. We all depend absolutely upon an adequate environment for our health and well-being. However, as Hayward acknowledges, this is not what Cranston means by universality. Instead, according to Cranston's definition a right can be universal only if the duty to which it corresponds is a universal duty:

> On this view, each and everyone only has a right that is genuinely universal if each and everyone is also under the duty that correlates to it. Inasmuch as the right of each

> to an adequate environment can be understood to imply that each also has the duty to refrain from harming the environment of each other, it qualifies as a universal right in this sense. The right to an adequate environment thus in fact fares better by this standard than human rights such as healthcare, education, and social rights generally, in that the correlative duty, being purely negative (i.e. a duty to refrain from certain actions), can be conceived as unproblematically universalizable. (p. 49)

So it seems that what Cranston is here referring to as a 'universal' right is something closely resembling what has traditionally been named a right 'in rem', as well as a right held by 'each and everyone'. Hayward correctly observes that rights to healthcare, education and so on do not pass this test, suggesting that environmental rights fare better on this front. However, environmental rights may not be as unproblematic here as they first appear. The difficulty here lies in our specification of who counts as 'each and everyone' for these purposes. A problem might arise if we hold the view that the community of right-holders may be wider than the community of duty-holders. If this is the case then no right can be genuinely universal in this sense the 'each and everyone' who has the right cannot also have the correlating duty because some of them cannot have duties at all.

The obvious candidates for right-holders who are not duty holders are animals. These will be relevant in chapter 6, but can be disregarded for Hayward's purposes, since he is explicitly discussing *human* rights. However, there are also cases of human individuals who may or may not count as moral agents in this case. I will discuss the complicated cases of future people and group rights in the next chapter, but there are some presently existing human beings who might be considered to be moral patients without being moral agents, right-holders without being duty-holders. These are infants and severely disabled people. Some theorists (for example, proponents of choice theories of rights such as Hart and Lercher) suggest that these would not be capable of having rights either (since having rights requires rational agency) but many would find this conclusion problematic. It is certainly the case that many bills and conventions of human rights afford rights to young children and the

severely disabled.[1]

Perhaps Hayward would get around this problem fairly easily by reformulating his description of a universal right slightly. Instead of saying that a right is universal only if it is held by each and everyone and correlates with a duty imposed upon each and everyone, he can say that a right is universal only if it is held by each and everyone who is capable of having rights, and correlates with a duty imposed upon each and everyone who is capable of having duties. This still leaves open the enormous question of who is to fit into each of these categories, but the discussion of hard cases is something that is widely discussed elsewhere, and perhaps unnecessary for Hayward's core project.

However, as Hayward acknowledges, practicability is perhaps the hardest of the three tests for environmental rights to pass. It is the practical question of how the universal duty is to be understood and applied that causes great difficulty, and this is why Hayward eventually argues that we must reject Cranston's strong conception of a universal right:

> If each and every individual is supposed to have a duty not to harm any other individual's environment, the critical question is how this duty is to be implemented and enforced; and how, indeed, it is even to be intelligible as an action-guiding principle. (p. 49)

It is the complexity of the social interactions that lead to environmental problems which cause these difficulties, together with the fact that environmental problems sometimes require an active rather than a passive response. These factors create great difficulty with identifying who is supposed to do what in response to an individual's environmental right. So in response to this difficulty, Hayward (against Cranston) argues that a universal duty "is not always - or even generally - either (*a*) necessary or (*b*) sufficient for the universality of any human right" (p. 50). This weaker interpretation of a universal right seems plausible. For example, if we suggest that there is a universal human right to healthcare, education or

[1] For example, the United Nations Convention on the Rights of the Child (UNICEF 2008) and the United Nations Convention on the Rights of Persons with Disabilities (ENABLE 2009).

housing, this does not imply that there is a duty upon *everyone* to provide these things. Usually, this duty is held by governments or international agencies, rather than by specific individuals or people in general. Each individual's right imposes a duty upon the state. It is a right in personam held against a group or institution.

However, this is not the main ground on which Hayward rejects Cranston's correlativity thesis (that universal rights correlate with universal duties). He attacks as overly simplistic the view that each right maps directly onto a particular duty:

> It is a mistake to say, as Cranston does, that to speak of a right is to speak of a duty as if these are simply two sides of the same coin… There is, to be sure, a category of rights for which it is the case that the right and its correlative duty constitute a single relation such that the right is nothing other than what the duty demands and vice versa. This is the category of rights analysed by Wesley N. Hohfeld as 'claim-rights', which arise in bilateral legal relations which are such that, by definition, the meaning of A's right is equivalent to B's duty. This category does not, however, comprise what Hohfeld calls 'privileges' (p. 51)

What is meant by a privilege here is a 'bare liberty' or simply the absence of a duty on the part of the possessor of the privilege, as we saw in the previous chapter. Thus if I have a right of this form, a privilege to do X, it simply means that I have no duty not to do X. Nobody else has any duty to allow me to do X, it is just that I am not obliged not to.

As Hayward also notes, most rights are 'clusters' of Hohfeldian rights, such that it would be overly simplistic to analyse them simply as a claim with a correlative duty. A complex bundle of interrelated claims, duties and absences of duty might be implied by a single right. He makes a further point that background considerations relating to the parties involved or the society that they inhabit may alter the duties involved with any particular right such that there can be no 'closed list' of duties that correspond to any particular right.

This raises the question of whether it is ever possible to analyse a right and its related duties intelligibly. However, as Hayward points out, this is a difficulty of practicality rather than one that makes rights incoherent in principle, and importantly for Hayward's argument, it presents as many problems for rights that are conventionally considered universal as it does

for environmental rights. Thus in this sense, Hayward demonstrates that if any moral rights are coherent, then so is a right to an adequate environment.

**3. Analysis**

So how do these arguments for environmental rights fit in to the earlier analysis of what forms such rights could take? Firstly, both rights can be seen as rights to a particular environment, not to some nebulous idea of *the* environment, they are rights concerning our habitat. Lercher argues for a right against pollution, more precisely a right against exposure to pollution in the space that we inhabit. Hayward argues for a right to an environment adequate for health and well-being. Both are also environmental rights in the instrumental sense that I outlined, in that whether the right is fulfilled or violated will make some difference to the environment of the right-holder. Are they also environmental rights in the strong sense? By this I mean the sense in which something is an environmental right only if interference in the environment of the right-holder is the only way to violate the right, and it is this interference which *makes* the act a right violation. Both a right against pollution and a right to an adequate environment can only be fulfilled or violated by affecting (or refraining from affecting) the right-holder's environment. This differs from a right to liberty or property, which could perhaps be respected or violated in some other way, although in a moment this will be given more consideration. However, it is not the role of environment that is important here, it is the role that the environmental rights serve in protecting further rights.

This raises the question of whether such rights are worthy of any special regard or analysis of their own. They both seem to be specific instances of a broader (instrumentally environmental) right. If we only have a right to a particular environment as an instrumental way of achieving other moral rights, is this worthy of any special attention that we would not give to any other practical applications of our wider theory of rights? Is there anything

special about environmental rights in particular?

There are two main reasons why environmental rights might deserve special consideration. Firstly, we might hold that there are rights which are *essentially* environmental: environmental rights which are not merely the instrumental means to achieving some other right, but which stand as rights on their own without a further right propping them up. Secondly, we might say that while environmental rights are all merely instrumental, environmental issues are so pressing and important that we ought to consider whether the language of rights might be an effective way to examine and consider environmental issues. Environmental rights are not a special category of rights, but there are many applications of them and they are very important.

The first of these approaches might be the most appealing to some kinds of environmental philosophers, in that it marks out environmental concerns as a unique and important for their own sake, although this advantage is limited if environmental rights are considered as rights of humans. If a rights-based approach is to encapsulate uniquely environmental concerns, this may only be considered an advantage if it moves beyond the rights of humans, and perhaps even beyond the rights of discrete organic individuals. These issues will be considered in the next few chapters. A worry that many philosophers will have about the prospect of uniquely environmental rights is that this may open the door to an uncontrollable multiplication of categories of rights. If we can have uniquely environmental rights, important for their own sake, then why not also have rights that are uniquely any number of other things? This will be a particular worry for philosophers of rights who attempt to identify a single underlying basis for all rights, although less so for those who favour a pluralist account of rights or even of morality in general - if there can be a plurality of foundational moral concepts, then perhaps these can include a number of different types of right. However, this approach would involve the difficult task of justifying the unique status

of environmental rights (and any other unique types of rights that it espouses) I will attempt to indicate one way in which this might be done in chapter eight.

The second approach, claiming that environmental rights are not a special category, merely a very important and pressing one, is likely to garner more support from traditional rights theorists. The project here would be the application of traditional theories of rights to a number of environmental issues in an attempt to throw new light upon them. This is very much the approach adopted by Lercher. The question of whether rights are an area of purely human concern will again arise. If it is the case that rights cannot be held by animals, future people, species and so on, then we need to consider what to do about these cases. We may have a moral theory where rights are only one among several important moral concepts. If this is so, then it may be that rights are not the right tool for the job when considering the interests of these specific cases, but that rights are still important for considering the humanistic aspects of environmental ethics. It may however be that we regard all of these interests as so entangled that when considering environmental questions the interests of human individuals cannot be easily separated from these other cases. This may provide a prima facie reason to avoid the language of rights in environmental philosophy. Of course, it may be that we can ascribe rights to animals, future people, groups, species and so on. If this is so, then there are questions to answer about whether the pull or strength of these rights is commensurable between these cases. It is crass to ask how many squirrels' rights to life, if any, are equal to my property rights concerning the produce in my garden, but we do need some answer to the question of how to deal with conflicts of rights between species. Yet another approach might be to say that while rights can be ascribed to some or all of these cases, other environmental concerns are so weighty that rights-talk is rendered insignificant. This would be a very radical approach, but probably one that some ecologists would favour in the light of pressing environmental concerns.

## 4. Conflicts of Rights

As we have seen, if we can defend environmental rights, a further question is how they are to fit in with each other, and with the other rights that we hold. The issue of weighing the rights of animals and other moral patients against the rights of humans will be examined in later chapters, the concern here is simply with conflicting rights held by human individuals. Different people may have different rights concerning their environments, and sometimes there may appear to be conflicts between these rights. The landowner's right to choose how he puts his land to use may conflict with the rights of other people living on that land (ignoring for the time being the possible rights of animals, groups and future landowners). If I have a right not to suffer the effects of pollution, this may conflict with other people's rights to liberty. We need to consider which rights (if any) are absolute, and whether any of these are environmental rights. In a sense, this is a problem that has been dealt with before in other areas of rights theory. Much has been written on the topic of how apparent conflicts of rights are to be understood and resolved, but in order to understand how environmental rights might be understood to function, this question deserves some consideration in terms of its relation to concrete environmental issues. There are countless rights that might be thought to conflict with each other in an environmental context. The following section on the right to liberty merely picks out one particular type of conflict to demonstrate how such conflicts might be addressed more generally.

### *(4a) Environmental Rights and the Right to Liberty*

For many individuals, acting in a way that is thought to protect the environment is simply too inconvenient and difficult, and any measures to attempt to make them behave differently is seen as an imposition on their personal liberties, as it is making them act against their will. This has been raised as a concern with regard to compulsory recycling, 'pay as you throw'

schemes and proposed systems of individual carbon emissions rationing.[1] Instead it has been suggested that people should be persuaded to change their behaviour through education or incentives, as narrowing the scope of individual liberties is not regarded as justified in these cases.

However, the flip side of this is that many would suggest that we cannot simply allow people the freedom to destroy the environment. After all, many scientists claim that the threat of global climate change is so severe that carbon emissions need to be reduced dramatically in a very short timescale in order to avoid drastic environmental damage. There is a real issue of whether people will respond to this threat if left to make their own choices about how 'green' they wish to be. If people will not respond to persuasion (and some would argue that there is not enough time to see whether they will) then we are left with the question of whether it is ever permissible to interfere with someone's personal liberties for the sake of preventing harm to the environment. This appears to be a direct conflict of rights. On one hand, people have a right to individual liberty, while on the other, they have rights concerning the state of their environment, rights not to be subjected to serious risks, or to have their health or well-being damaged. The question here is how far the right to liberty extends, and what limits, if any, can be placed on it. There is a sense in which it is impossible for everyone to be granted an absolute right to total liberty. Total liberty, the liberty to perform any action which one is capable of performing, would imply the liberty to restrict the liberty of others, and thus total liberty is not universalizable. We therefore need some rule or principle for how liberties ought to be distributed. Where does one person's liberty begin and another's end?

Two popular justifications for the restriction of the right to liberty are the harm principle as articulated by John Stuart Mill (that the only reason to interfere with the liberty

[1] See for example Guardian Unlimited, 2006 and McCright (2000).

of an individual is to prevent harm to others) and John Rawls' liberty principle (that everyone should be allowed maximum liberty compatible with a like liberty for all) (Mill 1999 and Rawls 1999). Serious environmental harm could conceivably count as a reason for the restriction of liberty under either of these principles. The potential human cost of climate change could be disastrous. The effect of events such as hurricanes and tsunamis have been seen in recent years, and the chance of these events becoming increasingly dramatic is thought to be increased by human driven climate change.[1] There is also a serious issue concerning more general climate trends aside from these isolated dramatic events. Hotter summers and rising sea levels would make more areas of the world uninhabitable, making the simple business of sustaining one's life very difficult for many people in the developing world and leading to large scale migration of populations to find space in an ever more crowded world.[2] These effects are reminiscent of war on an unprecedented scale, killing people and driving them from their homes. The enemy is not an external alien force, in fact many of the people who will suffer are themselves partially responsible for their predicament.

It may be argued that such a threat gives sufficient reason to interfere in a person's liberty. After all, whether we use Mill's condition (harm) or Rawls' condition (infringement of liberty) it would seem that, certainly by some people's predictions, the results of climate change are fit to be considered good reasons to restrict liberty where such restrictions are necessary to prevent those effects. A rights theorist would couch this in right-based terms, maintaining either that the right to liberty does not cover these circumstances, or that the individual's prima facie right to liberty is in this case overridden by a more pressing right, either another right to liberty, or a right not to suffer harm (the latter is close to Hayward and Lercher's interpretations of an environmental right).

Whether we accept such interventions will depend upon how we interpret principles

[1] See the US Climate Change Science Program's report on this issue (U.S. Climate Change Science Program and the Subcommittee on Global Change Research 2008).
[2] See, for example O'Neill (2001).

that determine the limits to our liberty. Let us take as an example Mill's 'harm condition'. The basic principle is that the only reason for which a state can rightly interfere with the liberties of an individual is to prevent harm to others. This excludes self-harm, as only actions which harm people other than the agent are regarded as causing grounds for interference. One of the ways in which Mill seeks to elucidate the notion of harm is with reference to rights and right violations:

> Every one who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest. This conduct consists, first, in not injuring the interests of one another; or rather certain interests, which, either by express legal provision or by tacit understanding, ought to be considered as rights. (Mill 1999, p. 122)

So which interests is Mill referring to when he describes those that ought to be considered as rights? He claims that he is not talking about rights in the natural rights tradition, as he means simply interests which ought to be held as rights in legal or social arrangements, and he forgoes "any advantage which could be derived to [his] argument from the idea of abstract right, as a thing independent of utility" (Mill 1999, p. 53). So what we are discussing are interests which *ought* to be considered as rights for reasons of utility:

> To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of. If the objector goes on to ask, why it ought? I can give him no other reason than general utility. (Mill 1962, p. 309)

So if there is a Millian right to a clean or undamaged environment, that would mean that the best decision in utilitarian terms would be to protect the individual's enjoyment of a clean or undamaged environment. This might be couched in more general terms as less specific rights, such as a right to health or well-being, or the right against risk impositions. This would mean that the state should protect people's health and well-being, or should not subject them to unnecessary risks. In some cases the only way to achieve this might be through protecting their environment. The state would only be justified in interfering with an individual's liberty in the case of a right violation, perhaps in this case that could be causing

excessive pollution, or not recycling waste. It is important that the criteria remain fairly stringent, as for Mill, the right to liberty is usually stronger than most other rights in utilitarian terms, as he argues in great detail in *On Liberty.* Despite this, if we assume for the sake of argument that the intended interference in a person's liberty *will* serve to prevent harm to others in the form of violating their rights, and that it is the *only* way to prevent this harm, it initially seems that under Mill's terms, such interference would be justified.

However, a complication occurs at this point which draws on several strands that we have mentioned. Recall that those who are the victims of environmental damage are also very often the perpetrators. In fact, there is probably hardly anyone on this planet who does not contribute to climate change in at least some small respect. We should also recall that Mill thinks that the only reason for interfering in someone's liberty is to prevent harm *to others*. Here it becomes clear what the problem is. If we are complicit in the damage to the environment, then can the state still be justified in interfering in our liberties for the sake of preventing harm to us? Is complicity in harm the equivalent of self-harm and thus unaffected by Mill's harm condition? If it is, then our right not to be harmed is forfeited because we ourselves have acted in a way that would violate it.

There are a few possible answers to this. Firstly, people may not be aware of the threat that is posed to them by their own activities. If this is the case we may be justified in restricting their actions. Some people certainly do not seem to believe that climate change is a great threat, or at least that if it is it is caused by human activity. If people are not aware of the danger of their actions, then perhaps they can be restrained. Mill uses an example of a man crossing a bridge that is in a poor state of repair. If he does not know that the bridge is dangerous, and there is no time to warn him of the danger, he can be restrained from crossing it "for liberty consists in doing what one desires, and he does not desire to fall in the river" (Mill 1999, p. 146). Thus we can act to prevent someone from doing something that will

harm them when they do not know about the harm that their action would result in. So we might maintain that people who do not realise the dangers of climate change and their contribution to it can be forced to act in a certain way because they do not want to suffer the ultimate consequence of what they are doing.

But the bridge example is simpler than the climate change one. With climate change some argue that the science is still a matter of dispute. While most people involved in that area of scientific enquiry agree that climate change is a danger to mankind and is caused by human activity, this view is not unanimous.[1] The man can be prevented from crossing the bridge when it is known to be dangerous, but should he be prevented from crossing it when a group of engineers are in the middle of a heated disagreement about its safety? While many would probably urge the precautionary principle just to be on the safe side, this does not necessarily chime very well with Mill's liberal thought.

His emphasis on freedom of thought and individuality would suggest that the man should be allowed to choose whether to cross the bridge once he had heard what all the engineers had to say. Similarly with climate change, this might suggest that according to Mill's principles, an individual's behaviour should not be restricted once he had heard and considered the arguments on both sides. Here is not the place to discuss the role of doubt in ethical decision making, but is a complex issue that would need to be addressed. Perhaps it

[1] It is, however, sensible to take many of the claims that dispute the scientific evidence for climate change with a sizeable pinch of salt. There is a great deal more disagreement about climate change and man's responsibility for it in the media and among politicians than there is in the scientific community. Thus there appears to be less scientific consensus than there actually is. Of course, there is a separate question that can be asked about how non-scientists can know what scientific findings to trust and accept. As non-specialists, we must take the words of specialists on trust to a certain extent, just as we generally trust doctors, financial advisors, plumbers and electricians in their respective fields. But which experts should we listen to in cases of disagreement, and how can we make up our minds where there is uncertainty? Can we take what we have heard from experts to be knowledge, and if not, how can we use it as the basis of behaviour, political policy making and so on? Do we have good reason to side with the majority of experts, when lone voices have sometimes turned out to be correct? These kinds of questions have attracted an increasing amount of attention over the past few years (see for example Collins 2007 and Lahsen 2005) but cannot be discussed in detail in this thesis. Many thanks to Ian Kidd for suggesting these sources.

also highlights one respect in which Mill's emphasis on individual flourishing does not connect very well with environmental issues. If the situation we face is the one that the majority of scientists predict, do we have time for the luxury of avoiding the *tyranny of the majority*? Perhaps Lercher's argument, suggesting that there is not only a right not to be harmed, but also a right against the imposition of *risk* might help to some extent.

The view that we are examining is that climate change cannot be a reason for interfering with people's liberty because those people are complicit in their own harm. We have briefly addressed the point that perhaps we could interfere if the people were unaware of the harm that they were causing to themselves, but of course this is not the case for most people. It is generally accepted within and without the scientific community that human activity contributes to climate change, but while most people contribute to this harm, not everyone does. Of those who do, not all of them can be held responsible. Some animals, children and people who do not yet exist will all suffer as a result of climate change, but cannot be said to be responsible for it. Animals and children, but not future people, are both interest groups which fall outside of Mill's view of who should be allowed liberty bound only by the harm condition, as they are not capable of making rational choices for their own good. They are not however groups that would necessarily be excluded from counting as sufferers of harm who can count as a reason to restrict another's liberty, as they are both capable of experiencing pleasure and pain.

These cases will be discussed in more detail later in the thesis, but they are not the only ones to be considered in this instance. There are many people in the world for whom we can say that, while they do contribute to climate change through some of their activities, their overall impact will be very small. These may be some poor people living in developing countries, people who make deliberate efforts to reduce their environmental impact, or people who have a small impact for other reasons (an example might be certain Amish communities

who reject the use of the automobile and electricity).

Other people who may be regarded as not responsible for climate change may be people who contribute to it significantly but do not do so freely. These are people who have very little choice, such as poor factory workers, or the many people in Britain who cannot afford to purchase locally sourced products, which are often more expensive than goods that are shipped from parts of the world where labour is cheaper. The issue in these cases would not be so much whether we should constrain people's liberty, but how we can facilitate their behaving in a way that does not contribute to climate change. This is perhaps a question of positive liberty, and even of positive rights to be able to do good.

So in reality, we may be allowed to appeal to Mill's harm principle to intervene to lessen the effects of climate change, since for many people and animals it is not a case of freely chosen self-harming activity. We can perhaps interfere with the liberty of those who make significant contributions to climate change for the sake of preventing harm to those who do not, or who are not responsible for any contributions that they make. However, it does seem rather odd to say that measures that are taken to curb climate change are taken for the sake of these people or animals and *nobody else*. While climate change might be particularly damaging for certain vulnerable groups, many would hold that we should try to tackle it for the sake of everyone. This would seem to suggest that Mill's thought faces difficulty in dealing with situations which have complex webs of interactions and suffering, and where the conventional moral agent/ moral patient distinction is not straightforward.

If we are to use the traditional liberalism of Mill to justify coercive measures to protect the environment because they are being done for the sake of those people who are complicit in their own harm, we must explain why Mill's sphere of self-regarding actions is not applicable to this case. If we should be forced to protect the environment *for our own sakes* then this seems difficult. Perhaps a better way of looking at it would be to argue that

everyone should be made to preserve an environment that is conducive to the health and lives of everyone else. When it is worded like this, we can see how we are not talking about a self-regarding action; rather we are talking about an other-regarding action which regards everyone else in the world. Thus, the fact that other people are contributing to the pollution does not mean that they are excluded from being worthy of others' consideration, they are still liable to be harmed by it. Each of us only contributes a little to the pollution and deforestation that is responsible for global warming, so if we suffer harm as a result of it, only a tiny proportion of that harm is self-harm. The greater part is caused by others, and it is because of that part that we should restrict people's actions.

A difficulty that faces this is that the same argument could be applied to other activities that result in mutual harm, such as sadomasochism or smoking in a household where everyone is a smoker. These cases would traditionally be regarded as examples where people are complicit in their own harm and because of this the behaviour should not be restrained. It is not always so clear why this is thought to be the case, but one answer might be that by participating in the activity one gives one's tacit consent to be harmed which means that no outside force is justified in intervening to prevent the harm. It may be that we can distinguish the climate change case from these more traditional cases because true consent requires the ability *not* to consent. Living in a house of smokers or participating in sadomasochistic activity is a choice, but living on a planet that is under threat from climate change is not, so simply by existing on this planet, of course we have not given our consent to what is happening to it.

Another difficulty lies in the question of whether we should see damage to the environment as *shared* responsibility, where responsibility for the harm can be measured out between its different contributors, or whether it is *collective* responsibility which is held by groups rather than by individuals. The argument that people can be coerced into non-

pollution because the harm that they suffer is mostly not caused by them fits best with a notion of shared causal responsibility, where the individual's contribution to their own harm can be singled out and discarded. It would be harder to account for how this would be possible if it is collective causal responsibility that is most relevant here. Should we then regard global warming as something caused by individuals or by countries, governments, societies, corporations, cultures and so on?

Mill, as a firm advocate of liberal individualism, would be likely to be rather sceptical about the notion of collective responsibility itself, but perhaps this betrays an inherent weakness in theories such as Mill's for dealing with situations such as environmental damage on a global scale, as there are several reasons that suggest we should view the problem as one of collective responsibility, rather than just the aggregated responsibilities of many.

The literature on collective responsibility is rather too extensive and detailed to argue this point conclusively here, but collective responsibility seems to be suggested by the fact that no one individual polluting alone makes a significant contribution to the harm that would be suffered as a result of climate change. One person acting individually would not cause a small amount of climate change proportional per head to the current levels predicted. Rather, no climate change would occur at all. Harm caused by climate change is by nature something that is caused by many people acting and, in the sense that it can only be caused this way, is not an aggregate of the individual actions which contribute to it. It is also the case that the identities and behaviours of the individuals who are acting is less important than the identities and behaviours of the groups that have a causal impact, and this is not just down to a question of scale. In the type of society, corporation or species that causes pollution, people can be substituted and the activity continues, whereas if the structure or aims of the group that acts alters, the behaviour changes far more significantly. The activity is shaped by the type of group that is operating more than it is by the identities of the individuals who act within it,

since individuals always operate largely within the norms of the culture which they inhabit.

So the suggestion that we *can* interfere to preserve the environment due to Mill's harm condition faces a problem when we consider that most people on the planet are complicit in the harm that is being caused to them. However, if such measures would be necessary to avoid the drastic effects of climate change, it seems equally difficult to defend the view that interference is not the best option in utilitarian terms. Even Mill's "largest sense" of utility "grounded on "the permanent interests of man as a progressive being" (Mill 1999, p. 53) do not seem to justify taking no action when the threat to human happiness and progress is so grave. Part of this seeming contradiction stems, as we have seen, from Mill's failure to account for collective responsibility and the inevitable entanglement of moral agent and moral patient that arises with global cases such as this. This does not seem to be unique to Mill. This is partly a product of the individualism that has dominated political thought for centuries, but it is not just down to this. The thought of Marx, with his strong alienation between the worker and the bourgeoisie, might also struggle to deal with the extent to which different groups and their activities occupy multiple roles, both as attacker and as victim. These complexities make environmental problems very difficult to conceptualise in conventional political terms, something that becomes particularly apparent in the literature on rights, which as we have seen makes a stark division between agent and patient. We will also see how it is not just human individuals and groups who are entangled in this way. Issues such as the importance of animals and species and the interaction between them, humanity, and the non-sentient world will further highlight the inadequacy of conventional agent/patient and rights based approaches to the issues facing our planet.

## 5. Chapter Conclusion

We have seen what forms environmental rights might take, and how they fit in with wider theories of rights. It appears to be at the very least plausible, if rights theories are plausible at

all, that there can be environmental rights. In a sense, the conventional rights of classical natural rights theories can be considered environmental rights, at least in some instances. It is also plausible that, derived from these, there are more specifically and essentially environmental rights, where harm or interference in the environment lies at the heart of the formulation of the right, and the right does not exist merely as a derivative of another more foundational right.

We have also looked at the issue of how the right to liberty might come into conflict with environmental rights. This has thrown up a great deal more questions, suggesting that perhaps traditional rights theory may be simplistically individualistic when applied to large-scale environmental problems. The level of complex dependencies and global interactions affecting the world were not fully recognized in Mill's times, and the problems with applying his moral thought to contemporary issues is perhaps further evidence that moral and political ideas must be understood in terms of the social and intellectual backgrounds against which they develop. This chapter has also forced us to consider the role in theories of rights of those who are not (presently, at least) moral agents. Many of these cases will be discussed in the next two chapters.

# Chapter 5- Rights of Future People and Groups[1]

> Should we fail to rise to this challenge I don't believe we will be able to explain ourselves to future generations that we have let down.
>
> -Tony Blair on Climate Change[2]

> The content of a fruitful ideal necessarily lies beyond the momentarily actual. And because it reaches beyond the limits of an individual life, it naturally reduces the individual to a link in the chain of life, which connects the past with the future. Man sees himself caught up into a larger providence, which looks beyond him and yet is his own. (Hartman 1981, p. 307)

## 1. Introduction

In chapter four we looked at environmental applications of theories of moral rights, and considered what forms these rights might plausibly take. The focus of the chapter was on the environmental rights of currently existing human beings, although it suggested that theories of environmental rights might be harder to apply to some other cases. This chapter will be concerned with some of the difficulties of applying rights theory (and particularly theories of environmental rights) to some human cases. The main questions will concern whether we can attribute rights to future people, and whether we can attribute them to groups of people. Work has already been done surrounding these issues (especially relating to the rights of future people) although less has been said about the implications of these difficulties for rights-based theories and how environmental ethicists ought to respond to the notion of rights given these issues.

[1] Many thanks to Jonathan Lowe and to Jonathan Tallant for their advice on some of the more metaphysical elements of this chapter, as well as on the most appropriate terminology to apply, and to Geoffrey Scarre for past conversations about moral obligations to the dead which have direct implications for some of the substance of this chapter.

[2] Tony Blair in a speech launching the Stern review of the likely impacts of climate change. See The Daily Mail Online (2006).

Questions about future people are often raised in relation to environmental ethics. In the case of people who will be born after the time that we have died, the main way that we can affect their quality of life is through the legacy that we leave in the environment. Things that we do now will have sometimes irreversible effects on the environments that future people will experience, whether it is in the form of an altered climate, reserves of natural resources, preserved ancient woodland or levels of population growth. However, it is probably worth mentioning that environmental matters (particularly climate change) are thought of less in terms of future generations than they used to be. The growing literature on the medium rather than long term effects of climate change, coupled with the recognition that we are living longer has brought more focus on things that will happen within some of our lifetimes. However, the consideration that we give to future people is still very important in shaping the way that we respond to environmental questions. For example, if we consider only the interests of currently existing people, we may choose to use up a natural resource which we would otherwise preserve for future generations, or to make different decisions about the storage of hazardous waste.

I aim firstly to consider the moral status of future people, and then to demonstrate how this issue is closely tied to the moral status of groups of people. I will argue that one way that we might ascribe moral rights to future people is to ascribe moral rights to groups.

## 2. Future People

As always, it is important here to make some sense of the terminology that we are using. Various different things have been meant by 'future people', and there are different subsets into which the set 'future people' can be divided. In the broadest sense, future people can include distant future people, but also ourselves in the future, the children that we have or may have in the future, and those who currently exist only as zygotes, embryos or foetuses

(which we may or may not also regard as current people).[1] In a narrower sense, future people might be only those people in the relatively distant future, whose lives will never overlap with our own:

> What is distinctive about the notion of obligations to future generations is… that it refers to generations with which the possessors of the obligations cannot expect in a literal sense to share a common life. (Golding 1972, p. 225)

Different things can be said about these different cases. It is perhaps significant for example whether the genetic identities of the people concerned have been determined at this point in time. If having a particular current genetic identity is a condition of having rights, then we may be able to ascribe rights to presently existing foetuses which we cannot ascribe to non-presently existing future people (and if current genetic identity is not a criterion, but rational agency is, the reverse might be true).[2]

These questions are further complicated by some of the same questions that we might have about the ascription of rights in general: do future people from dramatically different cultures, who have dramatically different ideas about morality or concepts of the good, or who are not the inheritors of our culture have any rights against us? Or perhaps all future people have rights against me because I have the power to determine, in part, their way of life:

> The cross-temporal moral community in which one finds oneself is not restricted to those who share one's own way of life, but extends to all those with whom one stands, directly or indirectly, in dependency or interdependency relations... Interdependency is transitive, and so relates me to all those with whom either earlier or later participants in my particular way of life have stood in interdependent relationships. (Baier 1981, p. 179)

The answers to these questions may or may not make a great difference with respect to which environmental policies should be enacted. It may be that these people have prima facie

[1] Embryos and other things that exist which are not people but will become so are sometimes distinguished from contingent future people (people in the future whose identity and existence depends upon what we do now) by the use of the label 'Potential people' See for example Warren (1978).

[2] This depends to an extent on our theory of time and our views on tenseless logic, as we shall see later.

rights, but that they are so heavily outweighed by the demands of current people that they don't count for very much.[1] On the other hand, the fact that these are rights may give them a strength and demandingness that other moral claims do not.

> The issue may be one of enormous moral and practical significance, for a duty to respect another's rights generally carries greater weight and thus overrules a competing "uncorrelated" duty, such as a duty to be charitable. Thus, for example, we assume that we can write a check to the March of Dimes *only* if we have cash on balance *after* paying our bills and instalment debts. Our creditors have a *right* to our money, but the charitable agencies do not. (Partridge 1981, p. 135)

This is heavily dependent upon what we think about rights in general. Alternatively, it may be that future people do not have rights, but that they still have moral status of some sort that should prompt us to behave sustainably,[2] or that even if future people have no moral status, we should behave sustainably for the sakes of current people who have strong views about what should happen to future people[3]. These issues may have implications for the value of rights theories and their applications to future people and to environmental ethics more generally. I will mostly be concerned with those future people with whom we shall never share a common life.

## 3. The Moral Status of Future People

As I mentioned, it is possible (at least by some theories) to assert that future people have some kind of moral status without attributing moral rights to them. However, it is not possible so far as I can see to do the opposite, that is to attribute moral rights to an individual whilst denying that they have moral status. At least part of what it means to say that someone has rights is to say that they feature in our moral landscape, that they are worthy of moral consideration. This means that those wishing to assert that future people can have moral rights have to answer questions about moral status, but even once this has been done, it does not necessarily imply that future people can have *rights*.

[1] For a discussion of this, see Williams (1978), Kavka (1978) and Barry (1978)
[2] See Macklin (1981)
[3] For example, Clayton Hubin (1976) and Schwartz (1978, pp. 12-13)

In this section we will consider the question of whether future people can have moral status, moving on to the more specific question about rights later in the chapter. The most notable problem for the moral status of future people is Derek Parfit's 'non-identity problem' (1984), although issues relating to the non-existence of future people also provide the grounds for some other criticisms of the view that they have moral status.

*(3a) The Non-Identity Problem*

Derek Parfit's non-identity problem is probably the most famous problem associated with obligations to future people. The problem hinges on the idea that the identities of future people have not yet been determined. An individual's identity is determined, at least in part, by which sperm fertilised which ovum. Due to the minimal likelihood of any particular sperm fertilising an ovum, tiny changes in circumstances can completely alter which people will come into being. Any decision that we make which will have an impact on the well-being of whichever people exist in the future will also affect who those people will be. Thus a decision which will give future people a poor standard of living can't be said to cause harm to anyone, since had a different decision been made, the people experiencing the low level of well-being might not have existed at all. Instead, different, happier people might exist, who similarly cannot be said to have been *benefited* by the decision. This means that moral theories relying on weighing up harms and benefits to specific people cannot account for obligations to future generations.

Whether or not the non-identity problem is a serious concern will depend to a certain extent upon which moral theory one adopts. Parfit himself answered the problem by appeal to an impersonal moral outlook, comparing the relative welfares of different people. He suggested that we should bring about the possible state of affairs in which people's lives are best. Critics of this position say that this does not achieve what it is supposed to. Who or what exactly is better off under the 'better' choice? Certainly no individuals are better off, so

should we say simply that this is a better world? The world itself does not care whether it is better off than it otherwise would be. One way to approach this would be to consider the welfare of society or of a group as a whole, rather than considering the welfare of individuals. This view is rejected by Thomas Schwartz, although he doesn't clearly explain the reasons for his view:

> Let us concede that one and the same future society would exist under both the restrictive and the laissez-faire [population] policies, although it had none of the same members under the two policies. Still, this "society" would not be better off under the restrictive policy *in any morally relevant sense.* The fact that one policy would in some sense be better than another for something called a society, although in no sense better for any *person*, constitutes no moral ground for prescribing the former policy. (Schwartz 1978, p. 7)

Of course it is the case that, if we take an individualistic approach, we cannot have obligations to a society. Equally, if we do not take such an approach, it may well be the case that we can. Schwartz does not (in this article) provide any rationale for embracing the individualistic approach. Whether a non-individualistic approach is compatible with a rights-based theory is a further question, and one that will be considered later in this chapter. However, before we address that, we should consider a further question about whether we can have moral obligations *at all* to people who do not currently exist.

*(3b) The Existence Condition*

Epicureans regarded death as something which could not be a harm to them. This is because 'harm' cannot be attributed to something that does not exist: "so long as we exist, death is not with us; but when death comes, then we do not exist" (1926, p. 85). Once someone dies, he ceases to be, so his death cannot be a misfortune for him. As with people who have died, people who have not yet been born do not exist at present, so in a similar way, we might say that we cannot attribute 'harm' to those who do not yet exist. If this is the case, then we cannot correctly say that an action that we perform now is harmful to future people.

This idea of harming those who do not exist is part of a wider question in philosophy

of language about what is going on when we apply any predicate, reference or description to a non-existent object. Think of Russell's famous puzzle which suggests that (due to the law of the excluded middle) "the present King of France is bald" must either be true or false (Russell 1905). It quite obviously is not true, since there is no present King of France to be bald, but the sentence's negation seems to imply that the present King Of France is not bald, which does not seem to be true either. The difficulty of course is that Russell is grappling with a non-existent object, and things that don't exist are very difficult to keep hold of. We cannot truthfully attribute any property to a non-existent object (this perhaps relies on the assumption that non-existence is not a predicate).[1]

The idea that future people cannot be harmed because they do not exist (are not actual) can be argued as follows (I use 'exists' to refer to existence at a particular time, and 'is actual' in a broader, tenseless sense):

1) Future people do not exist at present.

2) Objects that do not exist at present are non-actual objects

3) No properties can be attributed to non-actual objects, therefore,

4) No properties can currently be attributed to future people.

5) 'Being wronged', 'being harmed', 'having moral status', 'having rights' etc. are properties (or at least *supervene* on properties), so,

6) Future people cannot currently be harmed, have moral status, have rights etc.

This issue has been discussed in the context of harming or wronging the dead at least as much as it has been with reference to future people. David-Hillel Ruben noticed this with respect

[1] One exception to this might be how we deal with fictitious entities. It is quite normal for us to attribute a property to a fictional character or object ('Sherlock Holmes is/was an opium user'). There are a number of ways of dealing with this, one of which is simply to say that it is true that in Conan Doyle's stories Sherlock Holmes was an opium user. Another response is that Sherlock Holmes is a genuine object with the property of non-existence. If this is the case then it is not true that Holmes exists, but it is true that he is an opium user. Yet another response is to say that what we are doing when we ascribe properties to non-existent objects is playing a game of make-believe. We are not making genuine references but merely pretending to. See Thomasson (1999) for a detailed discussion of these issues.

to predicating any property of an object which has ceased to exist:

> A suitable slogan might be: No properties can be had or acquired by things at times at which the thing in question is not there to have or acquire the property. That is,
> (4) If, at t, x has the property P, then x exists at t. (Ruben 1988, p. 213)

Similarly, when considering the Epicurean question about the evil of death, Fred Feldman uses the term 'the existence condition', which states that "nothing bad can happen to a person at a time unless he exists at that time" (1991, p. 205). Premise (2) deserves further attention before we can make sense of the argument, and this requires that we analyse it in terms of different theories of time.

*(3c) Eternalism*

The view that presently non-existing people are non-actual depends on holding particular views about time, whereby what has been in the past, and what will be in the future, is not actual in the present. If this were not the case, then (2) and therefore (4) would be false. The future person, while he does not exist in the present, is actual, and can therefore have properties. Views such as this can be characterised as 'eternalism' or 'block universe theory', the notion that all time and all space is one continuous whole, and that the apparent differences between past, present and future depend merely on the subjective viewpoint of the observer.[1] If the present has no particular privilege which makes propositions about it any more real than the past and the future, this allows us to apply tenseless logic to it. We can truly say that (tenselessly) the future person x exists and has the property P. In other words the future person (and the property that he has) are *actual*.

This might then allow us to apply morally significant predicates to people who do not yet exist. The proposition 'Some future person, x, is (tenselessly) in pain' would then be very different from the proposition 'The present King of France (the King of France, who is actual

[1] See, for example Grunbaum (1950-1) and Horwich (1987)

in August 2008) is bald'.[1] So according to eternalism, a person who exists at t can meaningfully and truthfully say that there is a time t+1, at which x exists and has the property of being wronged, harmed, possessed of rights etc, and therefore that x, and the wrong, harm, right, etc., is *actual*. Because the present has no special privilege, this becomes equivalent to saying that there is a place, different from the place in which we live, in which x exists and is wronged, harmed, possessed of rights etc. Premise (1) is true, but not important, and premise (2) is false.

This is not to say that temporal 'distance' would have *no* moral implications for the eternalist. There is debate about the extent of our moral obligations to those who live far away from us, but few people would deny that *some* such obligations are at least possible, even if not instantiated. It might be argued that there are exceptions in the form of theories like the ethic of care[2], which suggest that a moral tie between y and x depend on a relationship of care between y and x. In the case of the ethic of care, this is because a direct relationship of care exists between them. This may arguably also be true of some theories of rights, as we shall see shortly. However, the question of whether we have a relationship with someone is not the same as whether we occupy the same points in space. It may often be the case that a moral community, or a pair or group of people sharing bonds of care, occupy the same geographical area, but this is far from being a logical necessity or even a universal experience. Thus if we adopt eternalism, the problem with future generations would not be concerned with whether or not y and x exist at the same time (and whether or not they can instantiate properties) but with whether the fact that they do not exist at the same time precludes the possibility of any moral relationship. This question will be considered later in this chapter.

[1] The view that propositions referring to states of affairs in the future already have truth value arguably implies determinism, which would have major implications for moral philosophy too complicated to deal with here. To preserve moral responsibility alongside determinism, we must adopt some form of compatibilist approach. For example, Hume (1978), Strawson (1962) and Dennett (1984)

[2] See, for example Gilligan (1982) and Noddings (1984)

*(3d) 'No Future' Theories*

'No Future' theories is the term that I will adopt for theories that reject eternalism and give ontological privilege to the present over the future. I use the term 'no future theory' (henceforth NF) to apply both to 'presentist' theories (which hold that only the present has ontological reality - see, for example Bourne 2006) and to 'growing past' theories (which hold that the present and past have ontological reality, but not the future), since they are both opposed to the eternalist idea that the future is 'actual', even though they disagree about the ontological status of the past.

If we do not accept eternalism, and think that there is no ontologically extant future, is Ruben's statement 'If, at t, x has the property P, then x exists at t.' irreconcilable with the view that future people have moral status? One might initially find this view more problematic for the idea of future people having moral status, since moral status is generally thought either to be a property, or to supervene on a property. If we hold (as the NF theorist does) that there are no ontological entities in the future, then we must also hold that no properties can presently correctly be applied to future objects. There are, however, various approaches which might duck this problem.

One such approach might be to claim that there is a sense in which x *does* exist at t, even though his genetic identity and other facts about him have not yet been determined. In work that I have previously done on moral obligations to the dead I have suggested that it may conceivably be possible to have certain obligations to a person who does not exist anymore because important elements of his identity last beyond his physical or conscious existence (McKinnell 2007).[1] A person's identity is constituted, at least in part, by his projects, goals, relationships, and so on. If we take a strong version of the view that these elements are constituents of a person's identity, then perhaps it is possible to ascribe

[1] In my 2007 paper I also suggest that this is supported to a certain extent by the language that we use in everyday life. We talk, for example, of someone being 'immortalised' through his work, or 'living on' in our hearts.

properties to what remains of someone after his or her physical death. This view would have to overcome a number of difficulties, the most pressing of which would, to my mind, be the counterintuitive implication that human personal identity becomes subject to vagueness. We could answer the question 'does Bertrand Russell exist?' with the reply 'mostly' or 'a bit'. We are used to thinking of groups of people in this way (consider the question 'Is there a punk scene in Durham?') but we generally regard individual humans as indivisible wholes. However, this might depend to some extent upon what type of theory of identity we are looking at. Numerical identity is usually understood in a binary way, either x equals y or it doesn't. However, other ways of looking at personal identity might have less clear cut implications than this. A narrative theory of identity, for example, does not necessarily see an individual as divisible, but it does make the boundaries of the self rather more fuzzy in a number of respects. I will return to this theme in chapter eight.

How might this argument apply to future people? Remember that what is being denied here is premise (2) in our original non-existence argument, that currently non-existing objects are non-actual objects. The NF theorist would have difficulties employing a tenseless logic in the way that an eternalist might, since propositions about contingent facts in the future cannot be true or false, they can only be possibly true or false. This would mean that objects in the future cannot truthfully be ascribed any properties. Depending on whether the proposition about the future will be a contingent or a necessary truth, it can only be the case that these propositions are 'possibly going to be true' or 'going to be true', not currently true. What follows from this is that premise (2) cannot be sidestepped for the NF theorist in the way that it can for the eternalist. That future people do not currently exist and are non-actual are premises of (so far as we can see) a valid argument, and must be either confirmed or denied to establish whether the argument is also sound.

Now let us turn to the notion that elements of our identity might extend beyond the

temporal boundaries of our biological lives. The tentative theory of identity suggested at the start of this section claims that a person is constituted of a complex web of elements. Among these might be genetic and biological identity, but they also include projects, goals, relationships etc. For this person to have any of this identity left after he has died, at least some of these elements must remain after his physical death. A future person's identity will come to consist of all of the elements that we have discussed, some of which exist before his physical body comes into existence. Before I was born, people wrote philosophy, dug their gardens, were members of my family etc. In 1982, I came into existence and incorporated these things into my identity. Thus there were elements of my identity that existed prior to my birth, and (at least to a small extent) properties could be ascribed to me even then.

This faces obvious difficulties. Assuming a NF view, before I came to exist there was no fact of the matter about whether I would come to exist or not, and there was also no fact of the matter about whether someone with my genetic or biological identity would come to instantiate or absorb those other elements of personal identity. This means that it could not be the case that elements of my identity existed prior to my own existence, since there was no fact of the matter at that time about whether there would be a 'my identity' for those things to be elements of.[1] This could be argued by reference to a 'potential identity' that *might* come to exist, but if we consider the vast number of potential genetic identities, when this is coupled with all possible combinations of projects, goals and relationships, considering them all as individuals who are worthy of the moral concern that we ascribe to extant individuals would start to look rather absurd.

Another possible view is that future people do not currently exist to have moral status, but that in the future they *will* do, and the fact that there will be such people with moral status

[1] Whether or not this is a problem for obligations to the dead depends on whether or not we believe that there are facts about what happened in the past. A presentist would be able to maintain this objection in the case of past people, but a 'growing past' theorist probably wouldn't.

confers present obligations on us.[1] According to NF views, the proposition 'there will be future people' is not determinately true in the present moment, because we don't think that there is presently any fact of the matter about what exists or doesn't in the future. However even the NF theorist (depending of course on his views about ethics) can accept the minimal proposition that 'if there turn out to be future people, they will (then) have moral status'. NF theorists are of course generally of the opinion that things will happen in the future, and that we can make some good guesses about what those things will be. Despite the fact that the NF theorist thinks there is currently no fact of the matter about whether there will be future people, he can still predict that there *will* be such people. Given that he has a good idea that there will be some future people, he also has a good idea that there will be future people with moral status. In other words, he cannot say 'there are future people who have moral status', but he can say that he can make a pretty good prediction that the proposition 'there are people who have moral status' will be true in the future as it is now. This might be said to confer obligations on adherents of NF theories to behave in such a way that people's future moral status is respected. If we take this line then, the epistemological question of how well we can predict whether there will be future people becomes more significant than the metaphysical question about the ontological status of those future people.

The difficulty with this is the problem of how future (non-actual) moral status can confer present (actual) obligations. If it is some projected future property of the future person that allows her to be ascribed projected moral status, then how can these affect the NF adherent's present obligations? We might get around this to some extent by suggesting that it is our obligations that confer moral status and not the other way around. If we focus on what we should do, rather than on what future people want, need, require or demand, then the relation does not seem to be a backward one. This arguably however undermines the notion

[1] Thanks to Jonathan Tallant for helping me to think about this argument more clearly.

of moral status to some extent, and certainly would undermine the notion of rights, as we shall see later in this chapter.

Perhaps then it might be less controversial for the NF theorist to take a more impersonal approach, focused on what we might share with future generations or what we might owe to people as a whole. The fact that an obligation is owed to a particular person becomes irrelevant, instead we are considering what we owe to a particular community of which we may or may not be a part, but which has a currently existing component.

*(3e) Moral Communities and Reciprocity*

Earlier I suggested that the major question for the proponent of the eternalist view, so far as obligations to future generations are concerned, is whether it is possible to share a moral community or moral relationship with a member of another generation. This also appears (for different reasons) that it may be the case for someone holding a NF view, since the NF view may have to solve the problem of non-existence by holding that we have obligations to a community in order to have obligations toward people in the future. The answer to the question of whether we can participate in such an intergenerational moral community would depend very heavily on the way that we characterise a moral relationship. For example, if the relationship had to depend on reciprocity, we immediately encounter difficulties. The notion of reciprocity is particularly prominent in the language of justice, so even if we hold that there can be obligation without reciprocity, whether there can be rights without reciprocity is quite a different question, and one that we shall come to shortly. There is considerable difficulty in considering intergenerational ethics and justice in terms of reciprocity. We are able to have a significant effect on the lives of people who exist in the future, but what can those people do for us? Some would deny that they can do anything, since they can't affect our conscious experiences of life: others would say that they can have some effect upon our reputation, desires or projects (something that will be discussed later). Either way, there

appears to be a considerable asymmetry between what we can do for people in the future and what they can do for us:

> This relationship [between current and future people whose lives do not overlap] could not result from a relationship of mutual benefit (reciprocity) nor from explicit or implicit agreement. It is difficult to see how future generations could come to have a claim against us in any of the ordinary ways in which one comes to have a claim against another. (Clayton Hubin 1976, p. 71)

However, perhaps there is no reason why a morally significant relationship needs to be reciprocal, or at any rate symmetrical. It is often said that parents invest far more time, emotion and money in their children's welfare than they can ever expect to get back.[1] Whether this is the case or not, this fact would not seem to undermine the sense of a genuine relationship between parent and child. This idea is particularly well articulated in a novel in the 'Space Opera' genre[2] by Lois McMaster Bujold:

> You don't pay back your parents. You can't. The debt you owe them gets collected by your children, who hand it down in turn. It's a sort of entailment. Or if you don't have children of the body, it's left as a debt to your common humanity. (McMaster Bujold, 1999, section 10)

Notice that there are two different types of repaying the 'debt' alluded to here, the second being to one's 'common humanity'. As we have seen, the latter of these may be more promising for a NF theorist than a theory that gives moral status to future individuals. Since groups can span generations and still maintain their identity, obligations to a group (from my own family to a 'common humanity') may hold more promise than obligations to individual identities which do not exist at the same time. So we have two separate questions to consider: firstly whether it is conceivable that we have a moral relationship with those with whom we share no common life, and secondly, whether we can have moral obligations to a group as a whole, rather than to its individual members. The question of group obligations

[1] Although with people living longer and requiring more care from younger generations, this relationship, while far from equal, is more reciprocal than it once was. There are also of course always going to be isolated cases where the roles are reversed.

[2] A style of science fiction, characterised by epic themes, romance and high melodrama.

and group rights is the subject of the second part of this chapter, but first we will consider the idea that we can have relationships with those individuals with whom we do not share a common life despite the lack of reciprocity.

*(3f) Relationships of Obligation*

First, let us consider the question of some kind of intergenerational relationship that might link us to individuals who do not yet exist. This might take various forms. There might be a common community which we share with those future people such that we owe obligations to all members of that community; we may have some kind of relationship of care with future people, despite never having met them; or we might have obligations to future individuals through some kind of 'chain' of owing that links us, through people with whom our lives overlap, to people with whom we do not share a common life.

The concept of belonging to an intergenerational community has a great intuitive appeal. We regard ourselves as comprised of our history and as shaping our future. This relates to my point in chapter one (concerning the role of history in informing philosophy) that our experience and our culture is formed by its history and motivated by its future. This supports the view that human society is temporally as well as spatially extended. We, at least to some extent, occupy the same society as our great grandparents and our great grandchildren. Thus, if we owe obligations as part of a shared society, then (at least to some extent) we owe obligations to our great grandchildren. We can extend this further (both in time and in numbers of people) if we argue that we owe obligations to people simply because they are members of the human race.

This might also superficially seem a tenable view for the NF theorist, since it does not depend on an identity being assigned to a specific future person. However, assuming we cannot get around the existence condition, it fails because it still relies on future predication. We still talk about a non-specific person having the property of group membership. The

difficulty here is that according to NF theories, this cannot currently be true or false. So we cannot say that we currently owe an obligation to that person because they are a member of that group, because they do not exist to have group membership assigned to them.

It might be objected that if this is the case, then my argument that the NF theorist may be able to have obligations to groups as a whole cannot stand either. It is certainly true that the group, of which I am currently a part, may not exist in the future (its future component is contingent) and no predicate can currently truthfully be assigned to its future component. Any proposition relating to the group in the future cannot be true of that group *at present*. However, the group *does exist now*. This means that things can currently be predicated of the group. Thus I can say that I owe it to my group now to ensure that (if it exists in the future) it continues to flourish. It is commonplace to have obligations toward currently existing people that will (or even that might) affect them in the future. A mother might lose her child at the age of five, but before that was known to her she still had an obligation to have concern for its future beyond that age.

Since eternalism gives no privilege to the present, the idea of having obligations to future members of our group (be it our family, our nation, the human race, or the biological community) is no more controversial than having obligations to currently existing people in virtue of their membership of a group. This would suggest that, if group membership is satisfactory, we need not deal with the notion of chains of obligations to ground obligations to future people as some theorists have, since the chain is a device for connecting those who have no direct link[1]. If we have a direct connection with anyone who is a member of our group, this is unnecessary, and if (as the conclusion of a NF theory would seem to be) we cannot ascribe moral status to those who do not currently exist, the chain cannot connect us beyond the generations with whom we will share the earth.

[1] Edward A. Page provides a detailed discussion of what he calls the 'chain of concern model of intergenerational reciprocity' (Page 2006, pp. 115-119).

The chain model is often invoked in cases such as these where one-to-one direct reciprocal relationships cannot exist. By the chain model, what I 'owe' to person B is paid to a substitute, person C, who then passes it on to D, and so on. This can be described as 'indirect reciprocity'.[1] My suggestion here is that, for the eternalist, one-to-one direct reciprocity can exist (rendering the chain model unnecessary) and that for the NF theorist, even indirect reciprocity such as the chain model is impossible on an intergenerational basis.

But perhaps the chain can be of some use when we look at the problem from another angle. Consider, for example, the view that we have a special relationship of care with certain individuals which gives us obligations to them over and above the obligations that we owe to members of our society or human beings in general. In these situations we could imagine a bond connecting, for example, parent to child. The parent is bound by the relationship of care to provide their child with as good a life as possible. They have this as an obligation, but it is also in their interests. We could say that human flourishing involves the flourishing of any offspring that one has. This would mean that part of the parent's obligation to their child might be to look out for their grandchild, great grandchild and so on. In this sense, we might say that a relationship of care gives us moral obligations concerning those who do not yet exist. However, whilst this is an obligation *concerning* future people, it is not an obligation *to* them (assuming that the NF view is true). In this example, the parent has an obligation to give consideration to the welfare of future generations for the sake of their child and their child's welfare. The claim that we can have obligations *concerning* future people is less contentious than the claim that we have obligations *to* future people (i.e. that they have moral status). If enough people in our current society who are alive today have deep concern for the people of the future, then we might owe it to those living people to have concern for future people, regardless of whether the future people themselves have moral

[1] See Page (2006, p. 103) and Arneson (1997)

status. Whether or not we can have a *right* concerning someone else's welfare is a further question, and not an important one here. If anything it would have had its place in the previous chapter among the many different varieties of environmental rights that can be ascribed to presently existing human individuals. However, we might note that if we hold that other-regarding preferences are of central importance (with or without rights) this may lead us away from individualistic moral theories. Whether theories of rights can withstand this change is yet to be seen. This view would not allow us to talk in terms of the rights of future people.

## 4. Future People and Rights

I have already indicated how, depending on one's metaphysics, an ethic based on groups might suggest a more promising approach to the moral status of future people than an ethic based on the obligations that we have to future individuals. We will come to the rights of groups shortly. First I will consider whether (if we can ascribe moral status to them) future individuals can have rights. There are some features which make a right-based approach appealing in these cases: some rights are frequently considered universal and inalienable. They belong to a person purely in virtue of his being a person, and do not rely on him having 'earned' something. The fulfilment of his rights is not expected because he is Fred, Joe or Bill, or because he belongs to a particular culture; it is expected because he is human and he exists. This might help to a certain extent with the non-identity problem, since it is arguably an impersonal approach- personal identity is not relevant.

However, there are also potential problems with theories of rights in this context. If we ground them in the idea of a social contract, we would seem to face problems with the notion of reciprocity that was mentioned earlier. Another issue is that the problem of non-existence seems to loom particularly large when rights are brought into the picture, since rights often rely explicitly on positing some feature or property of the right-holder. We might

be able to escape the problem in a non-rights-based way by taking an agent centred approach. If our obligations to future people are based in our virtues, or in what sort of consequences *we* will bring about, rather than in the idea of what is owed to future people, then we can perhaps sidestep the problems of ascribing the mysterious property of 'moral status' to future people. However, a right-based theory is unavoidably patient centred, couched as it is in the language of what is due to a particular person. Rights can be understood either as properties or predicates of the moral patient, or as things that supervene on such properties.[1] If we were to create a system of ethics which avoided the notion of moral status, this theory could not have any room for moral rights.

*(4a) The Non-Identity Problem*

Doran Smolkin (1999) argues that a rights-based approach can provide a solution to the non-identity problem. He makes this claim on the grounds that rights can capture how someone can be wronged even if the situation that is brought about is no worse for them than any alternative situation. The idea is that if bringing the situation about violates that person's rights, it is still wrong whether or not that person would have existed had another (non-right violating) situation been brought about. This claim relies on a number of different things. Firstly, to accept the claim we would also need to accept that something which is not predictably worse for a person can still wrong them. Secondly, we would need to hold that we violate someone's rights by bringing them into existence in such a way that their rights cannot be fulfilled. Thirdly (and most importantly) we would need to answer critics who

[1] A distinction can be made between predicates and properties, whereby properties are instantiated by objects and predicates are (in normal usage) used to apply those properties to objects linguistically. See, for example, Heil (2003). Some theorists hold 'sparse' theories of properties, maintaining that there are few properties in the world, but still hold that there can be many well-formed predicates. According to this view not all predicates express real properties (Armstrong 1989). One suggestion here might be that we could potentially apply predicates to future people even though they do not exist to instantiate properties. This point is worthy of further exploration that goes beyond what I can do here. However, my initial thought is that even if this were possible, this would be potentially problematic as a way of generating rights or moral status. My reason for this view (although not fully formed) is that if we could make these claims about non-existent future people, we could presumably make them about fictional characters. This might result in a moral framework that creates stringent obligations to Othello, Bugs Bunny and Eleanor Rigby.

claim that future people are not the sort of things that can have rights. Smolkin also defends himself against the argument that, once we grant rights to future people, this opens the door to all kinds of absurd and spurious rights claims.[1] I will not dwell on this last point, as it seems that all applications of rights theory are open to this type of abuse, and it is neither an insurmountable problem nor a particular problem to future people. As Smolkin observes, a decent exposition of the correct attribution of rights ought to escape these claims. I will argue that Smolkin's view encounters difficulties on the second and third counts.

Smolkin addresses the first point, the argument that we cannot be wronged by something that is not predictably worse for us, by outlining and then criticising an analogy that several philosophers have drawn between the case of bringing into being a person who will suffer, and rescuing a person by performing a life-saving but bodily damaging act. Smolkin quotes a passage from Feinberg:

> Did the mother wrong the child by causing him to come into existence in a harmful (handicapped) condition? I do not think that the child can establish a grievance against her so long as he concedes that his handicapped existence is far preferable to no existence at all… To hold her liable anyway, would be (at least with respect to the harm element) something like holding a rescuer liable for injuries he caused an endangered person that was necessary to saving that person's life. He may have caused the imperiled party's arm to be broken in the rescue effort, but the alternative, let us suppose, was to let him die. So the broken-armed plaintiff suffered a harmful condition with respect to his arm, but the rescuer-defendant did not cause a condition that was harmful on balance, offset as it was by the overriding benefit of the rescue, and he cannot be said, therefore, to have *harmed* the plaintiff… at all. [1] (Feinberg 1992, p. 27)

Smolkin (correctly I believe) disputes the value of this analogy. He points out that in the case of the rescuer, a worse fate would befall the plaintiff (death). However, in the case of the handicapped child, if his mother had decided not to have a child (or to have a child at a different time) then there would be no alternative worse fate for the child, as the child would not exist to undergo such a fate. This, Smolkin maintains, leads to a kind of 'moral necessity' in the first case which does not apply in the second, since in the first there is a person

[1] The criticism has been made by David Heyd (1992) and is discussed by Joel Feinberg (1992).

desperately in need of help, while in the second there is no such person:

> Unlike the rescuer who is in the straightforward position of being able to promote or fail to promote another's best interests, the earlier person in a non-identity problem case is in a position of determining whether or not a particular person will ever come into being. And we may reasonably think that this special power, coupled with the fact that the earlier person is not confronted by someone desperately in need of help, grounds a special responsibility that the person who does come into being is able to live well. That is, we can maintain that a future person may legitimately complain that an act necessary for her to come into being wronged her even though her life is on balance worth living, if it resulted in her being in a seriously handicapped condition. (Smolkin 1999, p. 201)

It certainly is true that the analogy is flawed as it compares a case where identity is determined with a case where it is not. It is furthermore quite possibly also the case that Feinberg's analysis that the rescuer does not harm the plaintiff is flawed: a harm is not necessarily a wrong, especially when it is the least harm that we have the option of inflicting. It seems quite implausible to say that, even in the most extreme circumstances, breaking someone's arm does them no harm. Perhaps then the rescuer harmed the plaintiff without doing her any *wrong*. So can we carry this over to the case of the future person who will be handicapped if his mother chooses to have him? Is he harmed by the choice that his mother makes, and whether or not he is harmed, does she thereby *wrong* him?

For us to be able to say that the mother harms her child, we have to equate inflicting harm on someone with bringing into existence someone who will suffer harm. After all, the mother may know that if she has a child he will be disabled, but in most cases it is not any direct action of hers that makes this the case. Thus it seems that while the mother brings someone into existence who will suffer harm, she does not herself directly harm him, she merely chooses to bring about a situation where he will exist to suffer harm. If we were to equate this with a harm, then we could all accuse our parents of harming us if we have ever experienced any kind of harm, since they brought us into existence and it was reasonably foreseeable that we would experience harms.

But nonetheless, is bringing someone into existence who will experience significant

harm a *wrong*? This is most easy to argue in cases where the person's life is not worth living, but these are not the cases with which Smolkin is concerned. It seems far easier to argue that it is a wrong per se, than it is to argue that it is a wrong to the person who is brought into existence. We can, with Parfit, adopt an impersonal approach and say that when we make these decisions we should attempt to bring about a future in which the greatest possible level of welfare is experienced. However, to say that we wrong someone by creating them (and thus their handicap) seems to be the same as saying that the right thing to do, *for them*, would have been to ensure that they never had existed. Even if we think that this does not reduce to absurdity, it implies that their life is not worth living. Thus while we can talk in these terms about the right choices that we can make concerning future people, it seems rather more difficult to suggest that the wrong choices wrong those people in cases where they still have lives that are worthwhile. However, Smolkin argues that a right-based theory can account for wrongs which do not make someone worse off than they would otherwise be, following Annette Baier's claims that our rights can in some circumstances be violated in ways that do not make us unhappier or thwart our achievement of our goals:

> The violation of a right is, of course, a special sort of effect on a person and on his or her good. It cannot be equated with making that person unhappier, or less able to get what she in fact wants. If I don't want to vote, then the violation of my right to vote by the removal of my name from electoral rolls will not hurt me - it may not even be noticed by me. Nevertheless someone else on my behalf might correctly protest the violation of my right, and correctly say that my position is worsened… I might even myself protest, and insist on my rights, then never exercise them. (Baier 1984, p. 218)

Whether or not we agree on this point will depend to some extent upon what theory of rights we hold. However, Smolkin seems to misinterpret Baier to some extent in his statement that "Thus, there seems to be nothing particularly unusual about claiming that a person's rights can be violated by some act, even when that act does not, on balance, make things worse for the person affected" (p. 202). In fact, this directly contradicts Baier's statement in the above passage that, in spite of the lack of harm caused to me by my disenfranchisement, one might

'correctly protest the violation of my right, and correctly say that my position is *worsened'*. Baier's claim appears to be that someone's situation can be worsened even in situations where we cannot say that they have been *harmed*, and that worsening someone's situation may in some circumstances account for how their rights are violated. This is not akin to, and perhaps even in direct opposition to, the claim that the notion of a right violation does not depend upon the right-holder being made worse off in some way. Smolkin has more work to do if he wishes to overcome the non-identity problem with a right-based approach, and given the route that he is taking, this will probably rely upon rejecting benefit theories of rights. I will discuss this issue a little later on in this chapter.

*(4b) The Existence Condition*

As we have seen, the notion of ascribing moral status generally relies on the ascription of properties to the people in question. 'Moral status' might be used more loosely, simply to describe the focus of our obligations rather than relying on some inherent property of the person whose moral status it is. If we use the term in this way, then we may be able to speak about future people having moral status. This seems to be more complicated when we talk about rights however. Rights have some of the appeal that they do because they are patient-centred, they look to some feature of the right-holder as the source of duties or obligations. For example, choice theories of rights demand that the right-holder is rational and autonomous, while interest or benefit theories claim that they must be capable of having their interests served or being benefited in some way. The NF theorist would deny that future people currently have any of these properties because they do not exist. So can we simultaneously hold a NF position and argue that the rights of future people are in some sense binding on us?

Perhaps, just as we might maintain that future people *will* have moral status, they will also have rights, and that provided we can make a reasonable prediction that there will be

future people, the fact that those people will have rights is enough to ground our duties. But this would have the peculiar implication that future rights would appear to generate present duties. This depends to an extent, as with moral status, upon our view on the relationship between obligations and rights. If we think that obligation is the 'main' or 'prime' concept here, then perhaps this is not so problematic. The future people will have rights because we have present obligations concerning their future wellbeing. However, this way of thinking robs theories of rights of some of their intuitive appeal. Rights are partly popular as a moral concept because they have their basis in some feature of the right-holder. There is some inherent integrity or inviolability that grounds the obligations that come with rights. Rights, in other words, are commonly viewed as having their basis in the right-holder: they are a patient-centred notion. The reason that this then presents a problem is that it would appear that *future* rights somehow have to generate *present* obligations. This bears at least a superficial resemblance to backward causation, something that the NF theorist in particular might be keen to avoid. However, notice that it may also cause some discomfort to some eternalists if they hold that time has a direction or 'arrow'. The fact that future people (tenselessly) exist and hold rights might still create difficulties in explaining our obligations to them if we think that the relation between rights and obligations can only take one temporal direction in the way that it is often thought that causation does.

However, the relation between a right and an obligation should not be regarded as a causal one. A right does not *cause* an obligation as such: it is perhaps more accurate to say that it *signifies* one. It is not so clear that signification always has to be a relation that places what is signified later in time than what signifies. The idea of 'backward signification' has been used to some effect to attempt to explain how we can wrong the dead, even though we can never affect their conscious experiences. Geoffrey Scarre writes that "while a person cannot be pleased or pained by what he never knows, occurrences after his death can cast a

backward light or shadow over his life" (Scarre 2001, p. 210). The idea is that while a past event cannot be caused by a future one, future events can alter the meaning or significance of what has gone before. Consider the following example from George Pitcher:

> If the world should be blasted into smithereens during the next presidency after Ronald Reagan's, this would make it true (be responsible for the fact) that even now, during Reagan's term, he is the penultimate president of the United States. Only if one bears this straightforward sense of "make true" and "responsible" in mind can one properly understand the thesis that "An ante-mortem person can be harmed by events that happen after his death. (Pitcher 1984, p. 188)

Aristotle conveys some similar thoughts when he considers whether the flourishing of someone's life can be affected by things that happen after he dies. He suggests that it would be strange to think that someone who is already dead can change between 'happiness' and 'unhappiness' on the basis of events that postdate his death, and yet that there is a sense in which his fortunes do seem to be invested in the fortunes of his descendents, and we can talk about his life having been more or less successful on the basis of what happens to them after his death (Aristotle 2000, pp. 16-19).

So it might be argued that, just as things that we do now can give new significance or meaning to things that have happened in the past, rights that people will have in the future can confer certain meanings or signify certain things relating to presently existing people. Of course, this has not happened yet, but we can perhaps predict that it *will*, on the basis that there probably will be future people who will have rights. Our moral lives are thus shaped and coloured by what we can reasonably predict will happen in the future. This type of view, being extremely light on ontology, depends on holding a certain kind of outlook on what our moral lives are like. To accept it we must hold that, at least to some extent, what matters about human life is networks of meaning and signification, rather than what properties are instantiated by things that actually exist. This type of view may not be to everyone's taste, although I will provide some reasons for supporting it in chapter eight. An alternative to this approach may be to ascribe rights to currently existing groups that ensure the wellbeing of

their future members. Again, this view will be revisited in the final chapter, and we shall see that it appears to be very compatible with a similar view about what matters about human life.

*(4c) Social Contracts*

Rights are sometimes associated with a social contract model, and thus we might think that the ability to take part in a social structure, or to agree explicitly or implicitly to certain conditions of that structure, are a prerequisite for having rights. I will not say a great deal about this here, since we have already discussed the problems with talking about reciprocal moral relationships involving future people, and since it is plausible to think that there may be such things as rights without social contracts. Natural rights theories for example claim that there are moral rights that are prior to any social contract. I shall say a little more about this point in the next two chapters.

However it is also important to say that the project of applying a Rawlsian hypothetical contract model has been attempted in the area of the rights of future people.[1] These attempts will not receive a great amount of attention here because they typically do not address problems relating to the ascription of rights to presently non-existent entities. In some cases this omission is deliberate:

> I shall begin by assuming that we do not owe obligations to future generations and that when we do, we are speaking either metaphorically or elliptically… It is possible, I think, to account for much of our duty to provide for future generations in terms of a duty of justice with regard to future generations (but not owed to them). But since questions of justice seem to arise most naturally with respect to competing claims of contemporaneous agents, we must ask how it is that duties of justice can extend to include actions the intended beneficiaries of which do not yet exist. (Clayton Hubin 1976, p. 71)

The Rawlsian model is an intriguing one, but it faces a great deal of problems when dealing with future generations. If, for example, we wish to allow the hypothetical contractors to be

[1] In fact, Rawls himself discusses the idea in a small section of his famous *Theory of Justice* (Rawls 1999, pp. 251-258)

unaware of the generation in human history in which they live, how can we account for Parfitian non-identity problems? The decisions that the contractors make will affect the circumstances of life that determine who comes to exist, and how many future generations there will be. Do we then allow there to be some hypothetical contractors who may, if a certain decision is taken, never come into existence? It seems that we must, but if this is the case it is hard to imagine what decisions this might lead the contractors to make. Perhaps, for example, they would choose population maximizing strategies because they judge that it would be better to come into existence (even with a poor quality of life) than never to be born at all. A hypothetical contract model would not necessarily run into the same problems as, say, a tacit consent model, which relies to some extent upon reciprocal relationships, but it brings a whole host of problems of its own. For now I will simply take it that Rawls' contract is merely a way of discovering or refining our relationships of right and obligation, and not a device which gives those rights or obligations any independent weight. Bearing this in mind, we can take it that (at least for the case of future generations) the hypothetical contract is not the best method to use, and that we should employ other ways of establishing what rights and obligations we take to be binding.

*(4d) Choice Theories of Rights*

I have observed that part of the problem in viewing rights of future people in terms of a social contract is the problem of reciprocity. We cannot enter into reciprocal relationships with people in the future to the extent that they cannot actively do anything that affects our conscious experience of life (even though, as I have suggested earlier, they may be able to do things that affect the value or meaning of our lives). We face a similar problem with the so-called 'choice' theories of rights, which maintain that part of what it is to have a right is to be able to exercise our autonomy to 'waive' the right and to cancel or override the corresponding obligation.

Part of the problem here is that, depending on our theory of time, we may not wish to regard future people as autonomous agents. Certainly, the NF theorist who thinks that no properties can presently be instantiated by future people might hold this view. A proposed solution to this problem was to say that the rights which future people *will* have are sufficient to ground our obligations, perhaps by a process of backward signification. This is further complicated by the choice theory however. To ascribe rights to future people under a choice theory would appear to imply the possibility not only of backward signification, but also backward *causation*. If, in order to have a right against you, I need to be in a position to let you off the hook with regard to your obligation, it seems that we must be contemporaries. In fact, I must exist, be autonomous and have the right *before* the time that your obligation would need to be discharged, otherwise I would not have an option of waiving the right. It would not appear to be possible for me to let you off your obligation in any meaningful way after the time that you have either honoured it or failed to do so. This is not a problem just for NF theorists, but also for eternalists.

It has been argued that problems of this kind can be remedied by appointing a representative (or representatives) for future people who can claim, and in some circumstances waive, their rights on their behalf (Feinberg 1981, pp. 147-148). This would be someone chosen to represent the interests of the future people in moral or political decision making, who can exercise their own autonomy to act in what they judge to be the best interests of the future people in question. One problem here is that we may have great difficulty in predicting what the interests of future people will be, especially the interests of people who live in the distant future, in physical, political and cultural conditions that may be extremely different from our own. What is regarded as valuable in life might be radically different, and the things that are necessary to sustain life may also be different from what they are now in any number of different and unpredictable ways.

However, this need not concern us too much. It may be difficult to predict what people's interests might be in the distant future, but that does not stop us looking out for the generations that we can make some reasonable predictions about. At a bare minimum, we can reasonably assume that there will be many generations of future people who require food, water and an atmosphere to breathe, that they will have some kind of interest in pursuing personal relationships and pursuing personal goals, whatever forms such goals might take. We can predict that people will have some notion of what is a good life, and that this notion will require certain natural resources in order to be made concrete. This may mean that the representatives of future generations are making difficult choices based on limited information, but the fact that their decisions will not always be perfect or detailed does not mean that they should abandon any prospect of making such decisions.

The problem with the representative view lies on a deeper level than this. It is not simply that there is a practical question concerning how future generations are to be represented. Choice theories of rights are couched in the kinds of terms that they are because they give fundamental weight to the notion of autonomy and moral agency. According to such theories, a fundamental part of what it is to be a holder of rights is to be a free and rational agent. This is partly a problem for future people because, depending on our metaphysics, we may think that they do not exist to instantiate these properties. They are not (although we might reasonably predict that they will be) the types of things that are rational. This could, as we have already seen, be a problem that we can solve. If we think that people's future rationality can *signify* things about our present lives that confer obligations on us, then the fact that there probably will be rational autonomous agents in the future might help. But this may not be enough. Choice theories typically place autonomy and rationality at the heart of rights because these things are fundamental parts of our identities. They are based in a particular kind of liberal tradition that values individual autonomy as one of the

things that makes us uniquely human. If this is the case, it would seem odd to say that (in the absence of an autonomous decision to do so, such as a living will) we can simply transfer our autonomous decision making to another person and still retain our rights. It would be as incongruous as instructing someone else to eat my dinner or do my exercise for me.

The representative solution mistakes the nature of the problem. Future people cannot claim or waive their rights against present people, because they exist (or will exist) after those present people have died. This cannot be solved by simply appointing someone to do it on their behalf, since the exercise (non-exercise) of our rights is, according to such theories, a fundamental element of the rights themselves.

If backward signification conferred by rights that people will have doesn't work as a way for the choice theorist to ascribe rights to future generations, will the group-based solution fare any better? It certainly wouldn't chime well with theories of this nature to ascribe rights to groups. The background from which these theories emerge tend to treat the individual as sovereign. Whether the notion of group rights is entirely incompatible with a choice theory is something to which we will return later in the chapter, but it will depend heavily on whether we regard groups as entities that can have agency of their own, above and beyond the agency of their individual members.

*(4e) Interest/Benefit Theories of Rights*

So will interest or benefit theories of rights fare better in the project of explaining rights of future people? To an extent the answer must be yes. Although it seems that there is a genuine problem (if we hold a NF view) of ascribing properties such as interests to future people, this may be dealt with by taking the route of ascribing duties on the basis of rights that people will (probably) have. Alternatively (or in addition) we might maintain that groups can have interests that include an interest in their future. Either view does not seem to rely, as choice theories do, on backward causation, representatives, or any other potentially

problematic philosophical positions. We can say with some degree of certainty that there will be future people, and that they will have some interests that we can protect (even if there is a certain amount of difficulty in predicting in detail what all of those interests will be.

Benefit theories are even less problematic in this regard because the notion of doing something now which will, in the future, benefit someone who does not yet exist is not mysterious. However, benefit theories may be prone to the non-identity problem. We face the difficulty of how something can be regarded as benefiting someone or (even more problematically) harming them when the alternative is non-existence. We might suggest that even a very damaging environmental policy will benefit the future people whom it affects, if being born is a benefit. Or, if we reject the notion that we can be benefited by being born, we might say that to speak of benefiting a particular person through a given policy is incoherent. If another policy had been chosen, he would not exist to be harmed by it. Thus what has been conferred on him is not a benefit, merely his existence.

This is why Parfit chooses to take a more impersonal approach, but it may be doubtful to what extent this is compatible with rights. Can we really talk about someone's rights being violated if the alternative to the violation is non-existence? This would suggest that no policy, no matter how harmful, could be taken to be a violation of someone's rights. This would appear to be the implication for benefit theories in particular, since the concept of being benefited relies on the idea of being made 'better off' than one would be in an alternative situation. It is harder to see to what extent this might apply to interest theories. We can talk about someone's interests being served even if there is no possibility that *that* person's interests could be done a disservice. An interest theory would not be incoherent in this sense. So we can talk about how interest theories of rights might be able to accommodate the rights of future people when those rights are being fulfilled. The problem comes when we try to articulate what would count as a right *violation* in these circumstances.

A future person will not necessarily be able to turn around and claim that their interests were not served by a decision made by an earlier generation, since had another decision been made, they would not even exist to have interests. It would seem very strange to claim that we can hold a theory of rights that accommodates right fulfillments but not right violations, so the non-identity problem looms large for interest theories as well.

But notice that this may not be the case for group rights. The precise forms that groups might take can be altered by decisions that we make now, but the groups themselves already exist. It is the group that is there now that can be benefitted or harmed, or perhaps have interests that can be served. I will move on to this issue later in the chapter. However, it does seem that 'personal' approaches, based on the rights of specific individuals, are problematic in this regard.

## 5. Future People and the Separateness of Persons

So far, we have seen that for the NF theorist, it is very difficult to ascribe moral status to future people. This problem does not arise with eternalism, although for either theory of time the non-identity problem appears to have the same effect (although perhaps for the eternalist 'non-identity' is a misleading term). In either case, decisions that we make now will affect which individuals come to exist, suggesting that an impersonal rather than a personal approach might be in order. What exactly is meant by an impersonal approach in this sense? Parfit argues for an approach to ethics (and metaphysics) which is impersonal on a number of different levels. The non-identity problem is one of his most famous arguments here, but a number of different arguments combine to give the full story. Parfit's main point is that we generally place too much emphasis on the notion of the individual, and that we instead need to hold a view that does not regard personal identity as an absolute and irreducible fact, and which is impartial with respect to which people are being affected by our actions.

Even accepting this, if we choose a NF theory, then the existence condition still

proves a serious obstacle. Even if our focus should be less on personal identity and more on predicted states of affairs, these states of affairs still rely on people instantiating properties. *Something* needs to exist to instantiate the property. Furthermore, there seems to be something very odd and artificial in splitting our regard for the interest or experience off from our regard for the individual who is having it.

Parallels might be drawn with the classic criticism of utilitarianism that it fails to respect the *separateness of persons*.[1] The idea that we cannot simply aggregate happiness or well-being to make a utilitarian calculation is based in the claim that a person's experiences are irreducibly theirs and cannot be stripped away from them as though they were mere commodities:

> In the perspective of classical maximising utilitarianism separate individuals are of no intrinsic importance but only important as the points at which fragments of what *is* important, i.e. the total aggregate of pleasure or happiness, are located. Individual persons for it are therefore merely the channels or locations where what is of value is to be found. (Hart 1979, p. 829)

I do not intend here to argue for the validity of this claim, but merely to say that it is an influential problem which deserves attention.

Of course, utilitarianism is not the only doctrine that rejects a strong conception of the separateness of persons (it might for example be said that both the Buddha and Schopenhauer, who appear to deny a strong notion of a separate self, are virtue ethicists[2]). However, from a certain perspective, any theory that cannot accommodate a separate selfhood is problematic. This arguably includes any moral theories which support the moral status of future individuals, since their individuality *cannot* be recognized, so any theory supporting the moral status of future generations must look at the experiences that our actions

[1] Most of us would associate this claim most strongly with Bernard Williams (1973), although similar arguments have also been made by John Rawls (Rawls, 1999, pp. 150-153) and many others. This view has probably contributed greatly to the significant erosion of confidence in some forms of utilitarianism which has occurred over the past few decades.

[2] Thanks to David Cooper for this point.

will cause future generations, taken separately from the identities of the people who will have those experiences. This is not quite the same as the criticism of utilitarianism, since it is not necessarily the aggregation of happiness that is the main problem. However, at the heart of each problem is the fact that the experiences of one person are regarded as completely replaceable with those of another, which seems to miss something very profound about what it is to be a person and to have experiences.

To suggest the attribution of moral status to groups as a solution to this problem might seem paradoxical. How can attributing moral status to an aggregation of persons escape the problem of failing to respect the separateness of persons? This is only a problem if we think that groups must in all cases *replace* individuals as the proper objects of moral concern, that groups are to be assigned some special moral and ontological credibility that individuals do not possess. There is no reason why, in general, we need to do this. We can hold that there are obligations to groups without rejecting our obligations to those people within the groups. They remain very much separate persons, perhaps more so than they would be if we could not explain people's identities in terms of the relationships and roles that they have within the groups in which they exist. It strikes me as a fundamental mistake to claim that there is one favoured level on which life can operate. Individuality and community are mutually supportive, not mutually exclusive. Therefore there should be no problem (according to 'separateness of persons' type objections) with having obligations to aggregations of persons, so long as we are not regarding individuals as mere 'vessels' for the group welfare.

So how would obligations to groups operate in terms of future people? Groups of people, whether we are talking on as small a level as a family, or as large a level as the human race in general, are extended over time: just as individual lives are, only more so. We can have obligations to individuals who currently exist (for example, to our children) even if those obligations concern what will happen to those people after we have died. In the same

way, perhaps we can have obligations to a currently existing group even when we will be long gone by the time that the group comes to gain the benefit of our actions. This depends on holding the view that the group will essentially be the same group even when all of its members have changed, and when the identities of its members will be altered by the choices that we make. However, I think that at least for some groups (e.g. our family and our species) this is not an overly problematic view assuming that we reject extreme nominalism.

## 6. Future People and Group Rights

There is often a reluctance to ascribe rights to anything other than the individual. This has its origins in the ways in which rights theories were brought under the banner of enlightenment liberalism:

> It is then time for a confession about my lack of faith or at least a deeply felt worry I have about the grounding individualistic values of liberalism. What the liberal takes as basic and unquestionable is the idea that the individual is the measure of everything; hence the liberal believes that the correct normative principles treat the individual as the fundamental unit of value and the ultimate focus of rights. Individuals are regarded as valuable because they are choosers and have interests. But so also do communities make choices and have values. Why not then treat communities of fundamental units of value as well? (Macdonald 1991, p. 237)

The association between rights and individualism is evident both among advocates of theories of rights and their opponents. As we have seen, Marx criticised rights as drawing divisions between individual people, forcing them to regard each other in terms of what they owe to each other and viewing each other as a prima facie threat to their rights and freedoms.

Rights in general are often associated with a rationalist enlightenment tradition which has often been criticised for creating a whole set of dualities and divisions. The dominant duality here is sometimes said to be Cartesian mind-body dualism[1], which through separating

[1] Several references are made throughout this thesis to 'Cartesian Dualism'. When I use this term, I am referring to the view that the body and the mind are radically ontologically distinct (albeit interacting) substances. This can be distinguished from property and predicate dualisms, although these positions owe a great deal to their Cartesian ancestors. While substance dualism as I have outlined it above is a view standardly attributed to Descartes, it has been suggested that his views are in reality rather more complex than this brief outline would suggest (see Cottingham 1985). Therefore, when I use the term 'Cartesian Dualism', I am referring to a view that would be associated with Cartesian thinkers, and making no particular claims about the proper

ourselves from our bodies creates a separation between us and the physical universe that we inhabit, including other people, animals and nature in general:

> As many people have pointed out, the central trouble is the dualism of mind and body. The notion of ourselves - our minds - as detached observers or colonists, separate from the physical world and therefore from each other. (Midgley 2005a, p. 357)

This is also frequently associated with a whole set of other divisions, relating to gender, race, class and so on. For example, it is associated with a division between men and women, since women have traditionally been associated with the natural and the irrational.

While some of these divisions are being remedied, we have inherited enough of them to suggest that we are still relying on this mode of thought. The response to this is not so much to reject the dualities. Some of them may be false distinctions, but this is not necessarily the case (of course man *is* different from woman, the individual *is* different from his neighbour etc.). Rather, the problem comes when we view a duality as contrary to or destructive of unity. The individual, as I have already argued, is explained by the group, and the group is explained by the individual. The individual is part of a continuous whole, but still identifiable as the individual. It is the suggestion that one level of existence is given evaluative and ontological primacy that causes dualities to become divisions. Thus if the focus is placed too strongly on the individual, then 'the other' becomes a problem or a threat; if the focus is too strongly upon the nation or culture, then xenophobia is the result; too much of a lens on the notion of men or women as a whole leads us to view the opposite sex as an enemy to be feared or resented, rather than as sharing a common humanity. This is not to deny that any of these levels are important: they all are; I am simply suggesting that an unbalanced and simplistic viewpoint that gives primacy to a duality on any one of these levels is liable to lead to a negative sense of division rather than a neutral recognition of duality.

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interpretation of Descartes' thought. Many thanks to Claire Graham for making me think about a term which I had previously used without much consideration.

A knee-jerk reaction to this would be to say that if rights are irreconcilably individualistic, then they must be abandoned. This is not necessarily so even if they cannot escape their individualism. If they operate as part of a pluralist theory of ethics which can take account of life on all its levels, then rights might still be a very useful way to talk about our moral lives in terms of our interactions as individuals. However, for a right-*based* theory (a theory which asserts that all moral concerns can be described in terms of rights) to survive in this multi-layered picture, rights must be able to take account of groups on all of the scales on which they have moral significance. We might also want to make rights do more work than serving individuals if we hold that rights are trumping considerations, and yet that individual concerns should not always win out over the concerns of groups or communities.

*(6a) Choice Theories*

Again, it is significant to this project to consider which form of right theory we are looking at. Choice theories are problematic for ascribing rights to future people, because future people are unable to waive the rights that they might have against presently existing people. I have argued that the 'representative' solution is not going to be effective because the very notion of having rights under a choice theory is bound up in the autonomy that the right-holder exercises over his or her rights. Given these problems, it appears rather difficult to account for choice-based rights of groups. Even if groups are capable of acting autonomously (or in other words, if people within the group are capable of acting as one fully unified whole) surely they will always rely on a representative of some kind, a person who will act as their mouthpiece to vocalize or in some other way express the interests of the group. This is only superficially problematic. A representative of a group does not necessarily make decisions or act on the part of the group. When I speak, my mouth, vocal cords and lungs combine to allow me to express decisions that I have made. These and other organs allow me to act upon decisions. This does not mean that my mouth, arms, legs or

whatever else is making decisions on my behalf, they are the means through which *I* engage with the world. The spokesman of a group need not be making decisions on the group's behalf, she may merely be the means through which the collective will is expressed.

But does it make sense to talk in this way about collective will, autonomy, action and so on? If it does not, then choice theories of rights cannot account for the rights of groups. One way to think about this would be through the literature on collective responsibility. According to Hart's choice theory, the community of right-holders is probably going to be identical with the community of moral agents. Both groups require autonomy, rationality, agency and the ability to understand moral concepts.

The notion of collective responsibility faces a great deal of criticism from those who claim that we simply cannot sensibly attribute notions such as agency or responsibility to anything other than an individual person. But it would appear on the face of it that this is something that we do all the time, and in a number of different ways. Sometimes I might attribute responsibility to a large set of disparate people for consequences that they cause, although the consequences would not have occurred if only one of them had acted as they did and would still have occurred had one of them chosen not to act in this way. These cases are distinct from instances in which people act collectively in a joint activity that contributes to a harm, such as participating in a harmful project or endeavour. They are also distinguishable from cases where there is a common cultural norm or attitude within a given group that people buy into and which causes harm.[1] I suspect that in the first instance, we will not be able to talk about any kind of collective rationality or agency in a group, only the agency of many individual people participating in individual activities that contribute to the same consequence. However, the other two cases need to appeal to something beyond the individual, a project or a norm, in which the individual participates. But can these projects or

[1] These different types of cases were originally distinguished in this way and explored by Joel Feinberg (1968).

norms simply be reduced to the sums of their parts? If so, does this imply that the responsibility that we attribute to the 'groups' is ultimately just reducible to the language of individual responsibility?

Perhaps one objection to the idea of a group having any kind of agency in any morally relevant way might be that it makes no sense to attribute *any* properties to a group that are not reducible in some way to the properties of the group's individual members. If this is the case, then to speak of the 'agency' of a group, and of any rights or responsibilities that this implies is likely simply to be a statement about the agency, and hence the rights or responsibilities of its members. If this were true, then we would not be able to ascribe any properties to groups (a similar problem to one facing future generations, but for different reasons) but this seems highly implausible. It appears that we can say things about groups that are not simply equivalent in meaning to statements about individuals. One good reason for thinking this is that the identity of a group is not determined by the specific identities of its members:

> The local tennis club is the same club as it was last year, despite the fact that new members may have joined, and old ones departed. The expression 'the local tennis club' does not, except in rare circumstances, refer to a determinate set of individuals. So it is absurd to equate the meaning of a statement about a collective with the meaning of a statement about a number of individuals. This would have the bizarre consequence that, had one of the individuals belonging to the collective not been a member, the meaning of the statement about the collective would have been different. (Cooper 1968, p. 260)

So in general, it does seem that we can apply properties to groups which are not merely reducible to any properties of the group's individual members. But is responsibility or agency the kind of thing that can be talked about in this way? Cooper argues that we can assign responsibility to groups in the sense that characteristics of a group not reducible to the characteristics of its individual members might be causally responsible for a bad outcome. In addition, certain attitudes of shame, disapproval or indignance toward the group (rather than its members) would be appropriate as a response. Cooper's understanding of the question does not depend upon assigning any group agency or groups rationality, so an approach like

this would not be useful to us in any attempt to explain the *rights* of groups in terms of group intentions or agency. However, it does help us to explain how groups can instantiate properties.

There are several accounts which claim that it is possible to attribute agency or intentions to groups. The problem for our purposes is that these accounts generally rely on the notion of contemporaneous individuals acting together to perform groups actions or agree shared commitments.[1] This does not render it entirely impossible that groups can have some members (i.e. future people) who are not currently individual agents, but it does raise a whole set of questions that would have to be answered concerning the status of the non-agents in the group. To what extent do they have full group membership if they do not participate in the actions or intentions made by some of the group's members? And would this give us reasons to think that they should be excluded from group membership so far as rights are concerned? I cannot discuss these questions further here, but it does seem to present some difficulties for a choice theory of rights to account for groups that extend across non-contemporaneous generations.

*(6b) Interest/ Benefit Theories*

It might therefore seem more promising to look to something like an interest or benefit theory of rights to account for the rights of groups (or at least the rights of groups as they are extended over time). It does not seem mysterious to talk about something being to the benefit of a group, or even for something to be in a group's interests. Groups can be weaker or stronger, more or less cohesive and companionable, and they can also face an extinction or demise. Neither do we face non-identity problems in these cases, because as Cooper observed, the individual membership of a group can be variable and the identity of the group does not depend upon the identities of its members. Thus, provided we can make a

[1] See for example, Gilbert (1997), May (1987) and Tuomela (1989).

reasonable assumption that the group will continue to exist in the future, it is not an important consideration that I cannot predict who its members will be. This would seem to suggest that an interest or benefit type approach, or some other approach based on what is good for or needed by the right-holder, would seem to be the best way to ground group rights.

More will be said about how precisely we might encapsulate these notions in the final chapter, but of course, how we define what it is to have interests, needs or to be benefited will have an effect upon what sorts of groups we can talk about as being the proper subjects of rights. This must fit in very closely with our theories about what constitutes identity, and what is morally *important* about identity. In the final chapter, I will suggest that we may be able to talk about groups of human beings as having a type of narrative identity or integrity that allows us to talk about their interests in terms of rights.

*(6c) An Objection to Group Rights*

Many of the objections that are made to the notion of group rights or the moral status of groups question the notion that we can coherently ascribe certain qualities (autonomy, interests, rationality etc.) to groups. We have examined these views, albeit briefly, earlier in this chapter. However, another species of criticism is more ideological in character. There is a concern that any theory ascribing moral importance to groups that is not reducible to the moral importance of its individual members is fundamentally illiberal or even totalitarian. There is a concern that the interests or rights ascribed to the group will in some way eclipse or trample the interests or rights of the individual. His will would, according to such objections, be regarded as completely assimilated into some notion of the common good, and he would have no room to exercise his autonomy and individuality. If this concern is well-founded, we certainly have a great deal to worry about here. If ascribing rights to groups will inevitably lead to the breaching of individual rights, we would not be looking so much at an expansion of the concept of rights to encompass groups (and possibly through this, future

generations). We would rather be narrowing the scope of rights such that none of us could even be certain that (as individuals) that we have any. In their crudest forms, these arguments sometimes appear to take the form of '*reductio ad Hitlerum*', but this is not to say that we should ignore the history of the ideas that we hold. They can, as I have argued in chapter one, have a bearing on what those ideas mean today. As Michael McDonald points out, criticisms of this kind are often associated with a certain way of interpreting historical events:

> In part liberal hostility to collective rights is based on a certain reading of history that identifies collective rights with a totalitarian approach in which the individual is run over by the collective steamroller. Collective rights are seen as having a fascist ancestry, an association with the doctrine of the master race. The liberal's concern is often for the members of minority groups who will suffer at the hands of a majority invoking its alleged collective rights at the minority's expense.
>
> But here it seems to me the liberal simply misunderstands the main reason for advocating collective rights, namely, the protection of minority communities from majorities. (Macdonald 1991, p. 227)

McDonald is right in some senses. The terrible acts carried out by the Nazi regime should not properly be understood as a result of the 'group rights' of the majority trumping individual rights. Instead it seems more plausible to claim that, as well as breaching many individual rights, the Nazis breached the group rights of Jews, and of various other minority communities that existed in Europe at the time. Part of what was so terrible about the *holocaust* was that, in addition to causing great suffering, pain and death to many individuals, it was motivated by a desire to eliminate an entire group, including its genetic inheritance, social cohesion and ways of life. In fact, some might argue that we need a concept of group rights as well as a concept of individual rights in order fully to capture the nature of such atrocities.

One key point here is that, just as individual rights do not allow the individual to act in any possible way that is to his advantage, group rights are not a right to all things. This may appear somewhat trivial, but it seems to be overlooked by some who claim that group rights are inherently damaging to individual rights. An individual's right to liberty, for

example, does not include the liberty to violate another individual's rights. It would seem odd to suppose that this is any different at the level of group rights. A little more will be said on this point in the final chapter, where I briefly look at the question of whether certain groups have an automatic right to *exist*.

## 7. What *Environmental* Rights Can We Ascribe to Future People and Groups?

It would be a good idea at this point to return to the notion of explicitly *environmental* rights, and briefly look at what the work of this chapter may have contributed to the notion of rights concerning the right-holder's environment. The two arguments that we examined in chapter four, those put forward by Aaron Lercher and Tim Hayward, were primarily concerned with the environmental rights of currently existing human individuals, but it may be worth considering how well they might stand up if we wished to extend such rights to future people and to groups. As we have seen, there are a great many problems affecting choice-based theories of rights. This suggests that Lercher's development of Hart will not be useful here, and we need to turn to a theory that appeals more to interests or benefits to right-holders. This would make Hayward's approach, based ultimately on our interest in having an adequate environment, a more plausible candidate for the extension of rights to future people and to groups (although, as we have seen, there will be a certain amount of guesswork involved in determining what an 'adequate' environment might be for distant future generations). Another advantage of Hayward's account is that it rejects the thesis that holders of universal rights must be holders of universal duties. This makes an easier case for future generations to be right-holders. We can have duties to them that do not imply an equal corresponding duty to us.

I also mentioned in chapter four that while some rights might be only 'instrumentally' environmental, in that they are based on or instrumental to the more familiar rights in the western liberal tradition, there may be rights that are environmental in an 'essential' sense, in

that the right cannot be protected or violated without the duty bearer interfering or refraining from interfering with the environment of the right-holder, and also in that it is this interference or non-interference that *makes* the act a right violation. I will argue later in the thesis that this distinction may be elucidated by a thorough examination of the right-holder and the various ways in which he might relate to his environment. I will explain this in terms of environment forming an essential part of the right-holder's identity, in a similar way that liberty is sometimes thought to lie at the heart of personal identity. The relevance to this chapter is that we may thus be able to think about future generations, but more interestingly, groups, in these terms. This will be discussed in greater detail in chapter eight, but we can reasonably assume that environment plays at least as great a role in the identities of groups and communities as it does in the identities of individuals.

Consider for example some of the claims made on behalf of indigenous peoples. Certain ways of life are inherent to the identities of any culture, and these ways of life have often developed in such a way that they are heavily dependent on a particular type of natural environment. Examples include the relationship between Native American tribes of the Great Plains, and the buffalo, or American bison[1]. Not only is there a strong history of interaction between the native people and the buffalo, but through use of controlled fires, the Sioux and other tribes played a role in providing the ideal grazing conditions for the buffalo and in regulating the buffalo population. These interactions were important to the Sioux people in themselves, but also fed into other cultural phenomena such as naming and mythology. In a sense then, it could be said that it is (or at least *was*) essential to the identity of the Sioux people that they lived somewhere with buffalo and with conditions in which they could live. In other cases, it is not just a particular *type* of environment that is essential to the identity of a group of people, but one particular environment that is in a sense irreplaceable. In many

[1] Many thanks to Thom Brooks for this example

cultures, the mythology that people create, and through which they understand themselves, is closely tied in with particular features of the landscape that they inhabit. This is very much the case, for example, in Australian aboriginal 'dreamtime' mythology.[1] If we think that the environmental identity of a group or community can in some cases generate rights, the content of the corresponding duties may well vary depending on whether it is a specific irreplaceable environment, or merely a type of environment, that is crucial to the collective identity. Will it simply be enough to ensure that the people in question are able to live in an environment with the *types* of trees, animals, landscape and so on in which their culture has developed, or must they be allowed to remain in that very place? This is likely to depend upon their particular types of stories, religious activities and so on. The ways in which these identities might be understood will be examined further in chapter eight.

## 8. Chapter Conclusion

This chapter has examined two of the more difficult human cases that we might encounter in the attempt to assign environmental moral rights. I have argued that the two issues in some respects go hand in hand. There are a number of difficulties that afflict the prospect of attributing rights to future people (difficulties which vary in degree according to which theory of time one adopts). However, I have argued that there are two possible solutions to these problems. We can hold one or both of the following views:

1. We can attribute moral rights to groups that exist in the present, and which will have members who are yet unborn.
2. We can attribute future rights to future people, which, provided we can reasonably predict that those people will exist, will influence our obligations through backward signification (although for NF theorists this may be made problematic by the non-identity problem).

In an important respect, these two views go hand in hand. If we allow backward signification to determine moral obligations, the implication of this is that at least one important part of

[1] For an exploration of the ways in which specific places have cultural significance to Aboriginal Australian cultural life, see Myers (2002).

what matters about human life is the networks of meaning and significance that we build. In fact, if we are to be able to attribute rights to future people, these networks must be at least as important as autonomy or agency (or at least autonomy and agency with respect to the duty bearer) in how we think about what might confer rights. If we hold that these constructs are part of what allows us to attribute moral rights to future people, this may also be an approach that we can take to groups or communities, a view that I will attempt to defend later in this thesis.

# Chapter 6- Rights of Non-Human Animals

Anthologies and introductions to environmental ethics often include, along with a section on our obligations to future people, a section on animal rights. While the connection seems obvious (perhaps because of the traditional division of the world into the human and the non-human 'other', or perhaps just because of a rather more lazy lumping together of the two issues under the category of 'hippie stuff') it must be pointed out that the concerns of some animal rights advocates are not always in line with the concerns of some environmentalists. For example, in parts of Africa, there is an ongoing debate about whether elephants should be systematically culled, not just because of their devastating effects on the livelihoods of poor farmers, but also because of the threat that they present to rare species such as the antelope and the black rhino through the destruction of their habitats.[1] Here the ecological concern for the survival of a threatened species and a fragile ecosystem conflicts with the concern for the rights of individual animals. Similarly, closer to home, there is dispute over whether the grey squirrel population should be controlled because of their effects on local ecosystems. The grey squirrel, introduced to this country from America, can kill beech and sycamore trees by stripping their bark for food.[2] This removes an essential part of woodland ecosystems and can permanently alter landscapes. It is better known that the grey squirrel also presents a threat to the native red squirrel by out competing it for the available food and spreading the squirrelpox virus, which is harmless to the grey squirrel, but deadly to the red squirrel. For these reasons, culls of grey squirrels have been carried out. Rob Atkinson, the head of

[1]See *The Independent*, 2005a.

[2]See *The Independent*, 2005b. Of course, if it is the integrity of the native environment that we are concerned with, we should bear in mind that the sycamore, like the grey squirrel, is a non-native introduction with its origins in central and southern Europe, unlike the native beech. (See the entries on the sycamore and beech on the Royal Forestry Society website for more detail.

science at the RSPCA has said that it is "ethically dubious killing one species for the sake of another" while a representative from the Countryside Alliance has criticised the RSPCA "for valuing animal rights over wildlife and habitat management" claiming that culls are a vital part of conservation work.[1] What the Countryside Alliance are missing is that the RSPCA would not regard this as a criticism. The RSPCA are not ignorant of the plight of the red squirrel or of conservation methods, in this case they simply value the rights of individual animals over the plights of species and environments.

So in both of these examples, there is a direct conflict between the demands of the animal rights lobby and the demands of conservationists. This is not to say that animal rights and conservation are at odds with each other - they are usually very much in harmony - but merely that these odd cases of disputes show that they are two distinct issues to be considered separately. Why then should a thesis on environmental rights contain a chapter on animal rights? Firstly, animals are among those with whom we share our environment, or whose environments overlap with our own. If they have rights concerning their environments, then those rights must be considered alongside our own environmental rights. In addition, non-human animals, like humans, constitute a *part* of the environment, and unlike humans, they often constitute part of what we regard as the *natural environment*. While their interests are not always considered to be in line with what might be thought to 'benefit' an environment, they are dependent on the habitat that they occupy, and dependent on each other for the subtle ways in which they shape that environment to each other's mutual benefit. If animals do have rights concerning their environments, then the nature of ecosystems dictates that those rights are entangled with our own environmental rights in a deeply complex fashion. To treat animal rights as a separate issue from environmental ethics would be to oversimplify both issues. The extent to which human and animal identities are bound up in their environments

[1] See *Country Life*, 2008.

will be explored further in chapter eight.

Another point that is worthy of mention is that when many people (especially animal rights activists and other non-philosophers) talk about animal rights, they are often not too interested in what is meant by the concept of *rights*. They are concerned with the animals, rather than the moral theory. When they say that animals have rights, what they really mean is that animals don't have 'no rights' in the colloquial sense, since to suggest that someone has no rights implies that we can do whatever we want to them, without implying any kind of deeper moral theory or framework:

> To say that 'animals do not have rights' does not sound like a remark about the meaning of the word *rights* but one about animals - namely, the remark that one need not really consider them. (Midgley 1983, p. 63)

If there is a sense of rights intended here, it is a very vague and minimal notion that animals ought to be treated appropriately for their own sake, rather than for the sake of human happiness or well being. It is rather like Kant's idea that nobody should be treated as a mere means to an end, except that unlike Kant's view (which applies only to humans) it cannot not hinge on a strict and rigid idea of rationality.[1] PETA (People for the Ethical Treatment of Animals) clearly have this notion of rights:

> People often ask if animals should have rights, and quite simply, the answer is "Yes!" Animals surely deserve to live their lives free from suffering and exploitation. (PETA, 2009)

PETA make it very obvious that they are not referring to rights in any technical philosophical sense when they mistakenly attribute an animal rights view to Jeremy Bentham, who as we have seen is fervently opposed to the notion of moral rights:

> Jeremy Bentham, the founder of the reforming utilitarian school of moral philosophy, stated that when deciding on a being's rights, "The question is not 'Can they reason?' nor 'Can they talk?' but 'Can they suffer?'" In that passage, Bentham points to the capacity for suffering as the vital characteristic that gives a being the right to equal consideration. (PETA, 2009)

[1] See, for example, Kant 1994.

In fact, it is easy to imagine that Jeremy Bentham would turn in his wooden cabinet at this interpretation. He would reject the notion that animals can have moral rights because he would reject the suggestion that *anyone* can have moral rights, but for Bentham, as for many contemporary moral philosophers, a rejection of animal rights does not amount to a rejection of animals' moral status or entitlement to decent treatment, or to the view that in colloquial terms they have 'no rights'. The use of the language of rights probably earns its popularity in these movements from its rhetorical and polemic power. The language of rights has pervaded a great many political struggles, occupying a central role in gaining justice for women, ending the slave trade and so on. 'Animal rights' campaigners wish to identify themselves with these causes, since the language of rights and justice has such motivational force. For some of the more extreme groups of animal rights activists, the language of rights might prove to be a slightly more substantial justificatory device, since the prevention of a right violation is often thought to be grounds for behaviour that would otherwise be unacceptable.[1] Consider for example this extract from the anonymous article 'Why Animal Rights?' on the Animal Liberation Front's (ALF's) website:

> A common argument is that the ALF has no right to destroy another's property. History tells us the contrary. The holocaust carried out against the Jewish people by the Nazis during World War II was only ended through war. What right did we have to interfere in that situation? Another darker part of history occurred in our own country - slavery. At that point black men, women, and children were seen as property, just as animals today are. Yet, there were those who chose to follow their hearts and take part in the Underground Railroad, despite what the law told them was right, and helped slaves find their way to freedom. In retrospect we can see that the laws of the day, or an abusers right to carry on their oppression unimpeded, mean nothing when compared to the lives that are on the line. (Animal Liberation Front)

[1] In fact, the Animal Liberation Front, an organisation which although it advocates non-violence is often associated with extreme acts, devotes relatively thorough attention to the philosophy of rights. See for example (Animal Liberation Front). The name does not refer to an organised group with a list of members, but is united by an ideology which advocates non-violent civil disobedience. Activists who are not happy to comply with the ALF's policy of non-violence often adopt the initials ARM (Animal Rights Militia) although critics suggest that this is simply a more militant wing of the ALF. The idea that rights justify behaviour that would otherwise be unacceptable is strongly related to Dworkin's view of 'rights as trumps' which we will discuss later in this chapter.

For John Locke and many other natural rights theorists, the violation of natural rights provided the only grounds for rebellion against the government (Locke, 1960). In the same way, for many activists, the violation of the rights of animals can provide justification for civil disobedience, just as the violation of the rights of women did for the suffragettes.

However, the idea that moral status and rights may be separate considerations and the question of whether the language of rights is appropriate in these cases are rarely discussed outside of academic philosophy.

## 1. Moral Status and Rights of Animals

Whether moral status and rights are separate issues will depend very strongly on the theory of rights that one chooses to adopt, and to some extent on what one takes to ground moral status. In the last chapter I made the uncontroversial assumption that while it may be possible to have moral status without moral rights, it certainly is not possible to have moral rights without moral status. I will carry this assumption through to this chapter, to imply that if animals have no moral status, then they can have no rights, and if they have rights, then they must have moral status. By moral status, I will mean that if x has moral status, then x is the kind of being to whom it is possible to have direct duties or obligations (duties or obligations that exist for x's *sake*). You will notice that what is raised here is the question of whether all duties correlate to rights and vice versa. If we hold the position that a right is simply the flip side of a duty, and that all duties entail rights, then not only must we hold that if animals have rights they must have moral status, but also the reverse, that if animals have moral status, then they must have rights.[1] If we think that there are duties which do not correlate with rights, then we need not hold this view. This leaves us with a number of different possible positions on the question of duties to animals and animal rights, some of which I will outline below, although I'm quite certain that other positions are possible. Three of these operate

[1] Assuming, that is, that we do not make a significant distinction between a moral duty and a moral obligation. As we saw in chapter three, Joseph Raz distinguishes between a 'duty' and an 'ought', arguing that right-based moralities cannot sufficiently account for this distinction (Raz, 1984).

within the rights and duties framework, while the others would reject the use of the terminology of rights, or even of rights and duties:

*1. Unlike humans, non-human animals are not the type of thing toward which we can have moral duties, and hence they also have no moral rights.*

This is the view supported by Aquinas[1] and (assuming, as some do, that he is a rights theorist) Kant. It would also be the view that would be accepted by more recent writers on the topic such as Peter Carruthers (Carruthers 1989 and 1992).

*2. Unlike humans, non-human animals are not the type of thing that can have rights, but we can have moral duties toward them.*

This is the view that is held by Roger Scruton, who argues that although there are kind and cruel ways to treat animals, and that these are kind or cruel because of the experiences of the animal itself, the language of rights can only be applied to human beings (Scruton 1998). This allows human beings to be given priority in cases where the fulfilment of their rights would involve harm to animals.

*3. Like humans, non-human animals can have moral rights, and thus we can have moral duties toward them.*

This is the view that is held by thinkers such as Tom Regan and Joel Feinberg, who think that rights are an appropriate way to describe our moral relationship with animals (Regan 1983 and 2004, Feinberg 1981).

*4. Nobody, human or otherwise, has rights, but we have duties toward both human beings and animals.*

This is the conclusion that we can draw from two of Bentham's most famous claims: that animals have moral status because they can suffer, and that moral rights are 'nonsense upon stilts'. Mary Midgley also suggests that the language of rights is problematic, not simply in

[1] See Aquinas 1976. See Singer (2003, pp. 56-8) for a discussion of this view. Whether Aquinas' view accounts for anyone having rights depends of course on our interpretation of his idea of *ius naturale* that was discussed in the first chapter.

the case of animals, but more generally (Midgley 1983).

*5. Moral duties that we hold are not directed toward any particular being, and so it makes no sense to speak of rights, human or otherwise. (e.g. an extreme emphasis on 'moral push')*

We have moral duties, but these are based in a concept of virtue, rather than in the effects that the carrying out or neglect of those duties might have on another. Thus the usual language of moral agency and patiency is misleading. Perhaps this might be a useful approach if we take the problem of animal minds to be a serious obstacle. If the duty not to torture animals derives from something like a virtue of human empathy, rather than from animal pain, the fact that the animals display the same kind of behaviour as we do when we are in pain might mean that torturing them betrays or cultivates a vice which is bad in itself. It is not clear however that anyone actually holds a view that is this extreme in its rejection of the idea of moral status.

*6. We have no moral duties toward any other being, human or otherwise, and thus nobody has any rights. (an extreme egoist view)*

Clearly, if nobody has any duties, then nor can anyone have any rights (except perhaps for a very minimalist sense of right such as a Hohfeldian 'bare liberty' or Hobbes' right of nature).

*7. We have no moral duties toward animals, but to be kind to them is good in a supererogatory sense.*

I have included this merely as a reminder that rights, duties and obligations are not the only kinds of moral concepts that we have to deal with. Perhaps it is the case that our treatment of animals lies completely outside the realm of what is owed or required, and to be kind to animals is good 'beyond the call of duty'. This of course would mean that animals have no rights, because to have a right against someone that they perform an act automatically implies that the act in question is obligatory, not supererogatory.

Within each of these views there is a multiplicity of different positions that can be

taken. For example, the first view does not necessarily advocate animal cruelty. For example, the view held by Aquinas and Kant is that we should not be cruel to animals only because this will lead us to develop cruel character traits which might later be taken out on humans. These are often referred to as 'indirect theories'[1]. The second, third, fourth and fifth views might vary in the extent of the rights of and obligations toward animals. We could hold position three, which on first appearances might seem the most animal-oriented, and only hold that animals have the weakest and most minimal of rights, or we might claim that they have equal rights with humans.[2] If we take a view such as number two that distinguishes right-holders from those to whom duties can be owed (e.g. Roger Scruton) we need to figure out what it is that separates having a right from having a duty or obligation owed to one. Does a right give the right-holder priority over someone to whom mere obligations are owed, as Roger Scruton argues? If there is no such practical difference, why not either dispense with the language of rights altogether or extend it to animals? I will initially be concerned with the first three of these positions, but this will lead to a consideration of the value of rights discourse *per se*.

Most work on animal rights has centred around issues like vegetarianism, vivisection, farming and blood sports. The main concerns with these issues have been to do with an animal's rights to life and freedom from pain. I will be looking at this in the context of environmental rights, so the main concern will be whether the animal in question has particular rights concerning its *environment*. Naturally, this question will spill over into some of these more widely discussed issues. I will follow most other writers on this topic and use the word 'animals' to refer to non-human animals. This is certainly not intended to imply anything so absurd as the notion that *homo sapiens* does not describe a type of animal, it is

[1] See, for example Wilson (2002).
[2] If we embrace a theory that bases all rights in a fundamental right to equality, as discussed in chapter three, this may be our only option.

simply a useful shorthand.[1]

Finally, it must be pointed out that this chapter is necessarily limited in what it can do. All animals are not the same, and to say that some animals have rights is not the same as saying that they *all* have them. A dog, a parrot and a fly cannot necessarily all be considered in the same light. All that I can do here is give broad consideration to what confers rights on someone or something, and to whether this means that rights can be conferred on some animals. Detailed separate examinations in terms of species or some other categorisation will not be possible here.

## 2. The Moral Status of Animals

### *(2a) The Historical Background of Our Patterns of Thought*

Most (but not all) moral philosophers today hold the view that animals are morally significant entities, and should not be made to suffer unnecessarily on the grounds that this causes suffering to the animals themselves. However, this view has not been predominant in the past. As we have seen, Kant and Aquinas both thought that our moral obligations concerning animals could only be indirect ones. This view is rooted in a tradition which has frequently viewed animals as mere objects which could be used in whatever way best suited human beings, and which have been created for that purpose. Part of this tradition is rooted in the Bible, although as we shall see, this cannot explain some of its extremes. The following quotation from Genesis is often used to demonstrate a biblical view of a God-like man with total command over all other living creatures:

> So God created man in his *own* image, in the image of God created he him; male and female created he them. And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth. (Genesis 1, verses 27-28)

Certain thinkers have taken the notion that man (and therefore, they assume, not beast) is

[1] This will be relevant to the discussion of biological theories of identity in chapter eight.

created in God's own image, with 'dominion' over other animals to mean that humans have no duties at all towards animals and can make use of them as they please:

> Have we duties of charity to the lower animals? Charity is an extension of the love of ourselves to beings like ourselves, in view of our common nature and our common destiny to happiness in God. It is not for the present treatise to prove, but to assume, that our nature is not common to brute beasts, but immeasurably above theirs, higher indeed above them than we are below the angels… We therefore have no duties of charity, nor duties of any kind, to the lower animals, as neither to sticks and stones. (Rickaby 1976, p. 179)

However, this aspect of the bible is not so black and white as it is currently fashionable to believe. The notion of *dominion* would be unpalatable to many animal rights activists (some Christians think that a better translation would be 'stewardship'[1]) but dominion over an animal is certainly not the same as mere ownership of an object. The passage goes on to describe how God gives plant life to the animals to use:

> And to every beast of the earth, and to every fowl of the air, and to every thing that creepeth upon the earth, wherein *there is* life, *I have given* every green herb for meat: and it was so. (Genesis 1, verse 30)

It makes little sense to speak of giving something to a mere object, and it also may be taken as significant that God gives man *dominion* over the animals, but gives the animals (and humans) the plants themselves. This is undoubtedly an anthropocentric view, but not necessarily one which regards animals as mere objects like 'sticks and stones'. Consider also the implications of the (slightly bizarre) tale of Balaam's ass, who God caused to speak after Balaam had beaten her three times:

> And the LORD opened the mouth of the ass, and she said unto Ba'laam, What have I done unto thee, that thou hast smitten me these three times? And Ba'laam said unto the ass, because thou hast mocked me: I would there were a sword in mine hand, for now would I kill thee. And the ass said unto Ba'laam, *Am* not I thine ass, upon which thou hast ridden ever since *I was* thine unto this day? was I ever wont to do so unto thee? And he said, Nay. (Numbers 22, verses 28-30)

This seems to portray the ass (whether in God's words or her own) as an innocent creature

[1] For a discussion of the debate surrounding dominion and stewardship, and Christian attitudes to the relationship between humanity and nature more generally, see Hand (1984).

who should not be caused to suffer, especially after her long and faithful service to her master. This suggests that the crudely objectifying attitude to animals exhibited by some philosophers cannot simply have its roots in a Judeo-Christian tradition. As with most dominant theses in any era, this attitude was probably the result of a complicated web of factors, including not only the biblical tradition, but also the anthropocentric position of many ancient Greek philosophers, and later the influences of the mechanistic philosophy of the enlightenment. All of these contribute in part to a world view which sets us above and apart from other animals and the natural world in general, and which at its most extreme leads to the view that human beings are the only proper object of moral concern.[1]

Various justifications have traditionally been given for this standpoint. Some, most famously Descartes, have claimed that animals are mere 'machines', incapable of having any conscious experiences, including pleasure and pain[2]. Others have claimed that it is a lack of the ability to reason that makes animals unworthy of moral consideration[3]. Reasons such as lack of language, non-membership of a moral community, and non-membership of the human species have also been employed.

*(2b) More Recent Perspectives*

Today, most thinkers agree that animals are worthy of some moral consideration, although there are notable exceptions. This shift has occurred in line with scientific discoveries that have highlighted certain features of our social and behavioural lives that we share with non-human animals, and especially by drawing comparisons between animal lives and the lives of what are perhaps inadvisably referred to in much of the relevant literature as 'marginal humans', such as very young infants and the severely mentally disabled. Those who deny

[1] For detailed discussion of these ideas, see Pojman (ed. 1994), and for a selection of historical readings, including extracts from The Bible, Aristotle, Aquinas, Descartes, Kant and Bentham, see Regan and Singer (eds. 1976).

[2] For example Descartes, 1976.

[3] This view goes back as far as Aristotle, and is repeated in different versions through Aquinas and Kant right up to Peter Carruthers.

that animals have moral status typically do this by challenging the usefulness or validity of drawing conclusions about conscious experience from analogies between humans and other animals[1], or by suggesting that consciousness depends on cognitive abilities that scientific experiments have failed to demonstrate the presence of in non-human animals. All this assumes of course that it is the capability for conscious experience that makes something worthy of moral consideration for its own sake. Certain environmental ethicists would disagree, often claiming that it is possible for things without the ability to feel pain or other conscious experiences to be worthy of moral consideration.[2]

I do not have the time or space to dwell on the criticisms made by those who deny animal consciousness or animal minds, but as my concern is more with the proper application of the language of rights, I shall assume that at least some animals can feel pain and experience this as something bad, although I will not assume that consciousness or the ability to feel pain is the only - or indeed the main - criterion for moral considerability.

**3. Animals and Rights**

If we make the assumption that animals have moral status, we face a further question concerning whether they can have moral *rights*. Of course if we believe that rights are simply the flip side of moral obligations or embrace a right-based ethic of the type that I mentioned in chapter three, then anything which has moral status has rights, and if we are sceptical about the language of rights altogether, then we must reject animals' rights along with everyone else's. So the question of whether animals with moral status also have rights is only a meaningful one for those theorists of rights who occupy the middle ground: those who believe that rights exist, but do not underpin all cases of moral obligation. Of course, if we hold that moral status implies rights, and animals cannot have rights under the theory of

[1] For example Harrison (1991).

[2] This is evident in works which attribute moral status to all natural objects or all living things, for example, Stone (1994) argues that trees and other non-conscious natural objects are worthy of legal consideration for their own (moral) sakes. See also Rolston (1988), Varner, (1998), Attfield (1987) and Taylor (1986).

rights we choose to accept, then this may give us grounds either to revise our moral theory or to reject the idea that animals have moral status after all. As we have seen, there are various different theories of rights, and our conclusions about animal rights may differ significantly according to which theory of rights we adopt, but a common view is that while moral status can be attributed to all those who are capable of feeling pain or emotional distress, rights can only be attributed to rational moral agents who have active membership of our moral community. At least one question that must be answered therefore is whether the notion of rights can be separated from concepts of rationality and agency.

We often hear it said (particularly by parents and politicians) that 'with rights come responsibilities'. The implication is that because we are granted some right, we ought to behave in a suitable way and not take undue advantage of the rights that we are given. This is often a very sensible position, but it is not the same as saying that moral rights cannot exist without moral responsibilities. For a start, the rights that are usually spoken about are legal ones, and the claim is that with legal freedoms that we are granted comes a responsibility to honour the spirit and intention of the law. This is a world away from the claim that we cannot have moral rights unless we can also be demonstrated to have moral duties. Nonetheless, some thinkers do hold the latter view, and claim that the kind of being who has no moral responsibilities also has no moral rights. Roger Scruton is a notable example:

> A creature with rights is duty-bound to respect the rights of others. The fox would be duty-bound to respect the right to life of the chicken and whole species would be condemned out of hand as criminal by nature… By ascribing rights to animals, and so promoting them to full membership of the moral community, we tie them in obligations that they can neither fulfil nor comprehend… Se Shonagon, in *The Pillow Book*, tells of a dog breaching some rule of court etiquette, and being horribly beaten, as the law requires. The scene is most disturbing to the modern reader. Yet surely, if dogs have rights, punishment is what they must expect when they disregard their duties. (Scruton 1998, pp. 80-81)

But why should we agree that a right-holder is necessarily a being with duties to respect others' rights? The answer is often given by reference to a moral community bound by some

form of social contract and tied up with the idea that members of this community must be capable of giving consent, both to their initial membership, and also to certain things that might happen to them within that moral community. Animals, since they lack rationality and language (or at least usually lack a language readily understood by us) cannot participate in this moral community and thus have no rights.

It must be pointed out that this is not an understanding of the relation of social contract and rights which was common to the classical social contract tradition. Many of its early advocates held that we had natural rights which were pre-social, and which society existed to uphold. According to such a theory, non-participation in a social contract would not automatically make one the sort of being who cannot have rights. This is precisely what is meant by *natural* rights. Certain rights assumed under a government, such as the right to choose one's leader, the right to political rebellion, or the right to certain government granted welfare provision such as benefit money or education, would not apply to animals[1]. Whether we wish to make the further claim that animals can have no moral rights will depend upon which theory of rights we favour.

*3a) Choice Theories of Rights*

According to a choice theory of rights, part of what it is to have a right involves the right-holder's entitlement to waive his rights. Having a right involves not only having some special entitlement, but also having a power over that entitlement. It is obvious that this poses difficulties for ascribing rights to animals, just as it might also pose similar problems

[1]The examples I give are mostly of rights that would be of no use to animals, in fact the Great Ape Project campaigns for the non-human great apes (gorillas, chimpanzees, orang-utans ad bonobos) to be given rights under international law, including rights to life and liberty and rights against torture (See the demands on the Great Ape Project website, listed in the bibliography). We should not assume, simply because some legal rights are useless to animals, that they should have none at all. This mistake was made in Thomas Taylor's *A Vindication of the Rights of Brutes*, a 1792 parody of Mary Wollstonecraft's *A Vindication of the Rights of Woman* (Wollstonecraft 1992) : "I do not see why an elephant may not become the king's principal surgeon, and a bear his physician in ordinary, as soon as the language of beasts is universally known, or at lest understood, by the principal person at court." (Taylor 2003). However, to argue that animals should have legal rights at all would involve arguing that having legal rights should not depend on having entered into a social contract.

for the rights of babies and the severely mentally disabled. The inability, through a lack of understanding of the notions of rights and duties, to waive one's rights, might be taken to mean that such rights cannot be conferred on these creatures. This is similar in some ways to the view that having a right involves the ability to *claim* one's right, and that therefore one needs a basic understanding of moral concepts in order to be granted rights. Both views hinge on the notion that in order to have a right, one must be an agent, capable of making moral choices and acting upon them.[1] Simply to be worthy of moral consideration is not enough. Thus if we view rights as trumping considerations, reasons for acting in one way even though other normal considerations are telling us to act differently, we give ultimate moral preference to moral agents. Non-agents can still be candidates for moral consideration, but if an agent's right conflicts with the non-agent's interests, then those interests will automatically be put aside in order to honour the right. As we saw in chapter three, the notion of 'rights as trumps' is developed by Ronald Dworkin. Roger Scruton combines this understanding of rights with a view of right-holders as agents to conclude that animals cannot have rights, and that therefore the rights of human beings can trump considerations of animal welfare[2]:

> Rights cannot be arbitrarily overridden or weighed against the profit of ignoring them… I must respect your right, regardless of conflicting interests, since you alone can renounce or cancel it. That is the point of the concept - to provide an absolute barrier against invasion. A right is an interest that is given special protection; it cannot be overridden or cancelled without the consent of the person who possesses it. By describing an interest as a right we lift it from the account of cost and benefit and

[1] Although the view that rights have to be claimable is potentially compatible with a view that those incapable of claiming them can have representatives (Feinberg 1981) while a choice-based theory, as I have argued in the case of future people and will reiterate in the case of animals, is not.

[2] Scruton seems to adopt a rather extreme version of Dworkin's position. We saw in chapter three that Dworkin maintains that rights are there to protect deeper underlying concerns that stand out against the "background justification for political decisions", and that even though in normal circumstances they can trump utilitarian claims of the greater good, they can be overcome in extreme situations where overwhelming considerations of utility come into play (Dworkin 1977). Scruton, however, maintains that "I must respect your right, regardless of conflicting interests, since you alone can renounce or cancel it. That is the point of the concept – to provide an absolute barrier against invasion. A right is an interest that is given special protection; it cannot be overridden or cancelled without the consent of the person who possesses it." (Scruton 1998, p. 31). Scruton cites Dworkin for this view, but it strikes me that Scruton's own interpretation of a right says something rather stronger than what Dworkin intends.

place it in the sacred precinct of the self. (Scruton 1998, pp. 30-31)

This combination of rights as trumps, rights requiring agency and animals as non-agents has dramatic consequences. It means that the interests of any number of animals can potentially be 'trumped' by the rights of one person. If one person's life or health could be saved by scientific advances which involve causing painful deaths to a million apes, then that is what must be done. Additionally, it raises questions about our treatment of other possible 'non-agents' such as the severely mentally disabled and infants.

As we saw in chapter five, some argue that the exclusion of animal rights is not a necessary consequence of an approach to rights that maintains that rights must be able to be claimed or exercised in some way. They suggest that a way around this is to say that those who are not able to waive or claim their rights can have a representative or proxy who can waive or claim rights on their behalf where appropriate. This has been suggested not just in the case of animals, but also in 'marginal human' cases and cases applying to future people and groups.[1]

However, as I argued in chapter five, this is not applicable to choice-based theories. The claim is not simply that it happens to be the case that those who have rights can waive them, but also that this freedom, autonomy and choice (and therefore agency) is at the heart of what it is to be a moral right-holder. Moral rights, according to such theories, are essential features of rational moral agents. As we saw in chapter three, for Hart, a right is not just a simple conjunction of someone's duty and someone else's powers concerning that duty. The power and the duty are intimately connected in that they share the same underlying justification, and only the person to whom the duty is owed is in a position to have the power to alter that duty (Hart 1955). The right-holder's power over the right is an essential part of what makes it a right in the first place. Thus it seems that theories advocating representatives

[1] See for example Feinberg (1981) and Baier (1981).

are missing the point. The problem with ascribing rights to non-agents does not lie in problems of practical application, but in deeper theoretical difficulties.

This may not be the case with legal rights, where right-holders can have representatives who speak and uphold their legally granted rights on their behalf, but legal rights do not necessarily imply moral rights. A company or a ship may be a legal right-holder, but this does not automatically mean that it is in possession of moral rights[1], and we may be able to say the same about animals, future people, and 'marginal humans'. There could conceivably be legal right-holders who are not agents. Under a choice-based theory of moral rights, a moral right-holder is *essentially* a moral agent. This excludes cases such as babies and the severely mentally disabled, as well as animals, from being right-holders. Some see this as a deficiency of these theories, but it is an implication which some choice theorists seem willing to accept.

Theories of this type are open to the criticism that they provide extra protection for those who are already strong and able, and neglect those who are weak, vulnerable or disabled. By allowing rights (and, under a trump theory of rights, priority) only to those who are able to exercise *power* over their rights, they neglect those whose interests are most under threat. As we saw in the previous chapter, it is this type of theory of rights which has led some thinkers to prefer a needs-centred approach to a rights-centred one. In addition, it can be argued that such a strong focus on moral agency relies on an overestimation of our human freedom and independence, and an underplaying of the constraint and interdependence which characterises much of our common life.[2] Perhaps a more balanced view of human life free from fantasies of omnipotence and total independence might lead us to acknowledge a closeness to the rest of animal life that a strongly agential conception of humankind would

[1] See Stone (1994).

[2] These arguments (levelled against agent-centred ethical theories in general, not specifically against choice-based theories of rights) are made very clearly by Soran Reader (2007). Many thanks to Dr. Reader for discussing these ideas with me.

not allow. The degree to which even our conceptions of self are strongly dependent on the environments that we inhabit will be explored further in chapter eight. Perhaps we are not so close to the angels after all.

*(3b) Benefit/Interest Theories of Rights*

Benefit or interest theories do not depend on agency in the same way. According to these theories, the capacity to have interests or potential benefits which can ground duties is what secures rights. Thus if we can have duties to animals on the basis of their interests, or duties to benefit them, then animals can have rights. Clearly, this is a less demanding criterion than agent-centred theories of rights such as choice theories, and it can escape the criticism of favouring the strong over those who need greater moral and political protection. By some versions of this view, a right-holder is merely someone to whom duties can be owed because of their moral status. If this is true, then the question of rights is at least to some extent reduced to the question of moral status, since all those who have moral status (to whom duties can be owed for their own sake) can have rights. We may still want to say that rights should be the type of things that can be claimed, but in this instance there is no reason why a proxy or representative cannot do this on a non-agent's behalf. The main question that this raises is what extra work the language of rights is doing over and above the language of moral status.

As we saw in chapter one, one answer is more in terms of a slightly different nuance or subject area, rather than an entirely different category. Rights are part of the language of justice, and this has a number of different implications. Firstly, questions of justice are often regarded as legal or political questions. Secondly, matters of justice are sometimes afforded a particular urgency or moral pull which other moral questions lack. When something is a matter of justice, it often seems to dictate what *must* be done, not simply what *should*. By this interpretation, a right need not be of a completely different category from other moral

concepts, it simply comes with slightly different baggage. We are dealing not so much with personal morality, but moral questions that have political implications, and the moral claim in question has a special urgency - a right cannot be ignored, it will continue insistently to proclaim itself until notice is taken of it. Perhaps a right can in ordinary circumstances trump all other moral considerations, as Dworkin maintains, or perhaps the question is more one of degree and nuance.

So what is it to be a right-holder? If the central factor which separates rights from other moral concepts is a matter of degree or nuance, this is basically the same as the question of what it is to have moral status. If the distinguishing factor is that rights are trumps, then perhaps we might say something more. Roger Scruton accepts that animals have moral status, but denies them rights: the rights of humans can thus always trump questions of animal welfare. However, if what we are faced with is an interest or benefit based theory of rights, it is hard to see how humans can have priority in this way, except to the extent that most humans may have interests that are not possessed by most animals, generating a greater *number* of right-claims (something that I will touch on in the final chapter of this thesis) or that animals' interests are of the kind that cannot ground rights at all[1]. To be a right-holder is to be in possession of the types of interests or potential benefits which can generate duties on someone else's part. To deny right-holder status to animals would therefore involve denying either:

> a) that animals have interests or can be benefited (or harmed), or
>
> b) that the type of interests or potential benefits that animals can have can generate human obligations.

The first claim here is a claim about animals, the second is more complex as it hinges on what we see as the connection between interests or benefits and duties. From a classical utilitarian perspective, it might be that all potential benefits (and perhaps all interests)

[1] This is for example Mill's view in *On Liberty*.

generate prima facie duties or reasons for action. If I can foresee that an action that I can carry out will benefit you, that provides you with a claim against me that I perform that action, even if this claim can be defeated by a stronger claim generated by a greater benefit to someone else or a benefit to more people. Many people would however doubt this. Why would I have even a prima facie duty to act in a way that makes people who are already happy and well off happier and more well off? If I could give five pounds to Bill Gates or flush it down the toilet, the fact that Bill Gates stands to benefit from the donation does not seem to generate a decisive reason to give him any money. Perhaps this would be the *better* thing to do on balance, but duty doesn't seem to come into it. It seems fair to conclude that not all interests and potential benefits can generate duties. This means that for animals to have rights under an interest or benefit theory, they must not only have interests or be capable of being benefited, but the interests or benefits that they can have must be of a kind that can confer rights.

I will consider what types of interests might confer rights in the next two chapters. However, for the remainder of this chapter I will concentrate on how the notions of interests and benefits might apply to animals.

## 4. Do Animals Have Interests?

What do we mean when we claim that something is in a person's interests? It is a common part of the currency of both philosophical and non-philosophical moral discussion, and in general we take the view that people have certain interests to be trivially true. Consider the Penguin Dictionary of Philosophy's definitions of two different meanings of the word egoism:

> **1** *Ethical egoism* is an ethical theory, to the effect that one *ought* always to act in one's own best interests; that an action is *right* if and only if it benefits the agent; that what is valuable or desirable is that which benefits oneself.
> **2** *Psychological egoism* is a theory about people's actual motivation and conduct, to the effect that all action *is* self-interested.
>
> Two main varieties can be distinguished. One says that disinterested action is

> impossible, like an uncaused effect, or an uncaused event. Another less extreme variety does not say that disinterested action is impossible, but takes it to be illusory, always, or for the most part: scratch the surface, and ulterior motives of self-interest, often disguised by pretence or hypocrisy, will be found behind seemingly disinterested actions. (Mautner 1996, p. 160)

These two definitions highlight some of the different ways we talk about interest and interests. Ethical egoism is a theory about whose interests we should serve, whereas psychological egoism is a theory about what we are interested *in*: the two need not be the same. The masochist may be interested in things that are not in his interests, and the saint's interests may not be the main thing in which she is interested. We might want to make a connection between the two - that we ought to be interested in serving people's interests, or that it is not in my interests to be entirely concerned with the interests of others - but the two concepts are distinct from each other. So when we ask whether non-human animals can have interests, we do not necessarily need to hold the view that the answer to this question depends on whether there are things in which they are interested. We might even go so far as to say a tree has an 'interest' in getting enough water and sunlight. However, trying to understand what interests are is not straightforward. A being with interests might be thought to be a being who, at least on a prima facie level, ought to have its interests served, but if we are to see interests as grounding moral status in some way, it is not enough to see a being who holds interests simply as one who has a 'sake' and who should not be used merely instrumentally for the sake of others. This would be to define moral status in terms of interests and interests in terms of moral status. Whether or not this circularity is vicious, it does not allow for any dialogue between those supporting animal rights and those who deny them.

There is a huge range of views about who or what can properly be said to have interests. Gary Varner argues that it is not just animals, but all individual living organisms, that can be thought of as having interests (Varner 1998), while R.G. Frey argues that interests are things that can only be properly thought of as pertaining to human beings (Frey 1980).

Our answer to the question of who has interests will of course depend on what we think it means for someone to have an interest. If we mean, as some have taken it to mean, that there are certain things concerning himself that the person ought to care about, or ought to act to promote then the prospect of assigning interests to animals looks less than hopeful:

> Interests suggest much more than that which is indicated by the person's welfare. They suggest that which is or ought to be or which would be of concern to the person/being. It is partly for this reason - because the concept of interests has this evaluative-prescriptive overtone - that we decline to speak of the interests of animals, and speak rather of their welfare. (McCloskey 1965, p. 126)

However, if we take a broader definition, perhaps we might think it acceptable to claim that at least some animals can have interests. McCloskey's understanding of what it is to have interests again seems to rest upon an agential bias. Thus even if through interest theories of rights we can escape the initial agential bias that afflicts choice theories, whether our interest theory of rights also falls prey to this problem depends upon how we understand what it is to have interests. This idea will be explored further in the next chapter.

Here, benefit theories would appear rather less complicated. It does not seem fishy or mysterious to say that an animal can be benefited. A dog will benefit from being fed the right amount and taken for regular walks, while we might benefit many wild creatures the most by leaving them well alone. Other things can be benefited too. We can do things that benefit plants and trees, or groups of people.[1] It would perhaps seem that the language of benefit can be applied to anything that has what might appear to be some kind of teleology, but this does not necessarily mean that any benefit can confer rights or even moral status. It might even be suggested that we can only talk about 'benefit' as having moral relevance for beings that have interests of some kind. These ideas will be discussed further in the next chapter.

[1] Although in some of these cases we might debate whose benefit we are really talking about. Gardeners tell us that some flowering plants 'benefit' from being pot-bound, or from having a restricted nitrogen supply. What is meant here is that they provide the best display of blooms under these conditions. This happens because the plant is put under stress and has evolved to produce offspring when placed in stressful conditions which will replicate its DNA in the eventuality that it does not survive. The panellists on *Gardeners' Question Time* often warn of the dangers of a plant becoming 'too comfortable' and failing to perform to adequate standards.

# Chapter 7 - What Would an Adequate Theory of Environmental Rights Look Like?

So far we have encountered a range of problems relating to the application of traditional rights theory to environmental problems. Some of these relate to particular cases, for example the specific difficulties of attributing rights to future people, and issues concerning the relationship between rationality and rights. Some of these problems are more general in their scope - the individualistic nature of many rights theories make them difficult to apply to cases which cannot easily be explained in terms of relationships between individuals, and seem to under-emphasise the continuity between the elements of the natural world of which we are a part. In fact, many of these problems can be summarised and related to each other in terms of continuity: the continuity between the human and the natural, the continuity of past, present and future, and the continuity of ecosystems and natural environments. Many traditional theories of rights tend to make overly stark divisions between the rational and the non-rational world, between agents and patients, and between individuals. They also operate best within a static time slice which does not take account of how cultures, communities, and natural systems alter in terms of their membership and their defining characteristics over time. This tendency to divide the present from the future, the human from the natural, and the individual from the culture and society, means that theories of rights can often struggle to take account of the types of continuity with which I am concerned. I am not suggesting that we cannot examine these issues separately (the structure of this thesis would suggest otherwise) but rather that our conceptual distinctions should not entail a conceptual *division*.

What follows will be a brief overview of what we have covered so far, and how it relates to the themes that I have mentioned above. I will follow this with an analysis of the

problem and what forms possible solutions might take.

**1. The Landscape of Rights**

The first three chapters consider what it is for a moral theory to be a rights theory. Of course there are many answers to this question, but the aim here was to identify the main features that stand out and should be objects of our examination in subsequent chapters. I started with a historical approach to rights theory. This was necessary for a number of reasons. Firstly, we cannot fully understand our current political and ethical thought in a cultural vacuum, and in order to understand the culture surrounding our concept of rights, we must understand its background and history: how contemporary ideas have evolved and why. This project also helps us in the difficult task of trying to identify what it is for something to be a theory of rights. We probably can't consider the *ius* of Roman jurisprudence to be equivalent to the contemporary understanding of rights, but at the same time, it shares some interesting features with it. Our notion of rights is closer to that envisioned by John Locke, although we also saw how it has been altered and refined since then. One thing demonstrated by this is that, even if we can compose a list of features that something must have in order to be a theory of rights, we cannot consider this to be the final and ultimate form that a theory of rights can take. Rights theories can stand (and indeed have stood) a great deal of revision, and should be understood as dynamic concepts that can evolve over time to embrace new challenges and problems.

Certain features do however stand out as part of the modern conception of rights. The most prominent of these is perhaps that we see rights as applying to a *subject* rather than just to a state of affairs or a right thing to be done. This is what is sometimes termed 'subjective' right, rather than the 'objective' right of previous times. This is one of the features that gives rights their special appeal, because as I have argued in previous chapters, it allows for an ethic which is explicitly centred on the patient, or the subject of moral concern. However, we

have also often seen that the very notion of being a right-holder (and in many cases the notion of being the subject of moral concern in general) is often bound up with the notion of agency. This is particularly the case with modern 'choice' theories of rights, although it can also be the case for certain interest-based theories, depending on how one characterises an interest.

A second feature that characterizes modern theories of rights follows from this. This is the idea that granting the right must be in the interests of, or to the advantage of, the right-holder. Again, this is a feature that did not exist as part of the roman idea of *ius* that I discussed in chapter one. If I have a right to something, it is generally expected that this is something that is in my interests or will benefit me in some way. This is even the case for things which might in some respects be to my disadvantage (for example the right to make unhealthy lifestyle choices) because despite the fact that making such choices is damaging to my health, the advantage of having freedom or autonomy is considered to be in my interests (more will be said about the ways in which freedom is important in the next chapter).

Another feature that emerged with the onset of a modern conception of rights is the notion of moral or *natural* rights, rights that we have in virtue of being born, and which do not depend upon any legal system or government. These rights have traditionally been viewed as being contingent in some way upon certain features of the right-holder. As we have already seen, these features have often been ones that are usually associated only with human beings, although some coherent systems of rights accounting for the rights of animals have also been developed. The important thing to note here though is that these features are not dependent upon living in a particular society or state, they are intrinsic features of the right-holder.[1] Some more recent theories have moved away from this view, seeing moral

[1] This is of course part of the purpose of a Lockean state of nature account. We remove man from his present day legal and political context, and ask what is owed to him and what he owes to his fellows when legal and political constraints are disregarded. Perhaps accounts of this kind (and with them the explicit use of the language of '*natural* right') went into decline with the rise of accounts of humanity as more culturally and historically constructed.

rights as things which *ought* to be made legal rights.[1] Rights of this kind are not dependent on the right being instituted by law, but they are dependent on the existence of legal systems, or at least on the notion and possibility of legal systems. This is perhaps a similar concept to J.S. Mill's idea of "certain interests, which, either by express legal provision or by tacit understanding, ought to be considered as rights." (Mill 1999, p. 122) Thus it is perhaps wrong to say that natural rights and moral rights are precisely the same thing, but nonetheless in either case we are dealing with rights which do not need to be laid down in positive law to have validity. This view has both advantages and disadvantages. If we take rights to be a natural feature of a being, then we may be accused of naïve realism. On the other hand, if we can provide a more sophisticated account of how rights can be predicated of beings with certain natural features, then this would allow us to hold a theory that links the ethical to the realm of politics and justice without the need to posit non-natural properties or entities. Again, more will be said about how this might be achieved in the next chapter.

The final major feature which I will mention here is the link between right and duty. Almost all moral rights theories make some link between right and duty (or at least between right and *obligation*). With many rights theories, this link is direct and clearly explicable (either in Hohfeldian terms, or by using a different system). However, some have rejected the claim that a right requires a straightforward and direct link to a duty, and in fact it is only rights narrowly construed as Hohfeldian claims that correlate to duty in this way, as we saw Tim Hayward argue in chapter four of this thesis (Hayward 2005, p. 51). Other Hohfeldian 'rights' such as privileges do not necessitate a direct link with a specific duty (Hohfeld 1919).

In addition to these clearly identifiable features of most theories of rights, there are a number of nuances and associations which the language of rights carries with it. Rights are generally associated with liberalism and individualism. The language of rights is usually less

[1] For example, the concepts of rights used by Hayward (2005) and Lercher (2007) discussed in chapter four.

popular on the communitarian left. This is arguably to do with concerns following from Marx's critique of rights that we saw in Chapter two, and related to more recent arguments from Joseph Raz (sometimes thought to occupy a middle ground between liberalism and communitarianism) which claim that while rights have their place, a right-based morality cannot account for common goods (Raz 1984). This is also an issue for some conservative thinkers because of the Benthamite concern that individual rights detract from the associations that we have with the state and the rule of law.

Relating to Bentham's criticism is the nuance that the language of rights carries with it of justice, law and politics. Perhaps this may be one of the ways in which we can seek to distinguish rights from other moral demands or claims. Rights, even if we hold the Lockean notion of pre-political natural rights, seem to carry with them some *political* demands. Often these are demands about what our government ought to do - where the government may or may not interfere with our behaviour, and which things ought to be enshrined in law. In this way, rights are seen as a type of standard or benchmark up to which legal and political systems ought to measure. This role of rights has become particularly prominent in the field of human rights over the course of the last century. This is not to deny the fact that there are generally thought to be in personam rights held against people who do not occupy positions of political power, and rights in rem against everyone, regardless of their political status.

Rights are also often associated to some degree with notions of autonomy, liberty and rationality. This is not just in the sense that people are seen as having rights *to* liberty: many theories of rights have the notion of liberty and autonomy at their very foundation. Rationality is closely linked with these concepts because the importance of liberty is fundamental to the ability of human beings to make rational autonomous choices about how to live their lives.

Finally, rights have a certain nuance of urgency, of a particular strength of moral pull.

To say that someone has a *moral claim* to something suggests that they *ought* to have it, but to say that they have a *right* to it seems to imply that they *must* have it. Sometimes this is systematized in terms of rights as trumps. In other cases, rights can be defeated more easily, but still carry with them a strength of demand. In many cases however, rights seem to be concerned with cases of special moral importance and urgency. To say that I have a right to something means that, at the very least, the person who denies me the content of my right must provide an extremely stringent justification.

The project of describing what it is, or what it might be, to have a right, was the concern of the first three chapters of this thesis. The subsequent three chapters applied different aspects of the central question of the thesis to some difficult cases. As we shall now recall, these chapters raised several problems for some traditional theories of rights.

**2. The Scope of our Concern**

Which are the entities with which an environmental ethicist ought to be concerned? Obviously, we can examine the various physical components of our natural environments: human beings themselves, other animals, plants, rocks, water, and so on. Beyond this we might look to categories of being: animal, vegetable and mineral perhaps, or sentient and non-sentient, rational and non-rational. We may also want to group particular entities together in other ways, according to what species they are a member of, what role they play within an ecosystem, what ecosystems they participate in, and what social or kinship groups or populations they operate as a member of. Beyond even this, we might want to consider the grand totality of life itself, or even the grand totality of natural objects (either on our planet, or in the universe- although most environmental philosophers would primarily be concerned with the former).

It may be that we ought to be concerned with all of these different layers or levels of existence. However, the fact that we are concerned with all of them need not imply that we

should properly consider all of them as reasonable candidates to be subjects of *rights*. It may be that we are only concerned with some of them because we consider them to be merely *instrumentally* important. Many people only attribute value to plants and minerals because they are necessary for animal life, this is different from the claim that they have the kind of value *in themselves* which would enable us to describe them as subjects of rights. It can also be claimed that having a good-in-oneself is not sufficient for the attribution of rights. A choice theorist might think that animals should not be made to suffer unnecessarily for the good of the animals themselves, but that this does not amount to a right of the animals not to suffer.

**3. The Role of Rights Theory**

Our views on these matters will depend heavily on what theory of rights we decide to adopt. A theory which rejects the notion of anything other than individual rights will struggle to attribute rights to species, populations, cultures and so on. A theory under which rights supervene on rationality will exclude at least some categories of animals. However a more liberal definition of what it is to hold rights might be more accommodating of animals and various different levels of existence beyond the individual.

Our analysis will also vary according to what we consider environmental rights to be. In chapter four, I take them to be rights concerning the aspects of the environment that in some way impinge on or have particular significance to the right-holder - in other words, my environmental rights are the rights that I have concerning *my* environment. This means that the fulfilment or omission of any duty with which the right correlates must have an impact upon the environment in such a way that it affects the right-holder. This includes some instantiations of the traditional rights to liberty and property, but I have also suggested that there might be what I term 'essentially' environmental rights, rights for which interference in the environment of the right-holder is the only way to violate the right, and for which this

interference is what *makes* the act a right violation. In other words, the right cannot be disentangled from ideas about the environment of the right-holder. I argue that this category of right can do useful work in explaining the way that we feel when we experience something like a burglary or being incarcerated. It is not simply the privation of property or freedom to which we react, although these are distressing things in themselves, but also the fact that our natural surroundings have been taken from us, violated or interfered with. The specific type of unease or discomfort that we feel because of these things feels more personal or intimate than many of the traditional conceptions of rights can accommodate, because these are experiences of being estranged from or deprived of our habitat in a way that seems to threaten our very identity or integrity. This will be the focus of the next chapter.

Similar things could be said about certain non-environmental rights, such as a right not to be physically harmed or touched against our will. A rape victim might find it difficult to describe her situation in terms of a violation of life, liberty or property - rather, it seems to be a violation of *self*: of what it is to be a person, and specifically of what it is to be oneself. In a similar way, because we identify ourselves so thoroughly with our environments, a harm to one's environment can be a harm to oneself in more than just an instrumental way. I would have reason to feel distressed if my house had been occupied against my will by an unknown intruder, even if no property were taken, and no threat posed to my physical health or possessions.

I take it to be uncontroversial that, if there are any rights at all, there are instrumentally environmental rights (rights whose violation will affect our environment) and I make the further claim that an essentially environmental right would have explanatory power over the moral relationship that people can have with their environments. Thus, in the absence of good arguments against essentially environmental rights, there seem to be good reasons for positing environmental rights of both types for currently living human

individuals. There are a few difficulties that need to be resolved here, not least the problem of dealing with conflicts of environmental rights of different types (as I discussed at the end of chapter four). While this problem applies to all areas of rights theory, it looms particularly prominently in the case of many environmental problems because of the complex nature of environments. The interrelations between individuals, cultures, species, and biological organisms mean that many of us assume multiple roles: agent and patient, victim and perpetrator, consumer and biological organism. We saw many of the kinds of problems that this can raise in chapter four.

This poses a challenge to traditional theories of rights, which are often very much concerned with simple relationships between individuals, or between an individual and the state. This brings us back to Marxist criticisms that theories of rights are alienating, although perhaps this problem operates on a more theoretical level than Marx's original claim. The claim here is not that rights encourage us to hold each other at a distance (although this may well be a consequence of this view). Rather, the idea is that rights, traditionally conceived, cannot adequately make sense of the fact that our environmental interests are intricately interwoven with the environmental interests of others.[1] These difficulties have arisen in the discussion of environmental rights of currently existing human individuals. However, establishing where other cases (future people, animals, plants etc.) fit in terms of the structure of environmental rights is an even more difficult affair.

## 4. Future People

In chapter five, I considered the advantages and the difficulties of ascribing rights to future people. This is an important consideration when assessing environmental rights because environments (and our interactions with them) are not static in time. The temporal extension of an environment is just as crucial as its spatial extension. Just as I argued in the first

[1] This is not only a problem for environmental rights, but for questions of rights that arise when discussing other large-scale global problems such as world poverty and hunger. Many of these complexities are discussed by various authors in Pogge 2007.

chapter that we could not fully understand rights without a sense of their history, we cannot understand environment as purely spatial without a sense of the temporal. This is the case because we cannot understand *ourselves* without understanding where our ideas come from. In addition, to think about the natural world is to think about change, not time-slices, and the same must be true for our relationship with it. Thus we cannot consider our environment without considering its future, and its impact on future human life.[1]

A right-based view has the advantage that theories of rights often speak of what is due to people in virtue of their humanity, rather than their specific identities. Thus the universal nature of rights may help to overcome the non-identity problem. On the other hand, there are also some serious difficulties with taking a right-based approach to these cases. Rights are often said to supervene on particular properties of the right-holder (rationality, humanity, interests etc.). If it is the case that we cannot ascribe properties to future people, then it is hard to see how we can ascribe rights to them. This is a problem which, while faced by other theories that take the notion of moral status as very important, might be escaped by more agent-centred approaches that do not require the attribution of properties to moral patients. Additionally, benefit theories of rights will find the non-identity problem particularly problematic, since they rely on the ability to choose between benefiting someone (and honouring their right) and not doing so (and violating their right).

[1] I would also argue that such a project should ultimately involve both an understanding of the history of our relationship with the environment, and that we should consider what we owe to people who are no longer alive. The first point is obvious, since assuming that what I have argued up to this point is correct we need to understand the roots of our current environmental problems to understand and improve our patterns of thought. The second point is slightly less obvious, but if we hold that a full picture of our environment, our patterns of thought and our identities cannot be gained without an examination of the past, we must at least *consider* whether we should privilege current and future people over those who no longer live.

Many thinkers have given interesting and enlightening consideration to the history of our environmental attitudes and practices, which is a topic that goes beyond what I can examine here. See for example Ausubel (1996), Frank (1997), Passmore (1995), Simmons (1995) and White (1994).

On the question of whether we can attribute any environmental rights to the dead, we cannot mould the environment which the people of the past inhabited, so the question of environmental rights is not quite so relevant to them. It may however be argued that (as people with an emotional and physical investment in the environment that we inhabit today) they have some right that we guard our inheritance wisely. I hope to consider this question in the future.

I argue that, depending on what theory of time and theory of rights one chooses to adopt, it can be problematic to think of our obligations to future individuals in terms of rights. Two solutions present themselves: firstly, we may be able to think about the rights of future people in terms of backward signification (although this may be problematic depending on our theory of time and theory of rights); and secondly, we may be able to think about the rights of groups that will continue to exist in the future. While the more technical metaphysical aspects of these questions are crucial to finding a final answer to these problems, they cannot be examined in this thesis, and I suggest merely that these two approaches seem promising. In different ways, they both point towards a particular way of viewing ourselves and our relationships with others. Backward signification, at least if it is to confer moral duties, relies on the view that what is important about our lives is the networks of meaning that we inhabit, created by our common cultural and social lives. In a different way, group rights depend upon a similar notion. This will be expanded upon in the next chapter.

**5. Groups**

If we can attribute rights to groups, we may be able to say that the whole group, including its past, present, and future members, has rights. This is not the same as saying that the future members of the group have rights at present, but rather that they will come to inherit the rights that they have in virtue of being a member of that group. In this way, we escape the existence condition, because the group currently does exist, and we arguably escape the non-identity problem.

However, in order to accommodate a theory of group rights, we must at least to some extent move away from the historical tradition of natural rights, which whilst supposedly universal in its scope, tends to be particular in its application, applying to individuals considered in isolation, rather than to groups or communities. Such a move is not necessarily

implausible however (especially given what I noted earlier about the fluid nature of the history of rights theories) and would also tie in well with the previous discussion about the complex interrelatedness of people in the modern world, particularly in the context of environmental problems.

**6. Animals**

Chapter six considers the role of animals in relation to the issues we have considered so far. A discussion of animals is necessary here because, if we adopt a right-based ethic, the question of whether animals can have rights is likely to affect our environmental decisions in a dramatic way. The challenge here concerns theories of rights which rely heavily on the rationalist enlightenment notions of reason, autonomy and agency to describe what it is to have a right, and which distinguish between rational man who is capable of giving consent, and irrational beasts which cannot in any way participate in frameworks of right and duty. This relies on the further supposition that agency requires the capacity to act for consciously-held reasons, and that animals cannot do this. This is most obviously the case for choice based theories of rights, where to have a right is to have the ability to waive the right. But it is also arguably true of any interest based theory of rights which understands interests in terms of what one ought to be interested in (since again the notion of 'ought' and agency is brought into the definition of what it is to be a right-holder). Defining interests in the absence of these notions becomes a very tricky problem. We can think of them in terms of benefits, or what it is to be a good example of the type of creature that one is, but of course we can talk about what is beneficial to a plant, or what it is for something to be a good pair of spectacles, but that does not mean that we would automatically ascribe *interests* to the spectacles or the plant.

**7. Summary of the Key Problems**

Most of these problems can be summarised in relation to one theme. They all arise because

theories of rights, and the tradition from which they arise, fail to take account of the complexity and continuity of the world. Many political philosophers have become too accustomed to viewing the individual self as a sealed unit which only interacts on a superficial level with the objects and other people which surround it. This sealed unit is dramatically set apart from the rest of the world because it is essentially rational autonomous and free, and thus not subject to the rules of natural causation. This is clearly not an accurate reflection of human life. We rely utterly on our environment for our continued existence, our physical selves are formed from the same material as it, and arguably we can only understand ourselves with reference to the relationships we have with people and objects which are external to ourselves.[1] It has been said that theories of rights are embedded in a conception of the world which cannot make sense of human life as it is actually lived - as part of the natural world.

To an extent this is an extension of the kind of criticism we have encountered from Marx and from Joseph Raz. Marx claims that theories of rights are active in the process of alienation, creating boundaries and spaces between individuals, and Raz claims that right-based theories cannot account for collective goods. We can see that our criticism above can operate alongside both of these criticisms. Rights might be taken to embody and perpetuate the view that people are to be viewed as hermetically-sealed units and they might also be seen as unable to accommodate our reliance on our environment as a collective good.

The real question here then is whether a theory of rights necessarily falls prey to these objections, and (if rights are still tenable) what a theory of rights which can escape them might look like. As we have seen, what it means for something to be a right has not remained static, but theories generally viewed as theories of moral rights have the following features:

- 'SUBJECTIVE' - The right is held by a particular subject.

[1] For an interesting and detailed examination of the ways in which we relate to the natural world, see James (2010).

- ADVANTAGEOUS - The right is in some way to the advantage of the right-holder.

- NATURAL/MORAL - The right does not depend on being accepted by any legal or political institution.

- LINK WITH DUTY - The right has some implications for what actions or inactions are required of others.

In addition to this, theories of moral rights often have the following nuances or associations:

- INDIVIDUALISM - The right is possessed by an individual or embodies individualistic concerns.

- CONNOTATIONS OF JUSTICE, LAW OR POLITICS - while not depending on acceptance by a legal or political institution, a right often has implications for such institutions in terms of how they should behave or which powers they should be granted.

- LIBERTY, AUTONOMY, RATIONALITY - Rights are associated with notions of rational autonomy and freedom, and thus are often only attributed to those whom we can properly consider to be agents.

- STRENGTH/URGENCY - A right is thought of as making special demands with a particular strength or urgency that is lacking in other moral terms. Thus they are often thought to trump other considerations or exercise a particularly forceful type of moral pull.

Notice that, at least on a surface level, the criticisms that we have seen apply mostly to the additional nuances or associations, rather than to the main features of rights. So the idea that environmental problems are too complex to understand in terms of direct links between individuals is not a problem that applies to rights in virtue of their advantageousness or their natural or moral character. It is perhaps arguable that this relates to the fact that rights apply to subjects and are linked with duty, because we need to identify subjects and duty-holders. However, if we accept that the subject of a right can be a group or some other form of collective entity, the idea of subjective rights become less problematic. If we add to this the view that the holders of the related duties may be many and widespread, or that there may be duties that are held by groups of people, then this is less of a problem. The real issue here is the association between rights and individualism. In order for a theory of rights to do the

work of environmental ethics, we must have an outlook that places emphasis on levels of existence beyond the individual. Other entities must have their place within any adequate theory. A workable theory of rights must (at least for our purposes) be less individualistic in its outlook.

Consider also the problems that we encounter when looking at future people. Initially, the difficulty might appear to be the subjectivity of rights. If rights are to apply to a particular subject, we must be able to posit a particular subject for their application. In the case of future people, the subjects do not exist, and their identities are not determinate. However, I suggested that an appropriate response to this might be to look, once again, beyond the unit of the individual. If we can ascribe rights to groups, cultures or traditions in which people participate over time, this can have a temporal extension into the future just as I might have rights concerning my own welfare which extend beyond the present moment. Thus the problem is moved from a problem about subjectivity to a problem about individualism. If rights are necessarily individualistic, this still won't do, but if we can achieve a theory of rights which is not limited in this way, we can make some sense of the obligations that we may have concerning those people with whom we will share no time on this planet.

Again, when we look at animals, the problems that we face with the application of rights theories are problems of association or nuance rather than with those things that I identify as central features of a theory of rights. Animals are subjects of moral consideration, they can be advantaged or disadvantaged, we can have duties toward them, and this may be for reasons which are independent of (or even contrary to) any legal or political obligations or prohibitions. Thus the problem lies with the association of rights with agency, autonomy and freedom. If we must attribute these features to someone or something in order for them to be a holder of rights, then we cannot meaningfully talk about the rights of (at least some)

animals. However, if we relax our understanding of rights and choose to relax or weaken this association, animals may still be right-holders. Notice that this only applies to some rights. If we have a view that different rights can depend upon different features of the right-holder, this does not exclude the possibility that there can be rights held by groups and by animals, but also *some* rights that can only be held by individual people. Nobody wants to argue that cats have a right to a school education!

Thus the cases that we have examined point to two main problems with traditional theories of rights, neither of which, I would argue, is essential by definition to a rights theory. These problems lie with the individualism of rights theories, and their strong association with liberty, autonomy and rationality. Perhaps the case for saying that these are not central or definitional features needs some more work. Once this work has been done, this still does not demonstrate that such a theory of rights can actually hold. Perhaps they are intrinsically linked with the central features that I identified, or perhaps they are somehow the glue that holds the central features together in a coherent theory. To demonstrate that a theory of rights can function without these secondary associations, we need at least a sketch of what such a theory might look like.

## 8. The Positive Case for Rights

Given the problems that we have encountered with the ability of rights to accommodate an environmental ethic, one might legitimately ask whether the language of rights is doing us any good at all. Do these problems not give us good grounds to abandon a right-centred ethic, at least in our dealings with environmental problems?

In answer to this, there are a number of reasons why we might want to retain rights theories, or at least to embrace a theory which has certain important features of a theory of rights. Firstly, there is a certain sense in which, regardless of any theoretical difficulties, claims of rights can be justified. In the philosophical sphere, rights are a source of

disagreement and often confusion, but in our everyday (and usually less philosophical) lives, the picture could not be more different. People talk frequently of their rights or the rights of others, and while it might be questioned whether the right being claimed is actually one that is held, there is rarely (if ever) explicit confusion or disagreement about what a right actually is, or whether there can really be such a thing.

There seems, at least superficially, to be an implicit understanding of how the term 'right' is meant. The experience of having one's rights violated is a very real and very distressing one, and the language of right-violation is a very appropriate one to describe our reactions to certain situations (remember the example I gave in chapter four of the sense that one's home has been invaded by an intruder). In this way, claiming that one has a right seems to be giving voice to a lived emotional experience of a moral wrong. This strongly emotional aspect of what it is to have rights and to have them violated is perhaps one of the things that is often missing from the dry philosophical accounts of rights in the Hohfeldian tradition. Some might argue that this way of thinking about our 'lived' moral experience might lead to a selective form of emotivism, suggesting that claims of right have no real cognitive content, that they are merely a way of bewailing certain things that are done to us and lacking in truth value. However, to some extent this will depend on how we analyse emotional responses. Most of us accept that people can have emotional responses that are inappropriate or ill-judged, so the claim that rights have a strong emotional aspect will not necessarily imply either that all rights-talk is mere emotional bunk, or that all rights-talk is valid. We may be able to look at someone's sense that they have their rights violated, and ask to what extent that feeling is justified.[1]

A further claim might be that, lacking as they are in any kind of standard of judgment, rights can multiply indiscriminately into a plethora of meaningless right-claims. The

[1] For a more general examination of the role of emotion and appropriateness in moral language, see Nussbaum (2006)

'Clapham omnibus' understanding of rights is often criticized by professional thinkers on the grounds that it is bandied about indiscriminately and overused. To illustrate this, a quick Google search on the phrase "I have a right to" yielded millions of results, including "I have a right to express all my feelings", "I have a right to buy whatever I want", "I have a right to marijuana" and "I have a right to broadband". Clearly, we would want to object to some of these right-claims (if they are meant seriously) as self-absorbed, self-indulgent and unjustified, but as the previous paragraph makes clear, the acknowledgement that rights are often used in an emotive and frequently thoughtless way does not stand in the way of doing anything useful with them.

A related point, which is arguably superficial but nonetheless important, relates to the rhetorical and political application of theories of moral rights. This is probably what John Stuart Mill was recognising when he denied the coherence of 'abstract right' and yet wanted to make philosophical use of "certain interests, which, either by express legal provision or by tacit understanding, ought to be considered as rights." (Mill 1999, p. 122) Mill recognised some theoretical difficulties or problems with the concept of rights as it was understood in the natural rights tradition, and yet he found the notion of rights useful in describing certain essential or important interests which should on no account be harmed. This may be because of the popular acceptance that the notion of rights had gained in describing what was morally due to one.

Perhaps there are two separate but related points here then: a point about the rhetorical force of rights language; and a point about how in philosophical terms, there is no moral concept which asserts the same kind of moral pull or urgency as rights do. So to take the example of a moral right not to suffer the effects of climate change, we might consider the language of moral rights to have two advantages. Firstly, the recognition of such a right could have important legal and political consequences. Many politicians would accept the

point that we really *should* do something about climate change, but shrug their shoulders and mention the many other pressing concerns that weigh upon them, but it would be more difficult for them to accept that there was a moral *right* at stake and remain inactive. This rhetorical pull exercised by moral rights is a consequence of the moral pull that rights are thought to exercise. So in the climate change case, the right does not simply have the result of psychologically requiring immediate action, but it also means that it requires it *morally*. Whether a right is considered to be a trump, or just a moral claim of particular strength or urgency, to assert that something is a right is to assert that it cannot be ignored or left alone. It is a priority case, and must in general be afforded more importance than those concerns which we do not consider in terms of rights. This would seem to be the type of political and moral strength that we need when we are dealing with situations as extreme as the one that currently faces our planet. So rights, or at least something very like them in their degree of moral and political pull, could be an important tool in environmental ethics.

Certain thinkers have suggested that rights occupy a difficult theoretical space in that they are both moral and political concepts. The argument is that this can lead to a confusion between the moral and the political which is likely to be a hindrance rather than a help to reaching genuine moral understanding.[1] This is certainly a real concern. If we are not careful, it could be very easy to confuse legal rights with moral rights, especially as moral rights have a legal or political nuance, and arguably legal rights have moral connotations. However, as long as the terms are used carefully and with thought, I would argue that this is a certain advantage of rights as part of the moral philosopher's toolkit. Certain moral requirements are very political by nature, especially concerns which affect our common life to the extent that environmental concerns do. To frame environmental concerns in terms of rights can help to highlight the essential political importance of these issues.

[1] For example, Mary Midgley makes an argument of this type (Midgley 1983, chapter five).

Another possible advantage to using rights discourse in the field of ethics relates to the idea that rights are applied to a subject, and thus the language of rights puts special moral emphasis on the moral patient rather than the moral agent. In superficial terms then, rights look to the potential victims of wrongdoing rather than the potential wrongdoers. This idea could be central to environmental ethics, as many environmental ethicists suggest in one way or another that we ought to shift our focus from the human agent to the earth, its systems, its non-human inhabitants, and its weak and vulnerable human inhabitants. Depending on which of these we regard as possible right-holders, the language of rights may have the advantage of framing moral requirements in terms of who or what they are required *for*, rather than who they are required *of*. Of course, whether this is possible depends greatly on what we say about what it means to be a right-holder, and as we have seen, some theories of rights seem to equate moral considerability with the capacity for moral consideration. This would apply to choice theories of rights, and to interest theories which ground interests in agency or even in moral agency. To the extent that they do this, theories of rights are agent-centred theories, but to the extent that they do not, they are patient-centred, and may be of use in understanding some environmental moral issues.

In conclusion then, environmental concerns seem to demand a moral theory which has the urgency and strength of rights theories, and which also has an emphasis on the moral patient (or 'subject'). On the other hand, we are looking for a theory which is less individualistic in its outlook than much of the natural rights tradition, and which places less emphasis on rational agency. To the extent that we can have a theory of rights which fits these criteria, we have good reason at least to *consider* environmental problems in terms of rights.

## 9. Why are Theories of Rights Often Individualistic?

It is sometimes said that rights are a particularly individualistic notion because they have their

origins in the social contract tradition. The thought is that only individuals can make rational decisions, and that therefore only individuals can participate in a social contract and accept all of the rights and responsibilities which accompany it. This analysis is mistaken. Whilst it is true that rights are often a feature of contractualist theories, they arguably predate them by a considerable margin (as we saw in the first chapter of this thesis). Secondly, many social contract theorists believe that rights exist prior to and independently of any social contract - this is what is meant by *natural* rights. The rights do not depend on any rational agreement or participation. Even if it is the case that it is rationality that grounds both natural rights and the social contract, but it is not the contractualist nature of the theories which directly implies individualism. Finally, while it is sometimes thought that only individuals can act rationally, there is a good deal of literature on collective rationality and collective action. Any thesis which suggests that there is such a thing as collective responsibility must rely on such notions (at least if we make the assumption that agency is necessary for responsibility[1]). The argument that rights are (or should be) associated with the social contract tradition gives us no prima facie reason to think that the individual should be the sole locus of concern of a theory of rights. So why do we continue to make a connection between theories of rights and individualism?

Perhaps this is something to do with notions of 'tyranny of the majority' or the idea that there are limits to what we can do to an individual for the sake of a greater good to society, as Dworkin argues. Perhaps rights exist in part to insulate the individual against claims of greater common good. This is not really decisive in making rights theories individualistic. Are individuals the only unit that needs this kind of protection? Perhaps we might make claims for the value of cultural practices, ways of life, and so on. In some circumstances these might be thought to outweigh purely utilitarian considerations or the

[1] It might be argued that Cooper's argument for collective responsibility that we saw in chapter five does not depend upon attributing agency to groups. (Cooper 1968)

concerns of other people or groups. If the individual sometimes needs insulating against the claim of the greater common good, perhaps certain common goods also need protecting against other concerns. It might be objected that this would create difficulties in weighing the rights of the individual against the rights of a group. As I have argued earlier, this ought not concern us too much, as we are already well-versed in considering conflicts of rights between individuals.

## 10. Why are Theories of Rights Often Agential/Rationalistic?

Perhaps some of the appeal of the view that one must be a rational agent in order to be a right-holder is that we are drawn to theories which exhibit a certain degree of balance or symmetry. We look for a set of criteria to determine which beings we might regard as having moral rights, and one of the elegant solutions that presents itself is to say that these match the criteria which determine which beings have moral duties. If we do this, it might be supposed that we can simply draw a ring around the classes of beings that theories of justice involve and leave it at that. The set of right-holders is identical to the set of duty-bearers. Thus the patients involved in a theory of rights are the same as the agents involved in such a theory. The difficulty with this view is that theories of justice often exist precisely because of inequalities of power and ability. Those who are weak and cannot exercise very much agency need to protected against those who are strong and extremely able. This is very often the case for the types of rights which do not arise from a contract.

So given that we can reject many of the reasons for associating the capacity to have rights with the capacity for rational agency, we must ask whether it is possible to have a theory of rights which operates without this assumption. The view of rights as uniquely associated with rationality is part of the view that I have mentioned elsewhere in this thesis that denies the continuity of people with their own bodies, with other people and with the natural world that they inhabit. This is often, as I remarked, tied up with the notion of

Cartesian dualism, but this should not lead us to suppose that *all* dualisms are by their nature pernicious. The question is, whether any conception of a right can survive if it can no longer feed upon the biases of its tradition. This of course depends on exactly what one means by a right. Some proponents of an agential conception of rights may be tempted to claim that they are right by definition: a right is the sort of thing that can only be held by a rational agent, and therefore only rational agents can have rights. This is unhelpful and uninformative. If we choose to understand rights in this way, then indeed it is true that only rational agents can have rights.

However, if it is true that moral rights can only be held by rational agents, it is nonetheless also the case that we can support the attribution of something suspiciously like them to non-rational beings, and potentially to non-agents. By this I mean that there is nothing internally inconsistent in holding a view that is focused on the subject of moral consideration, which is to the advantage of that subject, which is not dependent on a legal or political framework's acceptance, and which prompts or requires action (it has a link to moral duty).

**11. What Might an Adequate Theory of Rights Look Like?**

This means that theories of rights cannot rely on choice, or indeed on interests if 'interests' are defined in terms of what one ought to be interested *in*. If rights are going to do all this work, they also arguably need to be applicable to groups. This means that whatever criteria ground rights cannot be criteria that can only be ascribed to individuals. Interests is initially one way of doing this, because all it means is that the person, group, etc. in question has some good, there is something that it is to be a good or flourishing example of that thing. The problem is that the language of interests is rather vague, and is loaded with baggage because of the double meaning of the word 'interest'.

One possible solution to this is to apply the language of *need*. If rights (or at least

certain rights) are grounded in needs, then this escapes any requirement or concern that the right-holder must be considered in terms of agency. Rather, they are placed in the position of a moral patient. A need is something which can require a response or make a demand of us as agents - it can exercise a *moral pull*. It is not entirely certain whether a needs based rights theory should be seen as a species of interest based theory, or as a type of theory all of its own. Certainly, it would appear that what we need is in our interests, although not all interests are needs.

## 12. Needs

There are strong parallels between cases of need and cases of right. Consider the argument from the last chapter, when I highlighted the difficulties surrounding approaches to rights based on benefit. I gave the example of a choice between giving Bill Gates five pounds, and simply flushing the note down the toilet. The fact that Bill Gates would be benefited (albeit very slightly) by my donation does not make it the case that he has a right to my money. Then consider cases of obvious right-violations such as theft or torture.

What is it that gives a prisoner the right not to suffer torture, but which does not give Bill Gates the right to my five pounds? The obvious response is that someone has a duty in the former case, but not in the latter. We have a duty to refrain from torture, but no duty to donate money to billionaires. But what is it that grounds the duty and the right in the torture case, but not in the other? Both Bill Gates and the torture victim have an interest in certain actions being performed or refrained from, and both stand to benefit from the performance or non-performance of those actions. One major difference seems to concern the *needs* of the moral patient in each of these cases. There is a very real sense in which the prisoner is experiencing an occurrent need not to be tortured, while Bill Gates does not need my five pounds (unless, perhaps, he were stranded in a station without his sizeable wallet, but then it would not be clear that we had no duty to help him). In fact, many of the rights that are

considered uncontroversial might be thought to be rights to things that we need in some sense or another. In a way we might then say that rights of a certain kind are a tool for emergency situations, to be applied when someone's most basic needs are at stake. This is certainly the way that the language of rights has often been applied in the past, as a weapon against slavery, torture and oppression. It would probably not be possible to explain all rights in terms of needs. Rights of contract for example can't be understood in these terms (Bill Gates does have a right to my five pounds if he lent it to me in the first place). The rights that may be based on needs are what some people would call 'basic rights', or 'universal rights'[1].

Some thinkers, such as David Copp, argue that there is a right to have one's basic needs met (Copp 1998). He formulates this as a positive right that is held against the state, since he argues that there would be a difficulty in identifying the holders of obligations if such a positive right were to be held in rem. What Copp means by 'basic needs' is "things that a person requires regardless of her goals or desires" ( p. 123). This does not however imply that the way that these needs can be met does not vary from person to person and from culture to culture:

> It will be helpful to bear in mind this distinction between the basic needs and the forms of provision. Every human needs a nutritious diet, but differences in metabolism, gender, climate, health, and so on contribute to differences in what kinds and amounts of food a person must have in order to meet this need. Everyone needs a sense of self-respect, but different things are required in different cultures and circumstances in order to sustain this sense. And there are relevant differences between people due to differences in their psychologies. Every human has basic needs that are the same at some level of description as those of every other human, even though the forms of provision may vary from person to person and circumstance to circumstance, depending on a variety of factors, including culture. (p. 123)

Copp articulates this notion further in terms of choice and autonomy, suggesting that what is vitally important is not that one lives in the healthiest or most comfortable possible way (one might decide to be an ascetic, and this would not always be considered a 'blight' on one's

[1] More commonly, these would be likely to be referred to as 'human rights', but this term would obviously exclude many of the objects of my concern in this thesis.

life) but that one is able to 'choose and to live a standard life'. From this, Copp makes the step (I think mistakenly) of concluding that *all* basic needs can be understood in terms of what are necessary minimal conditions for autonomy or rationality. It is one thing to say that autonomy and rationality is a vital element of human life, and another to say that it is the *only* or the *most basic* one. Copp then argues that such needs should be understood as rights because the special status of rights has three aspects, aspects which he argues are shared with basic needs:

> First, rights have priority over the ordinary goals and duties of the state and over the goal of promoting the general welfare. Rights can be overridden only in the interest of a goal or duty of special urgency. Second, rights can be claimed as their due by the people who possess them. Right holders are wronged if their rights are abridged. Third, a person who claims something to which she has a right does not thereby demean herself or undermine her grounds for self-respect or self-esteem. On the contrary, a person with proper self-respect and self-esteem would claim the things to which she had a right, unless she had a good reason not to. (p. 127)

I would agree with Copp to the extent that this describes many of the rights that are held by presently existing adult human beings. But Copp's conception both of a right and of a basic need is far too agential a conception to do the work that we need it to do. He views both rights and needs as things that 'can be claimed by the people who possess them'. This is clearly not true of needs, even if we take Copp's narrow view that needs are basic conditions for agency and autonomy. If one lacks something that one needs for agency and autonomy, it is quite plausible that one would be unable to claim it precisely because of this lack. It might also be said that the same applies to rights – those who lack freedom of speech cannot claim their right to it. Thus it would appear that agency and autonomy is not a condition for having a right, even among the less problematic examples that do not involve animals, future people and so on.

However, if one looks at to the more minimal features of a right that I have described earlier in this chapter and elsewhere in this thesis, it does seem to be the case that what we would usually regard as needs does fit the bill. Needs are 'subjective' in the sense that there

are subjects of needs, they are natural properties of their subjects, in that they do not rely on legal or political institutions to define or create them, and they appear to generate duties, in that (at least very often) they prompt action from states or individual moral agents. They also often make demands of a particular strength or urgency, and can have implications for the institutions of law and politics. They also do not necessarily have to be understood in terms of liberty, autonomy and rationality, although in the case of human beings, many needs will be understood in such terms.

One question that this raises is whether in fact we require the language of rights when we can talk about needs in this way. However, I feel that this may be something of a red herring. Rights have a history of describing the relationship between right-holders and the duties that are owed to them in a way that needs do not, and so it is at least arguable that the best way to talk about the moral demands of needs is through the language of rights. One person who objects to this approach is Onora O'Neill, who argues that the moral demands made by needs cannot be adequately captured by theories of rights (O'Neill 1998). However, many of O'Neill's objections are based on the points that rights must be capable of being claimed and being waived, a view that I have already argued against. She also argues that rights must be attached to assignable duties, and that this simply isn't possible in instances where massive global problems such as world hunger need to be addressed. However, some have attempted to address this problem. As we have seen earlier in the thesis, some deny that there is always a simple and easily explicable link between a right and a duty.[1] Some support the notion of what are sometimes pejoratively called 'manifesto rights', rights which prompt us to create and assign duties, while others have other ways of explaining how our rights can correlate to duties when dealing with complex global issues. Thomas Pogge, for example, thinks that some rights impose duties on everyone to participate in political institutions in

[1] See Ashford 2006 and Hayward 2005.

particular ways:

> Understanding human rights in this way does not turn them into manifesto rights: each member of society, according to his or her means, is to help create and sustain a social and political order under which all have secure access to the objects of their civil rights. This demand, so abstractly put, is unspecific but, within any particular social context, quite specific. In a society where domestic servants must often suffer inhuman and degrading treatment from their employers, citizens have a human-rights-based obligation to help institute appropriate legal protections as well as perhaps a literacy program or unemployment benefits. (Pogge 2002, p. 75)

The task of defining needs is not an easy one, and we will come to this in a moment, but an interesting feature that we see emerging here is that the content of the right (i.e. what it is a right *to*) begins to determine the structure of the right (how it generates duties). This may therefore be a way of getting around the problem that many of the accepted lists of rights might seem a bit arbitrary. Once the content and structure of a right become more clearly linked, the purpose of the right becomes clearer. If at least some rights are based on needs and the moral demands that they place on others, then this helps to determine both what such rights we should have and why we should have them. This I believe must be a feature of how we define a right if we are to escape the spiraling lists of trivial rights that we increasingly see people claim.

This is not to say that other theories of rights have not attempted to explain the specific rights that we have in terms of how rights are structured (and vice versa), the more rigorous ones certainly have. Hart's argument, that if there is one fundamental right it is the natural right of all people to be free, is based on the view that the very nature of rights is based in the fact that we are moral creatures, and that the only morality that can exist must exist against a background of autonomy (Hart 1955). Thus the essence of humanity itself and the view that there are moral rights implies that we must be allowed to be free. As I suggested earlier, this is only part of what it is to be human, and we delude ourselves if we regard ourselves as completely free and autonomous agents, but in a way what Hart is presenting here is (in a very loose sense) a needs-based view. He argues that we have a right

to be free because that is an essential element of what it is for us to be who we are. In order to be human beings we must be autonomous, and this is part of the reason why we must have a right to autonomy.

We might thus extend this view to say that we should be understood to have a right to access all of our basic needs. I have a right to eat and drink, and to be provided with shelter, because after all without these things I cannot survive, let alone be free or autonomous or any of the more abstract things that are thought to be essential to our humanity. Anything that we need to ensure our existence might thus be regarded as the content of a right. Need in this sense is understood in ontological terms. X's needs are those things that X needs on order to continue to be X (or possibly *an* X's needs are the things that that X needs in order to continue to be *an* X). We might take this a little further and speak about needs teleologically. Perhaps we have certain needs in order to function *well* as the types of being that we are. This is the approach taken by Martha Nussbaum, who argues that our needs, and the state's obligation to meet them, are based on what she calls a "thick vague conception" of a good human life (Nussbaum 1998)[1]. Nussbaum's account ultimately comes down to notions of reason and autonomy as definitive of human need, but we could imagine a teleological account of human identity and corresponding needs which does not rest upon these foundations alone (I will attempt to explore this to some extent in the next chapter). Both of these views can be understood in terms of identity conditions – what I need in order to continue to be me, and what I need in order to have a good life for the type of thing that I am. This view would have a number of positive things to recommend it, but also faces some serious potential problems.

On the positive side, a theory of rights placed within the context of needs may be a move toward a naturalistic explanation of rights. If a right is based on a need, or even *is* a

[1] A similar view is suggested by Len Doyal (1998) although this view is again based on conceptions of agency and autonomy in a very fundamental sense.

particularly salient aspect of a need to which we must respond, then it appears that we could potentially recognize right-holders and the rights that they possess by identifying their needs. As I previously noted, it also seems a good way to connect the content and the structure of a right and to avoid an ever growing list of seemingly arbitrary rights. We can challenge need-based right-claims (as opposed to, for example, promise-based ones – I do not maintain that *all* rights are necessarily based on needs) on the basis of need. In addition, this approach would not require language use or rationality of something in order for it to have rights. Animal rights would be unproblematic so long as animals can be considered the types of things that can have needs in the relevant sense.

There are however a number of potential problems with this approach. It may appear extremely demanding. This demandingness springs from the number of rights that might then impose duties upon us, the number of entities that we may have to class as right-holders, and (perhaps greatest of all) the extreme version of the right to life that this might imply. We would be faced with a great number of right-claims because the plight of the poor and starving would become a question of rights. We would have to recognize these concerns as creating concrete duties, rather than simply prompting benevolence or charity. A great number of entities might be classed as right-holders because (if needs are defined as some kind of identity condition) we might find ourselves asking questions about the rights of bacteria, trees, tables and chairs. The right to life might pose a problem because if one has a right to whatever it is that is essential to one's identity, then this might force us to extend lives at all costs in order for the right-holder's identity to persist.

*(12a) A Need-Based Right to Life*

So would a need-based theory of rights force us to extend life in this way? Of course, there is a sense in which it probably would not do so. There is no reason why rights of this kind would have to be completely indefeasible. At the very least, different rights might compete

for our resources since there is no way that we can possibly meet all needs. So perhaps extending someone's life, even if they have a very limited capacity to experience and act upon the world, would not be a duty if other need-based rights could overcome the right to a very limited kind of life.

Another consideration is that mortality is in some ways a very important part of our identities. If it were possible for us to extend life indefinitely, the immortal beings whom we would create would lack a very important aspect of what it is to be a human being. Thus the ending of our continued biological existence is not necessarily something that should be striven against at all costs, because the ultimate (albeit unachievable) goal of this would be to transform us into something that we are not. The concern therefore is not necessarily an indefinite temporal continuation of the individual, but the preservation, insofar as it is possible, of their integrity and identity. In the same way, although they may not be aware of it in the same way, death is part of what it is for any animal to be what it is. The continuation of life should not always be an ultimate and overriding right, because other rights can dominate it in so far as it stands, and the ultimate aim of such a right would be transformation, not preservation, of nature. Of course, none of this implies that there is no right to life, either for people or for animals. The claim is that because of the inherent finitude of life, its indefinite continuation could not be considered a need in any morally relevant sense.

*(12b) Too Many Right Claims?*

So perhaps a need-based theory of rights would not call upon us to extend life indefinitely. But what of the other extreme claims that it might make? If all identity serving needs are the basis of rights, then we would be faced with a great number of claims. A massive proportion of the world's population is living in poverty. Many millions of people suffer from debilitating illnesses; many more people are victims of physical or psychological abuse. In

some ways, all of these conditions impact upon identity in a negative way, whether it means not having the resources to do anything beyond day to day survival, or whether it means being emotionally crippled and robbed of the confidence or self-esteem that one requires in order to feel truly at home with oneself. Do all of these things constitute needs, and are they all the sorts of needs that generate duties in such a way as to create rights?

Of course, the demandingness of this theory of rights will depend to a great extent upon the identities of the duty-holders. Many people would think that a theory imposing a duty upon every individual to live just above the poverty line in order to serve the needs of the many millions of people in the world would be overly demanding. But not all rights are rights held against everyone. Some rights are held against specific people or groups in particular roles, such as governments, families or other people who might be considered to be in a position of moral responsibility. We should also note that if this is a problem for a needs-based theory, it is also a problem for many other theories which advocate positive rights (i.e. rights imposing a duty to act rather than to forbear from acting). If we hold that there are rights to many of the things listed in the UN declaration of human rights, then these rights will prompt many demands on people whether they are need-based or not.

Additionally, it would be possible to take a weaker position according to which there were negative need-based rights, but not positive ones. So a right based on a need to a livable environment may not impose obligations upon us to campaign for changes in international law, or to spend our weekends cleaning the streets. Rather it might just impose obligations on us not to damage the environment in a way that impacts negatively upon the lives of others.[1]

*(12c) The Wrong Sort of Claimants?*

The third point that I mentioned as a possible objection to a need-based view of rights is that

[1] Although many have made the case for positive rights in similarly demanding situations (e.g. Caney 2007).

if we understand needs in terms of identity – either in terms of some kind of teleology or goal, or in terms of continued existence – then this might lead to a whole set of rights-claims made on behalf of trees, rocks, bicycles, tables and so on. Some may wish to accept these claims and acknowledge that at least some of these objects, strange though it is to say it, might be talked about in terms of rights. However, I suspect that many more people would want to reject such conclusions. Animal rights perhaps, but bicycle rights no. Part of the way that we can answer this is in terms of whether the observed teleology or identity of the object is something imposed on it by human beings, or whether it has some form of internal organising principle that lends it its integrity. We can also help to unpick these notions by asking what types of identity we are concerned with. Identity can be understood on a variety of different levels: numerical, biological, psychological, narrative and phenomenological, to name but a few. Perhaps some, but not all of these levels are of the kind that can generate moral claims. These ideas will be explored further in the next chapter.

# Chapter 8 – Environment, Identity and Rights[1]

## 1. 'Essentially' Environmental Rights

In previous chapters I have raised the notion that while we may apply rights to life, liberty and so on in situations which have an environmental dimension, there may also be a stronger sense of an environmental right. A right where what is at stake is not merely one's Lockean negative freedoms or one's property, but rather a different and very deep relationship that the individual person or creature has with its environment. The involvement of environment in these cases is not a merely circumstantial or instrumental means by which some other right is honoured or violated, it is bound up with what makes the right a right. In this chapter I will expand on this notion with reference to theories of identity. The basic point is that, in certain circumstances, a violation of an organism or person's environment can be a violation of the organism or person *itself*. This means that we are considering the possibility of environmental rights which are based on the idea of preserving the integrity, wholeness or flourishing of the right-holder, rather than by referring to something external to that organism to which the organism has a right. This ties in with the discussion in the previous chapter about need-based rights. If we understand my needs either in terms of what I need in order to continue to be me, or in terms of what I need in order to have a good life for the type of thing that I am, we would need some kind of theory of identity. A right based on these types of need would ultimately be a right against fragmentation, or a right to self-realisation of some kind.

[1] Many thanks to Thom Brooks, Beth Hannon and John and Judy McKinnell for their lively and helpful suggestions and comments on this chapter.

One reason why we might wish to consider the possibility of essentially environmental rights is that we condemn environmental degradation not simply on the grounds that it is deleterious to certain external human (or non-human) needs, interests or projects in a simple causal fashion, but also because of the perceived degradation of the environment itself. Having said this, we are in very controversial territory when we start to talk about 'intrinsic value' in nature, in the sense that the value is entirely independent of human or animal interests. This might prompt us to look to some sense in which a human being or animal's environment is important for them in terms that are closer to its sense of self or identity than its purely instrumental value can account for. A violation of an environment is not simply wrong because it thwarts some other interest, but because that environment *in itself* is important *to us as us*. At present, this is a somewhat vague and indistinct notion. The 'self' is not necessarily identical with the 'sense of self', and there are many different ways of formulating what I mean when I refer to my 'self'. The bulk of this chapter will be concerned with how some of these notions might be clarified and fleshed out in terms of concepts of environment. After this, I will attempt to articulate how this might be important to moral theory and theories of rights.

One way of understanding these notions might tie in with David Cooper's 'older' conception of environment as a field of special significance and meaning to the creature whose environment it is. Thus we would be talking about a right concerning vital aspects of our identities which cannot be described purely in terms of our liberties or even purely in terms of our rationality. In developing his theory of rights, Hart looked deep into the notion of what it was to be human, and found autonomy and rationality at its core. This for him tells us what elements of the self should be dignified with the ascription of rights. But perhaps there is more that is central and fundamental in this sense than Hart identifies. Perhaps the

very heart of the self is indissolubly bound up with its environment and its dependencies as much as it is with its rational autonomous independence.

Later in the chapter, I will suggest that we might consider environment as the content of a right in much the same way as we do liberty, because both play similar roles in our identities, but for now let us consider David Cooper's understanding of an environment in a little more detail:

> On that conception, an environment is what a creature knows – and knows in a certain way... The relevant kind of knowledge is practical, unreflective familiarity. (Cooper 1992, p. 169)

> A further essential feature of a creature's relation to its environment needs to be brought out. To speak in the language of phenomenology, this relation is an 'intentional' one. An environment, that is, is something for a creature, a field of meanings or significance. It is not simply that its environment matters to the creature... The point is rather, first, that the items in one's environment are those which are brought into relief, 'lit up', through occupying places within one's everyday practices... second, that the items within it signify or point to one another, thereby forming a network of meanings. It is this which confers cohesion, a certain 'wholeness', on an environment. (Cooper 1992, p. 170)

So when we talk about an environment on this conception, we are talking about a realm of 'practical, unreflective familiarity' and furthermore, a 'field of meanings or significance' which is bound up with one's practical activity and internally cohesive in the sense that Cooper conveys. The link between human/animal activities and environment is thus a strong and nuanced one. It is a small (but nonetheless significant) step from this assertion to the claim that environment is at least in some sense partially constitutive of the self.[1] Not only is our environment a realm of special significance for us, but we are diminished, made less as individuals, through the privation of it. Consider for example David Brower's evocative description of a condor:

A condor is 5 percent feathers, flesh, blood and bone. All the rest is place. Condors

[1] A position of this kind is presented in Freya Matthews' book *The Ecological Self* which understands human and animal identity as fundamentally bound up in its environment. Matthews is however more committed to an holistic account of the earth and the cosmos than the arguments in this chapter would require. Matthews' position is compatible with the views presented here, but is not a necessary consequence of them. (Matthews 1991).

> are soaring manifestations of the place that built them and coded their genes. That place requires space to nest in, to teach fledglings, to roost in unmolested, to bathe and drink in, to find other condors in and not too many biologists, and to fly over wild and free. (Brower 1981, p. 275)

The implication is that the condor's environment is not simply something outside the condor which has its own wholeness and cohesion by virtue of its significance to the creature. Rather, to talk about the condor *is* in part to talk about the type of environment that it inhabits. If we were to remove the condor from the environment of which it is a 'soaring manifestation', we are left with the five percent that is feathers, flesh and bone. In a sense, we would no longer have a condor at all, but a diminished fragment of one. Removal of a creature from its environment can be a fragmentation of its unity, a destruction of the integrity of its very being.

One question that this raises is whether we are talking about the importance of the species or the importance of the individual. After all, the place that has "space to ...fly over wild and free" seems to be an essential aspect of what it is to be a condor, and not to be a *particular* condor. Do we want to extend our analysis of what can be violated this far, or would it be safer to stick to isolated individual units of sentience? I will not rule out the possibility that we may be able to attribute rights to species, but this may not be a necessary consequence of this way of articulating the condor's relationship to its environment. The environment is important to the condor in a particular way because it is of the species that it is. Thus species can have an important role to play without being in itself a moral patient or right-bearer. Additionally, we can say that species, like environment, is indissolubly bound up with the individual, presenting us with a threefold interdependence. An environment (in Cooper's sense) is incoherent without a creature whose environment it is, the creature when estranged from the environment is estranged from itself and from what it is to be a member of its species, and the species is non-existent without individuals (although, as I claimed about groups in chapter five, it does not rely upon the existence of any *particular* individual) and is

diminished through estrangement of individuals of that species from their natural environment.

For all this to be true, our environment, or our relationship with it, must be integral to our identity, but what might we mean when we talk about something having significance for identity in this way? Identity can be understood and interpreted in a great many ways. We might mean simply numerical identity – the type of relation that any object bears to itself. Or we may be talking about *personal* identity, and if we are, we might understand this identity biologically, psychologically, or in terms of narrative. The type of identity that we are talking about is going to affect whose environment can be violated, in which ways, and with what moral implications. This might help to illuminate what we mean when we talk about concepts such as benefits, needs or interests which might be thought to ground rights.

## 2. Qualitative and Numerical Identity

Identity in its most general sense in philosophy is understood as the relation that makes things identical. This can be meant in two ways. Qualitative identity is a term used to describe objects which share common qualities or properties. This is a relative term, in that objects can be qualitatively identical to a greater or a lesser extent. So, for example, two organisms of the same species and genus will exhibit a higher degree of qualitative identity than two organisms of different species or genera. Leibniz's law implies that two objects which have total qualitative identity (i.e. they share *all* their properties in common, including spatial and temporal location) are in fact the same object. That is, they are *numerically* identical. (Leibniz 1969) Numerical identity is used to describe the relationship that something has to itself, and this is often understood in terms of how the identity of a given object persists over time: what it is that makes the pen on my desk the same pen that was in my pocket yesterday, and not just a pen of the same physical appearance and made of similar materials.

Qualitative identity may be helpful to some extent, in that it can potentially give us tools to talk about how individuals fit into categories such as species, genus, culture etc. It can also be used to rank organisms as sentient or intelligent to a greater or lesser extent than each other (in a given respect, a pig may have a higher level of qualitative identity with a human being than an ant, but a lesser degree of qualitative identity with a human being than a bonobo). However, this is a fairly straightforward thought, and not altogether in line with what we need from a theory of identity. Even if qualitative identity helps us to describe what a species *is,* it doesn't on its own help us to understand what might be meant by the unity, wholeness or integrity of a species, organism or person. To do this, we need a theory about what makes the species, organism or person *itself,* and not just about how it relates to others.

Can numerical identity be any help to us? Certainly, we are asking questions about what makes a person or a creature that person or creature, and what it is for that identity to be eroded or fragmented. However, theories of identity of objects as famously understood by Frege and Quine can only get us so far (Quine 1963, Frege 1969). It makes no substantial difference according to these theories whether we are talking about the numerical identity of a rock, a bicycle, a plant, a monkey or a man. We need a specific account (or some specific accounts) of identity that describe a 'thicker' sense of identity than the rather thin and abstract concept of numerical identity can accommodate. We need an account that distinguishes the sort of identity that people have from the sorts of identity that inanimate objects have. Unless there are further moral consequences, nobody would accuse me of performing an immoral act if I deconstruct my bicycle and sell its constituent parts. There has to be something that confers a special kind of identity on humans (and perhaps on other organisms) that numerical identity cannot cover. To put it differently, we are looking for something rather more akin to a theory of *personal* identity.

## 3. Personal Identity

We need to understand why it is important to maintain the integrity of identity of humans and some non-human animals, but not of bicycles or rocks[1]. This must be something closer to what is meant by personal identity, although it would be very hasty to assume at this point that identity of the relevant sort can only be displayed by those whom we might categorise as persons. This is because 'person' may be taken to be a purely moral category, denoting those organisms to which we afford special moral importance. For example, in his article 'Abortion and Infanticide', Michael Tooley uses the term "as a purely moral concept, free of all descriptive content." (Tooley 1972, p. 40) and James Rachels and William Ruddick have very little time for the concept because it is a "prescriptive or normative notion with pointedly little descriptive content" (Rachels and Ruddick 1989, p. 225).

According to these interpretations, 'person', if we are to use it at all, assumes that those whom we label 'persons' have a special type of moral status. But as we have seen, there are some who would regard trees, species and ecosystems as morally important in their own right, and even if we agree with them it would still seem a leap too far to describe these entities as persons. To use a term such as 'personal identity' to describe the types of identity that we regard as morally important would thus put us in danger of begging the question.

## 4. Biological Identity

The entities which are regarded as having moral importance in their own rights are usually biological, at least in part. Humans, animals and plants are all biological organisms, and ecosystems, environments and the much heralded Gaia, while not necessarily to be considered wholly biological, have biological components which are essential to their

[1] There are some thinkers who argue that natural objects such as rocks do have some kind of moral standing, such that there is a prima facie demand that we protect their integrity. My aim here is not to dismiss such views, but rather to attempt to establish why, in normal discourse, we do not regard inorganic natural objects in this way. I wish to identify some feature of humans and animals that distinguishes them from 'mere things', in that they are proper objects of moral regard. Later I will claim that we may be able to attribute moral importance to some 'mere things' (I will give the example of Ayers Rock) in terms of the roles that they play in human or animal identities, although this will not amount to describing them as being the proper subjects of *rights*.

function and identity. Thus it seems that biological theories of identity may be one very sensible place to start. Some thinkers regard the significant criterion of human or personal identity to be a biological one, and human lives thus to be understood as biological lives. They argue that "we are essentially human animals, not minds or persons, and that our persistence conditions are biological, not psychological." (DeGrazia 2005, p. 8). What is meant by the claim that we are essentially biological entities, rather than psychological ones? David DeGrazia's answer is that what we are essentially is the thing that we cannot cease to be and still remain us. He gives the example of Ariel, a college student. At some point in the future she will cease to be a college student and yet remain herself. DeGrazia maintains that she is still herself as long as she is the same biological organism:

> Ariel can exist qua *person* only if she retains... mental life. But, if I am right, Ariel can exist, even as a nonperson, so long as the human animal that she is, survives – in which case continuing the life of a particular human animal is her de re persistence condition, and being a particular (living) human animal is her essence. In general, X is an essential property of a thing if that thing cannot exist without having property X. If property X is both necessary and sufficient for the thing's existence, then X is the essence of that thing. ( p. 29)

DeGrazia provides five related major reasons for supposing that we are essentially biological, rather than psychological (personal) entities:

1. The "*fetus problem*": It makes sense to say that I was once a foetus. Foetuses lack psychological capacities, so there once was an entity that was me but was not a psychological person.
2. "*The problem of explaining the relationship between you, the person, and the early human organism*": What happened to the foetal predecessor when the person emerged? It doesn't seems a fair description to say that it died, which is how we understand the end of a biological life, but to say that its existence continues would be to maintain that two numerically distinct beings are associated with one body, which also seems implausible.
3. "*The challenge of explaining the relationship between you and the permanently unconscious being that will succeed you if you enter a PVS* [Permanent vegetative state] *before biological death occurs*": If personhood ends when psychological capacity ends, how does the biological organism that exists in the PVS originate? It does not appear to have come into being in any of the usual ways that we understand the origins of biological life.
4. "*The problem of implying that we are not animals*": In the case of the PVS, we might maintain that the person has died, but the biological animal persists. This implies that

the person cannot *be* the animal. The person is therefore not an animal, "apparently contradicting biological fact"

5. "*A problem about counting conscious beings*": we generally presume that "higher" animals are conscious. If we suppose that we are persons rather than animals (see above) there would appear to be two conscious beings, one a person, one an animal, coexisting in the same physical space. (paraphrased from DeGrazia 2005, 31-32)

There is not time here to analyse these arguments in great depth, and they are not without their flaws (what, for example, if we were to suppose that the foetus is not *me*, but merely something that changes into me?). But it is certainly true that even if we are not at the most fundamental level biological entities, whatever type of existence we have is usually contingent upon our biological existence, and biological factors will have an important relation to whatever type of identity that we do have. Theories of biological identity might fit well with much of the work that has been done by many authors to support the moral status of animals and to develop an environmental ethic. A view which identifies us as human organisms suggests a degree of continuity with other life on the planet which cannot be supported by more dualistic approaches. This notion of continuity is often regarded as more environmentally ethical than views which make stark distinctions between man and nature, although as I argued in chapter four and elsewhere, it is not necessarily the notion of a duality that is destructive, rather it is the way in which dualisms can on some occasions lead to unnecessary divisions and simplifications.

So according to a biological view of identity, what determines the continuity of my identity over time is the continuity of a certain set of biological processes. So how are we to understand these processes and the ways in which they determine identity? The following is Eric Olson's answer to this question:

> The parts of an organism, like those of a fine watch, are connected together in such a way that each has a role to play in enabling the organism to achieve its ends—survival and reproduction. No part can fulfil its function without the others; the entire structure will collapse... unless all or nearly all of its parts do what they are supposed to do... it seems reasonable to say that a living organism is anything that has these "life-giving" features—metabolism, teleology, organized complexity—and whatever further properties necessarily go along with them, such as self-directed growth and

> development, an internal genetic plan, low internal entropy, and perhaps the capacity for evolution by natural selection. (Olson, 1997, pp. 128-130)

So, according to Olson, the important features that we are looking for must be a complex interweaving of dynamic systems which interact to ensure the survival (and perhaps reproduction) of the organism. The different systems are all significant to one another's functions, and together form one self-sustaining structure. This can be distinguished from, say, a human kidney removed from a body and kept 'alive' by a machine. The kidney does not behave as any kind of self-directing or self-sustaining unit. Olson also articulates the concept of an organism through setting it in contrast to its environment. An organism is a unified whole which has a "self-controlled boundary" through which it interacts with its environment ( p. 130).

Olson explains the intuition of the importance of the brain in identity, not in terms of a psychological theory of identity, but rather in virtue of the special organising and sustaining role that the brain plays in the function of the body. He argues that were we to remove an organism's brainstem and add an artificial brainstem that would fulfil its functions (even in the presence of almost complete psychological continuity) the identity of the organism would not persist because it would no longer be self-regulating and self-sustaining. The artificial brainstem is not a part of the organism, and nor is a pacemaker or a dialysis machine:

> It makes no difference whether the machine is inside your skin. The Jezail bullet Dr. Watson carried around inside his shoulder was never a part of him. Strictly speaking, it was a part of his environment. We cannot add parts to an animal by implanting rocks into its abdominal cavity. And what goes for your dialysis machine and Watson's bullet goes for the artificial brainstem as well. It is not caught up in the metabolic processes going on in Tom's headless remains; so it is no more a part of any living organism than your dialysis machine is a part of a living organism. Thus, there is no animal made up of Tom's headless remains together with some mechanical or electronic contraption. ( p. 135)

But is Olson correct in drawing so stark a division between the living organism and its environment? Perhaps the notion of a self-regulated 'boundary' which marks where the living organism ends and its environment begins is altogether too convenient. A theory

which states that we are biological entities must take some account of biological theories about what an organism *is.* Many such theories reject the view that an organism (or at least the proper object of our concern when examining organic life) is a neat parcel of organs wrapped in skin which forms a clear boundary between the internal organism and its external environment.

To take a parallel from a non-biological account, compare the way that David Cooper describes an environment with its networks of meaning and signification conferring wholeness, and the description of the biological organism quoted from Eric Olson, according to which an organism's biological processes are interwoven and mutually supportive 'like those of a fine watch'. There does seem to be some case for arguing (against Olson) that, just as the functioning internal parts of an organism might be considered to be criteria of its identity, elements of its external environment which perform a similar role may be just as important in understanding that organism's identity. It might therefore be argued that we cannot decouple the organism from its environment in this way, and that its identity extends into the world. It can be responded that Cooper is discussing an organism's *intentional* relationships with its surroundings, while the types of processes that Olson describes are on a different, *biological* level. This is certainly true, but as we will see, similar claims may be made about an organism's biological relationship with its environment.

These claims can be made with varying degrees of strength, making the environment more or less integral to the identity of the organism and in a variety of different ways. To illustrate the point, let us imagine we were to meet someone who had never heard of a tiger. We want to demonstrate to them what it means for something to be a tiger. We might take them to the zoo so that they could see tigers close at hand. They would soon ascertain that a tiger was a large, striped creature with four legs and whiskers. But what would the experience of seeing the tiger in a zoo teach them beyond that? They might suppose that a

tiger is a type of creature that walks around in small circles and that eats meat that has already been slaughtered by another creature. If we really want to demonstrate what a tiger is *actually like*, we must show it in its natural habitat, the place in which it has evolved, where it exhibits traits and behaviours that we regard as natural to that creature, rather than imposed from outside.

> Roberts of Born Free USA ..says ..."Money spent on zoo tigers should be spent on protecting habitat for wild tigers. "There's an expenditure of millions if not tens of millions of dollars on captive tigers. *If we really want tigers and not just a shell of the beast we call the tiger, the real emphasis needs to be first and foremost in the field*." (McCarthy 2008, emphasis mine)

This view is not confined to animal rights activists and environmental campaigners, but is also (as we shall now see) important to the methodology of biological research.

*(4a) Evolutionary Theory*

Although external factors *have* in some way shaped the tiger's evolution, and its natural traits are products of external influence, they have over countless generations been internalised in the very coding of the creatures. Evolution dissolves the distinction between what is internal and external to a creature. The outside environment has been internalised. The distinction between the creature and its surroundings is only made sharp when the surroundings do not resemble the natural environment of the creature and have not been internalised in this way. This thought is in line with Richard Dawkins' 'extended phenotype' thesis, which argues that a creature's phenotype (the observable characteristics of an organism) cannot be understood as existing within the boundaries of the flesh of that creature, but rather extends out into the creature's environment. (Dawkins 1982) He considers the case of a caddis fly, which builds a shell from minerals that occur in its natural environment. Dawkins argues that in any relevant sense, this 'shell' is no less a part of the organism's phenotype than the shell of a snail or a mollusc.

Other theories in biology go even further than this, suggesting that not only is natural selection a means by which organisms are able to internalise their external natural environment, but that the causal links between the organism and its environment are more complex and reciprocal than Dawkins' theory can accommodate. Developmental systems theory argues that genes are only one aspect of a large developmental system, in which organisms and the environment mould and develop one another. We should thus look beyond the internal biology of the individual to the whole system. This then is not simply a case of the external environment being internalised in the genetic coding of the individual and species, or influencing the individual's phenotype. The environment in its raw, uncoded form is inextricably bound up with the creature's development and identity, and in turn, the creature changes and develops the environment of which it is a part.[1]

For example, Richard Lewontin argues that the Darwinian method of viewing the organism unrealistically alienates it from its external environment "by making an absolute separation between the internal processes that generate the organism and the external processes, the environment, in which the organism must operate" (Lewontin 2000, p. 42). Instead, he argues that a central feature of biological organisms is that they do not exhibit a rigid boundary between what is external and what is internal:

> The softness of the boundary between inside and outside is a universal characteristic of living systems... At every moment natural selection is operating to change the genetic composition of populations in response to the momentary environment, but as that composition changes it forces a concomitant change in the environment itself. Thus organism and environment are both causes and effects in a coevolutionary process. (pp. 125-6)

Lewontin provides a great number of biological examples to back up his case, but in a sense, he is saying nothing that we do not already know once we consider it. We are, and have always been, aware that life on this planet (human and otherwise) is active upon its

[1] The thoughts in this thesis on evolutionary theory owe much to some suggestions from Beth Hannon, for which I am very grateful. I am also indebted to Beth for the thought that work on extended cognition could be relevant to this thesis.

environment. To take an example from non-academic life, farmers have practised crop rotation to maintain the condition of the soil for centuries, indeed in some parts of the world for thousands of years[1]. This would not be the case if it weren't for practical knowledge about the ways in which plants can alter the environments in which they grow. Even when many farmers replaced crop rotation with intensive agriculture in the aftermath of the second world war, they recognised the effects of organisms upon environments in the application of far greater quantities of artificial fertilizers to replace nutrients lost from the soil, and now many of the disadvantages of this type of monoculture are being increasingly recognized, hammering the point home even further. This may be taken as an underestimation of the radical nature of Lewontin's claims, but this is not the case. My point is that the view of organisms as simply passively influenced by their changing environments has never held sway in practical life in the way that it frequently has in evolutionary theory. This reinforces the need for a new way of regarding biological organisms that tallies with the way that we have always known them to behave.

Not only have we been aware for millennia of the effects of organisms upon their environments, we have also been aware at least since Darwin and probably before, of the extent to which environments shape organisms.[2] Over the course of the twentieth century, it has become increasingly apparent how intimate these two-way relationships are. In a sense then, Lewontin's thesis has given a definite shape to a growing body of biological research.

So if we take developmental systems theory, or indeed the extended phenotype thesis, seriously, then Olson is rather quick in his supposition that biological organisms have clear,

[1] While usually associated in this country with the middle ages and the subsequent developments during the British Agricultural Revolution, there is evidence of crop rotation of various kinds in ancient Greece and Rome (White 1970) receiving even a brief mention in the first book of Virgil's *Georgics* (Virgil 2004, I, 43-49 and 63-70). It is also thought to have origins in parts of Africa and Asia (see the *Encyclopedia Britannica Online*, 2009 entry on "Crop Rotation") with significant developments during the Arab Agricultural Revolution in the eighth to thirteenth centuries (Watson 1983).

[2] To give an early example, the ninth century Islamic scholar Al-Jahiz writes about the role of environment in determining the features of animals, and a 'struggle for survival' in his *Book of Animals* (Zirkle 1941).

self-regulated boundaries that distinguish them sharply from their external environments. To a greater or lesser extent, our biological identity appears to be at least partially constituted by our environment. The old hegemony of internal 'self' and external 'other' does not seem to describe the world as many biologists observe it. For this reason, if we are to embrace DeGrazia and Olson's thesis that we are essentially biological entities, our essential identities are fundamentally bound up in our environments.

**5. Psychological/ Cognitive Identity**

But biological theories are by no means the only (or the most popular) way to understand personal identity. Even if it is true that in a certain basic sense we are essentially biological entities, this does not necessarily mean that it is this biological identity that is of most fundamental importance to our moral or practical concerns. The fact that I was once a foetus and may one day be in a PVS does not automatically imply that the 'me' that existed then and may exist in the future is worthy of the same level of moral consideration as the 'me' that exists for the time that I am conscious. We should not confuse the sense of 'essential' which refers to a thing's essence with the less technical sense of the word that refers to what is of utmost importance or what must be done. Our biological identity is certainly important – I have written here and in previous chapters about the dangers of forgetting that we are animals or a part of the natural world – but it is not going to tell us the whole story about what matters to us and about us as people and as creatures of the world.

Proponents of biological criteria of personal identity are often arguing in response to neo-Lockean psychological theories of personal identity. According to such theories, the main criterion for identity (and the persistence of identity over time) is mental – psychological or cognitive – and commonly understood in terms of the persistence of memory. What makes me myself is a particular set of stable personality traits, ideas, memories, or a continuous relation or flow of these traits, ideas or memories. We might

expect theories that situate identity in the mind to place less importance on the person's environment as an aspect of his or her identity. This is clearly going to be the case if we hold the view that what determines my identity is my consciousness, or the thoughts and impressions that occupy what we might regard as the 'foreground' of our minds. My environment might be reflected in my internal consciousness, but this is a world away from saying that it is a *constituent* of it. My environment, while I am often aware of it, does not itself form part of my being aware, part of my subjectivity. How can it be? Trees, buildings and rocks cannot experience things, so how can they be part of this mysterious inner 'me' that is defined by my experiences?

To answer this, we need to realise there are considerable problems with understanding identity just in terms of the things of which we are conscious. There are recognised problems with a Lockean memory-based account. A person can arguably persist through memory loss if they retain certain values and character traits:

> Though it is memory that makes us aware of our own continued existence over time, the various other continuities [values, character traits etc.] have great importance. We may believe that they have enough importance to provide personal identity even in the absence of memory. (Parfit 1984, p. 208)

A feature of these background traits and dispositions is that we are not always consciously aware of them. My set of values does not occupy the foreground of my consciousness at any given moment. Indeed, in the case of certain things that we might regard as constitutive of a person's identity (personality traits, talents etc.) they may never be apparent to the person in question, but only to external observers. It would seem that a plausible mental or psychological account of personal identity must involve more than simply the conscious experiences or memories of the person in question. In fact, many psychological theories would claim that a great deal of what is significant about a person's individual identity relates to what goes on in their 'subconscious' mind. If this is the case, is it still plausible to say that

such an account of personal identity must preserve a sharp boundary between the self and the environment?

*(5a) Extended Cognition*

Psychological theories of personal identity might initially be thought to retain a sharply drawn distinction between self and other. Such a view is not immediately incompatible with Lewontin's views about biological organisms, since if we do not hold a biological criterion for personal identity, we need not assume that everything that can be true of how biological organisms are defined is true of how we define ourselves. Thus we could agree that an organism's identity is partially constituted by environment, but reject the notion that this holds true for the psychological self. Perhaps the natural conclusion of such a view would be that non-sentient organisms are best understood in terms of their environments, but that the most striking or relevant features of sentient beings (and perhaps especially human beings) are not to be understood in this way.

There are a number of points that can be made against this type of view. Firstly, to say that our most striking or relevant features are psychological ones is not the same as the denial that we have any other important features. The assumption that what should be most valued or prized about my being is whatever goes on in my mind does not provide reasons to reject altogether the importance of my existence as a biological organism. It might be claimed that what matters *about* me is psychological, but what matters *to* me and *for* me is often not. My very psychology is bound up with the interests that I have in my physical and biological being. If that physical and biological being extends beyond the boundaries of my skin, then so does the extent of my self-interest. In this sense the biological organism does matter to my identity, all the more so because the psychological self identifies with it. For example, the psychological self usually has a gender that conforms to biological sex.

A second reason to reject the stark distinction between self and environment on the psychological model is that aspects of the mental, as well as the biological, may extend beyond the brain and skull and into the environment. The environment might be thought to be an essential aspect of one's identity if, for example, it plays an essential role in one's cognitive processes. This claim may be asserted with varying degrees of strength. At its most minimal, it may take the form of the view that at least some important cognitive processes and activities are only possible if the mind is allowed to interact with certain features of the external environment. In a more radical form, it might be argued that the mind itself is extended beyond the skin of the individual organism, and hence that the self is constituted in part by features of its environment.

The weaker claim could be supported by anyone who believes that many of our cognitive processes are dependent on what we encounter and observe. So, for example, if it is thought that we would not be able to have certain ideas about number or categories in the absence of an observable environment, then the environment is essential to many of the important functions of our cognitive processes. A human being or a non-human animal without certain things in their environment would not be a human being or whatever type of animal that they are in the absence of certain features of their environment that allow them to develop cognitive characteristics that we attribute to that type of creature. They would be in a sense cognitively incomplete, fragmented or deficient without these features. What would be violated by removing them from their environment, or destroying their environment, would be things that are central to their flourishing and their identity. Environment would therefore be regarded as a necessary condition of the type of life that we recognise as valuable.

The stronger claim calls upon theories of extended cognition to a much greater extent, arguing that features of the environment are not just prerequisites for the function of certain

cognitive processes, but are actually themselves functioning parts of those very processes.[1] This is very much the type of theory suggested by Andy Clark and David Chalmers (1998). They suggest that we should adopt an "*active externalism*, based on the active role of the environment in driving cognitive processes" (p. 1). What Chalmers and Clark mean by this is that aspects of the environment are not just props that cognitive processes latch on to, rather, the way that we shape the external environment and that it feeds back into our cognitive processes give it a much more integral and active role:

> The human organism is linked with an external entity in a two-way interaction, creating a *coupled system* that can be seen as a cognitive system in its own right. All the components in the system play an active causal role, and they jointly govern behaviour in the same sort of way that cognition usually does. If we remove the external component the system's behavioural competence will drop, just as it would if we removed part of the brain. Our thesis is that this sort of coupled process counts equally well as a cognitive process, whether or not it is wholly in the head. (p. 2)

This is in its own way a very radical claim. If it is true, what we have grown up to regard as our internal private realm actually extends out into the world. Even our mental processes cannot necessarily be regarded as 'internal' in any meaningful sense. Clark and Chalmers are quick to point out that extended cognition does not necessarily imply an extended consciousness, which as we have already seen seems far less plausible, but what it does imply is that thought itself is not an entirely 'internal' process. They back this view up with support from the cognitive sciences, and on the grounds that it provides a simple, natural explanation for many mental processes in which we engage. To take an example likely to be familiar to anyone reading this thesis, consider Matthew Ratcliffe's application of these ideas to the process of writing a piece of academic work:

> To produce the final draft of this chapter, I used external resources in a variety of ways. Many of the ideas were generated by engaging with others' work and discussing ideas with them. I did not retain these ideas 'in my head' but took detailed notes of references, quotations, claims, arguments and a range of my own semi-developed views. I then sat at a computer, surrounded by a nest of notes, sketched a

[1] The use of terms such as 'function' and 'processes' are not intended to suggest a mechanistic approach. I use them because they are commonly applied in philosophy of mind, but it would, I suggest, be a mistake to take these metaphors too seriously.

> rough plan, added in some key quotations, elaborated some points, wrote a few successive drafts, used a computer spell-checker, printed out the finished product, marked certain passages and made critical notes, typed out a revised draft, read the book as a whole and then further fine-tuned this chapter. During the process of writing and rewriting, ideas came to me that I had not thought of before, as though the act of writing itself were partly responsible for their genesis. Furthermore, while reading through a printed draft chapter, I found myself able to see ambiguities and weaknesses in the argument that I had not been aware of before writing it or while writing it. (Ratcliffe 2007, pp. 109-110)

Ratcliffe observes that the cognitive processes involved in formulating his ideas do not all seem to happen purely 'inside his head'. There is an interplay between mind and the external world that generates his thoughts, even at the abstract level of writing a chapter in a philosophical work.

But recall that many theories of psychological identity revolve not around cognitive processes as such, but around things such as memories, dispositions, values and beliefs. Does the view that some of our cognitive processes extend into the environment mean that the *mind itself* - or whatever we believe it is that has these memories, dispositions and so on - is extended? Clark and Chalmers believe that it is, or at least that it can be. They argue in particular that our beliefs can exist in the 'external' environment, rather than in our minds. They use the example of Otto, an Alzheimer's disease sufferer, who keeps vital information in a notebook that he carries with him at all times. The notebook plays the role for Otto that biological memory would usually play. So, if he hears of an exhibition that he wants to go to at the Museum of Modern Art, he checks his notebook for the location:

> Clearly, Otto walked to 53rd Street because he wanted to go to the museum and he believed the museum was on 53rd Street. And just as Inga had her belief even before she consulted her memory, it seems reasonable to say that Otto believed the museum was on 53rd Street even before consulting his notebook. For in relevant respects the cases are entirely analogous: the notebook plays for Otto the same role that memory plays for Inga. The information in his notebook functions just like the information constituting an ordinary non-occurrent belief; it just happens that this information lies beyond the skin. (p. 6)

This is not just how things are for Otto, an Altzheimer's sufferer. It has been widely observed by many folklorists that their informants from non-literate oral traditions have

enormous aural memory capacity. Most people in literate societies do not share this capacity because we have transferred the material that would have been 'stored' in our memories 'beyond the skin' to written media.[1] This suggests that it is commonplace to use features of the external world in roughly the same ways that we use some of our 'internal' mental faculties. A natural conclusion to draw from this is that we need, to some extent, to rethink how we understand the identity of the *self*. If we accept a psychological or cognitive theory of personal identity, and our psychology and cognition, and if my thought processes do not end at the boundary of my skin, this suggests that elements of my self are continuous with my environment. This conclusion is touched on by Clark and Chalmers:

> What, finally, of the self? Does the extended mind imply an extended self? It seems so. Most of us already accept that the self outstrips the boundaries of consciousness; my dispositional beliefs, for example, constitute in some deep sense part of who I am... To consistently resist this conclusion, we would have to shrink the self into a mere bundle of occurrent states, severely threatening its deep psychological continuity. Far better to take the broader view, and see agents themselves as spread into the world. (p. 9)

Note that this view about psychological or cognitive identity appears to be a direct mirror of Lewontin's views about biological identity. Not only does the environment play an important role in determining the identity of the individual, but this is a two-way process. The sense in which the boundary between individual and environment is eroded is created by the fact that the individual alters and adapts their environment, which in turn plays an important role in altering and adapting the individual (this is what is meant in the earlier quotation by a 'two-way interaction, creating a coupled system that can be seen as a cognitive system in its own right'). Note also that the views to which these theories are responding appear to contrast with each other. Lewontin's views about the role of biological organism, gene and environment are presented in response to a view in which the environment is active, "the organisms themselves being nothing but the passive medium through which we see the

[1] I am very grateful to John McKinnell for this example. See Bowra (1966, pp. 429-30) and Ong (1982, p. 146) for specific examples of this phenomenon.

external world" (Lewontin 2000, p. 44). Clark and Chalmers by contrast argue against a 'standard' version of externalism, according to which "the relevant external features are passive. Because of their distal nature, they play no role in driving the cognitive processes in the here and now" (p. 2). This is significant if we believe that there ought to be some kind of parallel between what we observe at the biological level and what we observe at the cognitive level. Whether this would be a reasonable supposition is not something that I can comment on in significant detail, but we might have some reason for holding that, if cognitive processes supervene on biological ones, we might expect to see parallels between the two in these respects. If this is the case, then an active externalism coupled with a developmental systems approach might seem more harmonious than a 'standard' externalism combined with a 'standard' Darwinian biology. Indeed, if we want to retain the notion that there is *some* validity in both the Darwinian approach and the 'standard' externalism, we might well wish to modify both of these views by introducing the notion of a two-way process, rather than simply denying the active force of either the organism or its environment. Were it simply a one-way process, the distinction between what is internal and what is external, what is active and what is passive would remain, but once the process is understood in terms of 'coupled systems', these distinctions become less significant.

Clark and Chalmers also briefly mention that theirs could be a view with ethical and social implications, suggesting that "it may be, for example, that in some cases interfering with someone's environment will have the same moral significance as interfering with their person" (p.9). This would of course only apply in cases where aspects of the environment are in fact - or could be predicted with a high degree of probability to be in the future - part of someone's cognitive processes. Not only must this be the case, but we may also suggest that this is only true when something else that is readily available cannot do the same job, and where the cognitive processes involved are central or important aspects of the person's

identity. Nonetheless, the notion that our selves extend into the environment, and that this can have serious moral implications, is a powerful one, and potentially a way of understanding ourselves that could have very positive implications for environmental philosophy. As Clark and Chalmers put it, "once the hegemony of skin and skull is usurped, we may be able to see ourselves more truly as creatures of the world" (p.9).

## 6. Narrative Identity

Some theories of personal identity portray a person's life as an ongoing self-written narrative. Thus we should see human identity in terms of the cohesive ongoing narrative that an individual creates. It is argued that this approach accounts for our usual practical concerns in a more convincing way than other accounts of identity:

> The question "What am I?" seldom arises, except among the very philosophical. The question "Who am I?" is more common. It *might* raise the issue of numerical identity but, if someone asks the latter question in earnest, she probably suffers from amnesia or another mental disturbance. The more ordinary sense of "Who am I?" inquires about one's identity in a familiar sense of the term that we may call *narrative identity*. Such related questions as "Who shall I become?" or "In what direction should I take my life?" ask about what we may call *self-creation*. (DeGrazia 2005, p. 78)

DeGrazia's view is that numerical identity, understood in a biological way, is necessary in order for us to pursue our practical concerns, but it is not *sufficient*. While we do have an interest in maintaining our biological lives, these lives are given meaning and significance by our conscious experiences, as outlined in a Lockean psychological account, and also by our projects, values, aspirations, and so on (whether they are conscious or subconscious). It is important to us that we are subjects of experiences, but also that we are agents who act upon the world and shape our own destinies. This involves the ability to identify with our future selves, and have hopes and aspirations about what becomes of us.

> Another way to capture how we value psychological continuity is to think in terms of our self-narratives or inner stories. Each of us has a mental autobiography, an extremely detailed story of what we have experienced and done and a perhaps less detailed account of what we intend, or at least hope, to experience and do. This autobiography is not a mere listing of personal events and intentions. The story is richly colored by a sense of one's own beliefs, desires, values, and character – which

> affect which events are remembered and how they are remembered, make sense of and even help determine plans for the future, and shape the overall self-conception of an enduring protagonist. (DeGrazia 2005, p. 80)

DeGrazia maintains that when an individual's basic needs are satisfied, he or she is able to engage in the active narration of their own life stories, and that this self-narration is one of the things that we value when we say that someone's life is going well. In this respect, liberty and autonomy is an important element of the narrative view, a point that I will return to later. Another observation that can be made is that, while we speak of 'a life narrative' many lives seem to lack one consistent narrative thread. This is not simply to say that one occupies many roles during one's life and that one can be many things to many different people, but that sometimes a life may lack a lived cohesion to the person who experiences it. Present events may not make sense in the context of past events, and past events may not come to invite new nuances or meanings in the light of what happens subsequently. In a sense then, some lives may lack a unified narrative flow. Some authors write of the importance of a sense of unity in a person's narrative. While our biological identities (understood, in DeGrazia's view, in terms of numerical identity) remain consistent throughout our biological lives, our narrative identities may be fractured and lack unity. This can be a destructive and negative force in a person's life. Thus it is not just liberty and autonomy, but also a certain unity, which serves as a measure of when someone's life is going well:

> In what does the unity of an individual life consist? The answer is that its unity is the unity of a narrative embodied in a single life. To ask 'what is good for me?' is to ask how best I might live out that unity and bring it to completion. To ask 'What is the good for man?' is to ask what all answers to the former question must have in common. (MacIntyre 2007, pp. 218-9)

So what might lend a coherence or unity to our lives? Part of this will relate to the way that events in our life hold significance in terms of each other. Philosophical questions that I asked my parents as a child (and the responses that I received) might loom large in my personal narrative because of the course that my life has taken. If instead I had chosen to

become a farmer, other events from my childhood might have been singled out as significant to my narrative. But these events, and the significance that we lend to them, do not exist in a cultural vacuum. We are able to make some sense of our lives and the roles that we occupy because we have notions of which lives can be lived and which roles can be occupied. These notions arise from wider cultural narratives that inform our ideas about identity. So for Alasdair MacIntyre for example, narrative is not just the prerogative of the individual narrator. Our narratives are partially shaped by the personal, cultural, and historical backdrop against which we perform. The roles in which I cast myself, and the ways in which I relate to the world, are informed by factors that have their origins long before my birth:

> The story of my life is always embedded in the story of those communities from which I derive my identity. I am born with a past; and to try to cut myself off from that past, in the individualist mode, is to deform my present relationships. The possession of an historical identity and the possession of a social identity coincide. (MacIntyre 2007, p. 221)

I have already made the case in the first chapter for the view that an understanding of our present moral concepts and values must be sensitive to the history of those values, taking on board Mary Midgley's point that, for example, our current ways of thinking are shaped by patterns of thought that evolved in the ancient world. Narrative theories of identity take this point to another level. If we think that our histories and cultures are woven through our identities, then this must surely have an impact upon how we articulate what is valuable about human life and human activity. Moral theories that rely on notions of personal identity must take account of the extent to which our identities are formed by historical and social factors. The history of our ideas is therefore not only useful in helping us to understand what role those ideas might play today, but is also a factor in helping us understand what sort of beings we are. Successive events in history have not simply given us new ways of thinking about the world (to take a pertinent example, the revisions of right-based moral language that tend to occur at times of political upheaval) they have also been incorporated into our story about

what we *are*. This may help us to think our way through objections that 'moral entities' such as rights are bizarre metaphysical fictions. Beings like us have rights embedded in our personal narratives because we have a cultural life and cultural history that requires these ways of thinking. This does not necessarily reduce to a cultural relativist conception of morality, simply to the view that certain modes of moral *discourse* are appropriate to certain historical realities. Remember also that while our narratives might change in response to the cultural conditions that we inhabit, the fact that we are the type of beings who create narratives will not. This means that those identities that we construct are likely to have a moral importance regardless of the precise shapes that our stories take. It is also notable that (perhaps partially in response to psychological and biological facts about the types of beings that we are) many patterns of myth, and also presumably the personal narratives that reflect them, are repeated time and time again across a multitude of cultures. This is not to say that if you scratch the surface, our values and concepts are all the same at heart. This is simply not true, and at worst pernicious, allowing us to regard all perpetrators of evil acts as simply people who got lost somewhere on the road between value and action. Instead my claim is that while our identities and self-conceptions are heavily influenced by cultural factors, this does not make us complete aliens to one another (i.e. to those whose cultures or backgrounds differ significantly from ours).

If we take these views seriously, human or personal identity cannot be understood simply at the level of the individual. Once we ask questions about what it is that makes a particular person who they are, the world floods in. In fact, we should not even see it in terms of the world 'coming in' from outside. The cultural and historical environment that an individual inherits is already there, very much present at the heart of his or her personal identity. But what we are talking about here is the 'cultural environment', the world of norms, roles, ideals and so on that is created by groups of human beings. Does this bear any

significant relation to the physical environment, or is it simply a convenient use of metaphor? What role, if any, does our natural and physical environment play in the creation of our personal narratives?

Part of the answer to this is going to come back to what has already been said about cognition. If our thought processes extend into the world, then so, surely, do our narratives. Consider again Otto's notebook. The record that he keeps is a record of the things that are significant to him. It is a self-selected chronicle of the things that he values. He would not after all write down the location of the Museum of Modern Art if that were not a place that he could envision himself visiting. We all do similar things. We create things, accumulate things, and surround ourselves with things in order to aid our memories, give us certain experiences, put us in mind of past events and future aspirations, and so on. The objects that we accumulate, the things that we create, and the way that we arrange things in our own immediate environments are not simply a reflection of the narratives that we create, they are a *part* of them. Were I to shape my environment in a way that was not consistent with my self-professed life narrative I might be accused of being inauthentic or misleading in the stories that I tell about myself. For example, a friend might reasonably ask 'Why do you claim to be a Lou Reed fan if you have none of his records but own the entire back-catalogue of The Spice Girls?'. In the absence of an explanation of this anomaly, my record collection would not just be *evidence* of the fact that my life is not what I claim it is - it would be a concrete instantiation of that fact. Thus my narrative extends into the world, with objects in my environment acting as part of the way that my narrative is formed.

So the way that we shape our environment is part of our process of shaping our personal narrative. But to say that this is the whole picture is to overemphasise the impact of the narrator on the environment and to underestimate the role of the environment on the narrative. The process is not one-way. Obviously, if the act of changing the world around us

is part of the act of self-narration, what types of narrative are possible will be in part a product of what is 'out there'. We cannot change our environment in a God-like way, summoning things out of thin air. Our creative acts, including the ways in which we shape our lives, are limited by the kinds of environment that we inhabit. One could not, for example, become a sea-fisherman in the Central African Republic. The combination of environment and vocation would not have their place alongside each other (at the same time) in the same narrative. This may be described in terms of individuals' narratives occupying a place within the wider narrative contexts that they occupy. We might criticise the aspirations of the wannabe fisherman in the Central African Republic on the grounds that the narrative that he wishes to create for himself is incompatible with the wider narrative that he occupies. Whilst I am largely concerned here with the ways in which an environment, and in more specific terms a natural environment, can limit and shape our individual narratives, this is not the only way in which a wider context can shape our narratives. For example, we might regard the extremes of the current minority trend of 'vintage living' as bizarre and perhaps to a certain degree flawed[1]. People involved in vintage living decorate their homes in their chosen time period, wear the clothes, drive the cars and listen to the music of the time. To the extent that this is a hobby in a society that embraces a wide range of leisure-time activities, we may regard this as a perfectly acceptable (albeit unusual) way to spend one's time and money. But some of the people who participate in this seem to engage with their time period (or at least with their imagined idea of it) on a more fundamental level. Consider the following remarks made in an interview by some women living 'vintage' lifestyles:

> I admit I am in retreat from the 21st century. When I look at the reality of the world today, with all the violence, greed and materialism, I shudder. I don't want to live in that world... I try not to interact with the modern world too much at all. Shopping in supermarkets is an ordeal, and I only recently realised that Tony Blair is no longer Prime Minister as I don't read newspapers – they are just too distressing.

[1] Thanks to David Cooper for suggesting this example.

> I have spent so many happy hours sourcing retro furniture and kitchen gadgets for our home, and gradually we are eradicating every trace of the modern age. We aren't friendly with anyone who doesn't share our love of the Forties. Some people might think I am hiding my head in the sand, harking back to an age that has long gone. But to me, the 1940s was a time when people were much more friendly to each other – they really cared about their neighbours. As it is, I hardly know the people who live next to us. (*Daily Mail* Online, 2008)

The problem with these modes of living might be articulated by saying that the people with these views are attempting to live personal narratives that are divorced from the wider narrative environment that they inhabit. This leads to seemingly contradictory attitudes such as desiring a 1940s lifestyle on the grounds that it was a time when people 'really cared about their neighbours' despite hardly knowing one's own neighbours and not being friendly with anyone who does not share one's love of the 1940s. It is one thing to say that one dislikes or wishes to reject certain features of the contemporary world, and quite another to believe that an adequate response is to attempt not to live in it. Like it or not, our personal narratives (including perhaps our rejection of certain features of the world that we inhabit) are shaped by the narrative context that we inhabit or have inhabited.[1] This is what MacIntyre means when he talks about our social identity. He also draws our attention to the fact that "rebellion against my identity is always one possible mode of expressing it" (p. 221). The example of the extreme participants in the vintage living movement vividly evokes the distinction between rebellion against one's social identity and the attempt to 'cut oneself off from' or deny it. Similarly, we might want to criticise cultures which encourage aspirations or goals that are largely incompatible with the prevailing social and cultural conditions. We might say this of any culture that encourages all its members to 'pull themselves up by the bootstraps',

[1] It is not just the environment that we currently inhabit that has an effect upon what forms our narratives can take. We must consider both past environments that we have inhabited, and the past of the environments that we currently inhabit. For example, Hungary's leader at the outbreak of the Second World War was Admiral Horthy. He was an admiral despite Hungary (like the Central African Republic) having no coastline and no navy. His rank dated from when the Austro-Hungarian Empire still existed and had held the port of Trieste. The fact that Horthy retained this title, although slightly eccentric, makes sense. It makes sense in virtue of the history of the political and physical geography of Europe. Aspects of Horthy's narrative identity would look very peculiar in relation to his environment and narrative context if we were to take a simplistic notion of identity based on present environment alone. Thanks to John McKinnell for alerting me to this.

when no provision exists for this to be a possibility for many of them. A culture whose ideals centre on personal narratives that are incompatible with the conditions that it creates is an incoherent and inauthentic one.

As we have seen, the factors connecting our environments with our narrative identities are made even more interesting when we reintroduce the role of culture. Culture, environment and personal narrative have a complex three-way interdependence. We have seen that culture informs the types of narrative that individuals can have. The type of story that we tell about ourselves is strongly informed by our historical and cultural backgrounds. But it is also the case that there is a rich interplay between culture and environment that shapes our narratives and which our narratives feed back into shaping.

To take an example that is close to home, Durham Cathedral was probably built on the site that it occupies because it is an ideal defensive position. In this sense, the natural environment supplies the explanation for why the city was founded. However, the position of the cathedral is also explained in terms of mythology. The monks who carried Saint Cuthbert's remains settled on the location because of the instructions given by Saint Cuthbert in a vision to the monk Eadmer. The founding of the cathedral, together with the legends that surrounded it, influenced both the way that Durham grew as a cultural centre, and the way that the landscape was subsequently changed. In a poem that also makes reference to Eadmer and the mythology surrounding the city, Sir Walter Scott was inspired to write the following lines:

> Gray towers of Durham!...
> ...Yet Well I love thy mixed and massive piles
> Half church of God, half castle 'gainst the Scot
> And long to roam those venerable aisles
> With records stored of deeds long since forgot (Scott 1858, p. 520)

These words were subsequently engraved into a stone on Prebends Bridge in the city. Thus the natural environment of the area led to cultural developments there (the building of the

cathedral) which involved an alteration of the environment. Scott was impressed by what he saw (in a sense, it impressed upon his *personal narrative*) and this was written back into both the culture and the environment of Durham.[1] It is quite plausible to maintain that this interplay of cultural and environmental factors might impress upon a person's individual narrative. Reading the words of Scott engraved on the bridge might lead an inhabitant of the city to gaze over to the 'mixed and massive piles' across the river and feel the gravity of their history as significant to their own sense of place and identity and as informing who they are. If that inhabitant happened to be an artist, a writer, an architect or a local campaigner, they might (as Scott did) feed something back into this interplay between personal narrative, cultural heritage and environment.

This is not an unusual isolated example of the ways in which cultural identity, narrative identity and environment interact. This is the way that our lives are continually led. We cannot therefore understand narrative identity as something distinct from environment or from culture. The stories that we tell about ourselves are inextricably bound up with place as well as with history. This is true on a grand scale (consider the significance of Uluru, otherwise known as Ayer's Rock, to the Aboriginal people of that area) but also on a more mundane level. Were we to replace the places in any person's story with other places, every other part of the story would alter. The cultural and historical significance of the place and the other people who occupy it would shift every detail of the story. The person in question would arguably be numerically the same individual, but their identity in the sense that they and the people around them understood it would be utterly different. They would be the same biological organism, but not the same person.[2]

[1] Interestingly, in this particular case, Scott is among other things commenting on the role of places in cultural memory. So even the very *notion* that environment can be a reservoir of cultural and historical significance has been inscribed back onto the physical environment.

[2] It is worth noting that the narrative view has its critics. See, for example Galen Strawson (2004). However, many of the arguments levelled against a narrative view are aimed at a conception of narrative as fully explicit and entirely self-told, views to which this argument is not committed. An interesting discussion of the different

## 7. The Moral Dimension

The main point that seems to come out of this is that each of these different ways of understanding personal identity point toward a similar conclusion about the role of the environment in identity. If we understand all of these factors as having at least something to say about who or what we are, environment comes into play in our identities over a wide range of interrelated levels. There is no level of thinking at which we can understand ourselves as the caricature of the Cartesian 'ego', radically cut off from the outside world. It is of course important to bear in mind that there are a number of different ways of understanding environment, as well as a range of ways of understanding the self. Cooper has a phenomenological conception of environment, and describes our relationship with it in terms of intentionality. Other writers have a more naturalistic outlook, describing environments as sets of physical objects. Nonetheless, however we look at it, environment seems to be fundamental to the identities of organisms.

So how does this translate to moral questions, and to the case for environmental rights more specifically? One answer lies in the way that we talk about what it is for a person to be oppressed or undermined. We often understand this in terms of a certain fragmentation of identity, something that lessens a person by removing part of their self. People who are removed from part of what is essential to themselves are fragmented and alienated from themselves. Karl Marx writes about estrangement from one's human potential or species-being, and feminists write about patriarchal dominance as a divisive and fragmenting force upon those who it oppresses:

> Sexual objectification occurs when a woman's sexual parts or sexual functions are separated out from her person, reduced to the status of mere instruments, or else regarded as if they were capable of representing her… Sexual objectification is a form of fragmentation and thus an impoverishment of the objectified individual (Bartky 1990, pp. 35-36)

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levels on which a narrative view can operate can be found in the work of Peter Goldie (2003). It should also be noted that I do not make the claim that our identities can be exhaustively understood in purely narrative terms.

To continue on a similar theme, we can look to Raimond Gaita's examination of our understanding of the terribleness of rape:

> We think of rape as terrible in ways that can only be appreciated if we assume that a woman's sexuality can be precious to her. If sexuality were properly seen as an instrument of pleasure and other purposes, as an instrument which can, contingently, bring something more serious in its train, or introduce us to something more serious… then it would be hard to see why rape should not be judged as a species of assault, or as something which could adequately be characterised in some variant of the thought that a woman has exclusive rights to her body. (Gaita 2002, p. 189)

Gaita argues that these are insufficient ways to characterise what is so terrible about rape, since this would reduce rape to equivalence with mugging. He also argues that we cannot simply characterise rape as an assault that is aggravated by trauma "because the question naturally arises as to why a relatively minor assault should occasion such trauma" (p.189). Instead, Gaita maintains that we have to look to the special relationship that a woman has with her own sexuality:

> Whether or not it is physically brutal, rape is a violation of woman's sexual being. Because there would be no rape if there were genuine consent, we tend to focus on the consent, and therefore to see rape, wrongly, as in essence a particular violation of autonomy aggravated by physical injury. (189-190)

The notion is that rape is in some sense a violation of an aspect of the woman's identity, a violation of the self. In a similar way, I want to maintain that the degradation, removal or subversion of a creature's environment should be understood as particularly bad or harmful to that creature, not just in terms of the fact that this might constitute a violation of a right to liberty or property, but rather because of the relationship that exists between creature and environment, the particular modes of habitation that are essential to the identity of that creature.

The rapist in Gaita's examination violates the woman's sexual self. This could be analysed in various ways, but were we to take a line consistent with Bartky's analysis, we could say that the woman's sexuality and sexual organs have been used as a means to

someone else's pleasure with no regard accorded to the rest of her identity. Her sexual self has been violated in that her sexuality and self are treated as though they are divisible. She has, against her will, been alienated from herself. To be estranged from one's environment is also to be alienated from oneself, and thus become a fragmented being, in the same way that Bartky understands estrangement from one's own sexual identity. This acts as a diminishing or impoverishing force. To impose such fragmentation upon other beings without justification is to participate in a dominating, oppressive or objectifying process. Thus by understanding a creature's environment as an essential element of its identity, we get closer to articulating the real significance of what is lost or violated when the creature and that environment are separated.

But which organisms can be talked about in this way? Understanding the different levels at which environment interacts with identity may be a key to understanding how and why different types of being might have moral claims concerning their environments. The types of fragmentation that are often cited as examples of oppression seem to come in at a narrative or a phenomenological level. It might be claimed that only human beings can have a personal narrative, while some non-human animals have some kind of phenomenological and psychological identity, and all living organisms have biological identities. We might also claim that cultures, groups, societies and so on can have narrative identities while lacking biological ones, and that our narrative identities can exist after our deaths and perhaps even before our births. So which types of identity confer a prohibition against fragmentation?

There is nothing morally wrong in itself with taking my bicycle apart. Can we say anything more about biological entities? It doesn't seem to be wrong, for example, to cut a stick of rhubarb from the plant or to peel a potato, although we might find it aesthetically insensitive or even morally objectionable to fell a giant redwood. If biological integrity always had to be respected in all cases, it would make human survival virtually impossible,

and yet in certain cases we value the biological integrity of rare, beautiful, or otherwise exceptional organisms. There does seem to be something rather more wrong than potato peeling about the naughty schoolboy's activities of pulling the wings off flies or killing ants with a magnifying glass, and torturing or maiming higher mammals seems obviously morally objectionable. This seems to present us with a layered conception of what matters morally in identity. Ruddick's view is that "the only value of biological life [is] instrumental, being necessary for biographical life" (Ruddick 2005, p. 503). Perhaps this is something of an overstatement, at least to the extent that we regard biological life as being instrumentally valuable only in as much it is necessary to the biographical life of the being in question.

However, there may be something in the view that we value biological integrity in certain contexts because it forms a part of our narratives. In this sense, certain living organisms in the natural world have a particular type of moral importance to us, but this moral importance is based on more than a merely pragmatic or instrumental purpose that they serve to us. The biological integrity of such organisms matters *to us, in itself.* The Bodhi tree in India, a fig tree that is sacred to many Buddhists, is not only morally or spiritually important because it serves some purpose in *reminding* people of their sacred stories. It is certainly not important merely for some wider practical purpose. It is important because it is a *part* of the narrative with which those Buddhists identify. This is not the same as saying that the tree is important because it is *instrumental* to that narrative, rather it is important because it forms part of the fabric from which the narrative is constructed. In this sense biological integrity, and not only our own biological integrity, can be significant in narrative. Neither is it the case that a moral importance attached to biological integrity here implies that an indefinite extension of the life of the biological organism in question is desirable. The current Bodhi tree, a pilgrimage site for many Buddhists, is not the original tree under which Siddhartha Gautama achieved enlightenment, though it is said to be a direct descendent of it.

What matters is that the tree should be treated in a manner appropriate to the narrative, not that it is allowed to live forever. If we think then that an organism's environment is (or at least can be) part of its biological integrity, organisms whose biological identities form part of our cultural and personal narratives need to be considered on the level of environment as well as on the level of the individual. While our claims to a cohesive narrative identity can be overridden by other concerns, it would seem reasonable to assume that it is a *prima facie* good that narrative identity should not be fragmented. 'Integrity', in the widest sense (not simply the 'integrity' of a moral agent) is what makes us what we are. Fragmentation of such integrity might therefore be compared to killing, although a strange kind of killing that goes by degrees rather than working with a binary opposition of alive or dead.

Extra ethical questions creep in when we move to the level of organisms that have a psychological identity as well as a merely biological one. Some animals that we commonly regard as conscious may have biological identities that are significant to people's narratives (consider temple bulls in Hindu tradition, or the cultural significance attached to racehorses or hunting dogs) but they also have psychological lives of their own. Thus we might afford their psychological integrity an importance of its own. If environment forms part of their psychological identities then, considerations of an animal's environment may be necessary if we are to preserve that psychological integrity. This may lead to conflicts between the environment suited to the animal's role in our narrative identities, and the environment suited to the animal's own psychological integrity.[1] How we should deal with these cases is likely to vary according to the degree to which environment is an essential component of the creature's identity, and the degree to which they form an essential part of our personal narrative. It would seem unreasonable to hold that, if we believe non-human animals to be conscious at all, their psychological integrity should always be trumped by the stories that we

[1] Although in many cases it can also lead to mutually beneficial circumstances, such as the relationship between a shepherd and his dog.

want to tell about ourselves. On the other hand, if an animal were to suffer a degree of estrangement from environment that could not be regarded as greatly significant, this might be less important than essential elements of a person's sense of identity. The important thing is that we regard both of these levels of identity as morally *significant*.

In addition to their psychological identity, some creatures have narrative identities. Are humans alone in this, or can we say that animals have biographical lives in this sense? One's immediate instinct is to reject this view, but perhaps this is due to the bias that the terminology of 'narrative' or 'biography' gives to the subject. How can a creature write or tell the story of its life when it lacks linguistic capability?[1] In a sense though, these words are only intended in a metaphorical sense here. This varies to some extent according to which theory of narrative or biographical identity that one chooses, but there are a couple of reasons to think that a life narrative needn't rely on linguistic faculties. Firstly, as we have seen, we needn't understand a life as entirely 'written' by the person living it. Our narratives are the product of a number of practices, allegiances and communities in which we play a part. This means that we are not the sole authors of our biographical or narrative lives. This point weakens the demand that the subject of the life in question must be capable of language. The second point to note is that, as I have articulated it, creating our narrative or biography is very much to do with how we act in the world. We create our lives by interacting with our environments in particular ways, making the environments that we manipulate (and which manipulate us) *parts* of our narrative. Thus our narratives are built in the vocabulary and grammar of what surrounds us, rather than merely in our linguistic systems.

It is of course very much true that human beings value language – we value our oral and written traditions, we use particular labels to reinforce or alter our identities and we

[1] It is not entirely certain that human beings are the only language users. However, for the sake of argument I will assume here that they are. A very interesting case here concerns the question of whether honeybees can be described as language users because of the elaborate 'waggle dances' that they perform which convey information about the location of rich sources of nectar. The dances appear to communicate the "distance, direction and desirability" of the patch of flowers concerned (Crist 2004).

sometimes remember past events and articulate our aspirations about future events in a written or oral way. It is undoubtedly true that language helps us to make sense of things, acts as a trigger to memory, bestows meaning on certain objects and events and so on. It would be a mistake to think that our lives are not richer and more meaningful because of the language that they involve. However, this does not suggest that it is a necessary condition for a biographical or narrative life as understood above, simply it is an enriching factor. And indeed, as James Rachels argues, certain non-human animals seem to have a lot of the characteristics that we regard as most defining of our biographical lives:

> Do animals have lives? Some of them clearly do not. Having a life requires some fairly sophisticated mental capacities, which simple animals do not have. Consider, however, a psychologically complex animal such as the rhesus monkey. Rhesus monkeys live together in social groups; they have families and care for one another; they communicate with one another; they engage in complicated activities; they have highly individualized personalities. And they are clever: one team of researchers noted that they 'can indeed solve many problems similar in type to the items used in standard tests of human intelligence'. Although their lives are not as complicated as ours, emotionally or intellectually, there seems no doubt that they do have lives. They are not merely alive. (Rachels 1986, p. 33)

To the extent that this is true, we can say that animals have biographical lives, and that environment is at least as important to animal lives on this level as it is to human ones. In fact, perhaps in the absence of language and theoretical structures, it becomes even more so.

Another interesting feature of this type of identity is that it can arguably be displayed by groups as well as by individuals. Societies, nations, cultures, tribes and families all have their narratives. These are networks of stories, artefacts, places and people of particular significance to that group. In the case of groups, they may be less distinct or harder to identify than in a personal narrative, but they are there nonetheless. So if we want to maintain that narratives are among the things that are morally important, or among the things that determine morally important *entities*, we may be able to look beyond the level of the individual and speak of the moral importance of the narrative life of a *culture*. Environment here is going to be especially significant to narrative. Every culture has stories that connect

people to places, places that have been the environment of the people of that culture in the past, and often places that will supposedly be their environment in the future, as well as to places that have immediate practical familiarity to those people. In the case of cultures however, the narrative identity of the culture is not contingent on any psychological or biological identity of the culture as a whole, but rather on the collective psychological and biological existence of its people. These identities do not remain stable; biological and psychological identities ebb and flow as people die and are born, and as people leave or join the cultural group. While we can talk about a unity or wholeness of a culture's narrative identity, it would be a mistake to talk about this as though it depended on a rigid set of identity criteria. One of the hallmarks of a living culture is that it relies on a dynamic and changeable set of interrelations. This will, of course, include interrelations with the environment.

## 8. Why Rights?

I have made the case that we may legitimately regard a being's environment as integral to the identity of that being. This is true on several levels, and regardless of which type of theory of identity, if any, we take to be paramount. However, it may then be asked why I see fit to frame questions concerning the illegitimate violation of a being's identity in terms of rights. There is no simple answer to this question, but a couple of points should be made in favour of rights discourse in these situations. One reason for drawing attention to the connections between fragmentation or estrangement and oppression or domination is to highlight the suitability of rights language to describe what has gone wrong in these situations. If we assume that rights language is suitable to describe the plights of oppressed minorities, and we situate the injustice of these situations in the way in which those people are fragmented or diminished by the process of domination, we have a good prima facie reason to think about the environmental parallels in the same way. Secondly, drawing on an argument based on a

narrative theory of identity, I would like to argue that if the right to liberty can correctly be thought of in terms of rights, we can make similar claims about our environments. James Rachels and William Ruddick argue that a 'biographical' notion of the self can make sense of the weight that we afford to liberty (Rachels and Ruddick 1989):

> It is not that Liberty is sacred in virtue of whatever intrinsic or instrumental value it may have, but rather that it is integral to a biographical life: Without Liberty (or rather certain specific liberties) someone can have no biographical life at all. (Ruddick 2005, p. 505)

The notion here is that liberty is valued in the way that it is because it is a necessary condition of having a life, in the sense that life is valuable. Liberty is an essential constituent of such a life. If we think that environment is a constituent of a valuable life in an analogous way, then we ought to value our environment in a similar way that we value liberty. This would provide us with a reason to think that the language of rights may be appropriate for describing the way that we relate to our environments in the same way that it is appropriate for talking about the way in which we value our personal liberty.

So why should we suppose that liberty is a constituent of what Rachels and Ruddick call a 'biographical life'? I will briefly outline their argument for this, before considering whether we can apply the same line of thought to the environmental aspects of our identities. They begin by looking at the different answers that have been given in response to the question of why we value liberty. They look at theories that claim that liberty has intrinsic value "simply because of what it is in itself" (p. 221), in particular the comparison that Gregory Vlastos makes between the value of liberty and the value of enjoyment (Vlastos 1962). They claim that this comparison in fact gives us reasons to doubt that liberty has intrinsic value. The value of enjoyment (taken as the archetypal case of intrinsic value) is 'transparent' and readily understandable. This is not the case, they argue, for liberty. They also look at theories that claim that liberty is instrumentally good, in that it is "desirable because of the pleasure and other consequences it produces" (p. 223). This they argue is also

an objectionable view, because it would imply that in circumstances where the consequences of the liberal and the illiberal decision were equal, there would be no reason to choose the liberal one. Finally, they look at the view that liberty is "necessary for self-realization" (p. 223). By this they mean the view that liberty is valuable because it is a necessary condition for developing one's human potential. This view, propounded by Joel Feinberg, is the approach that Rachels and Ruddick find most promising. It is distinct from the notion that liberty is an instrumental good, in that it holds that liberty is a necessary condition for a good human life, and not just something that will in some circumstances contingently lead to good consequences[1] (Feinberg 1973):

> The point is not that such self-development is a *consequence* of being free; it is that freedom is one of the important *conditions* without which this personal growth cannot take place. Freedom makes such growth possible, although it does not make it inevitable. (Rachels and Ruddick 1989, p. 224)

Rachels and Ruddick suggest that John Stuart Mill's approach in *On Liberty* brings in elements of all of these explanations of the value of freedom. They also suggest that any adequate theory of liberty must account for why each of these three views is appealing, even if some of the might be mistaken. Rachels and Ruddick argue that liberty is a *necessary condition* for 'having a life':

> The idea we propose is: *Without liberty, a person cannot have a life*. We do not mean that a person without liberty cannot have a good life, or a productive or satisfying life, or anything of that sort. The point is more radical than that. It is that, without liberty, a person cannot have a life *at all*. (p. 226)

A distinction is made between 'having a life' and 'being alive'. 'Being alive' describes the situation of Olson's 'human organism', it is describes the situation of a "functioning, self-preserving organism" - it could describe a foetus, or a human being in a PVS. 'Having a life'

[1] Already we see here some parallels with the ways that we have been thinking about environment. Many of the existing pieces of work on environmental rights consider the environment to be the content of a right because it is instrumental to achieving things that are more commonly considered to be the content of rights claims. However, it is arguable that this is insufficient. We value our environments (and particularly our natural environments) for reasons that cannot be explained purely instrumentally in these senses. This reflects my thoughts in the opening section of this chapter on the ways in which we may find an 'intrinsic' value in environment without necessarily maintaining that it is valuable independently of our concerns.

is however "a notion of biography rather than biology", determined by what we do, what we think and feel, and how we relate to others (p. 226).

> In losing their biological existence, the usual victims of homicide necessarily lose their biographical lives as well. But it is the latter, not the former, that is the morally objectionable loss and is the proper object of moral protection. To the extent that people have ceased to have biographical lives (as, for example, the irreversibly comatose), killing becomes less objectionable... And to the degree that animals of other species lack the capacity for lives, to that degree our objections to killing them (painlessly) for food, clothing, and scientific study diminish.(p. 227)

This is not quite the same concept as personal identity. Rachels and Ruddick favour the notion of 'having a life' over the idea of 'being a person'. Personhood, they argue, is a variable notion according to context, is often no more than a moral concept that begs the question, and is associated on the whole with notions of equality ('all persons are equal') rather than liberty. Liberty is a concept that protects and develops human differences rather than ignoring or disregarding them. Personhood, they argue, cannot therefore capture the value of liberty, but the notion of 'having a life' can.

So those who we object to killing are those who are 'subjects of a life' understood as outlined above. This notion of a life is understood in a broadly narrative sense. Having a life involves having a sense of 'self over time', involving plans, hopes, projects and regrets. They also argue that it is possible for a person not to be the subject of a life. Those who live in slavery, and have no time in which they have the freedom to develop relationships, engage in projects, and so on, are not subjects of a life. They "have no social existence apart from their masters; they are, accordingly, "socially dead persons," remaining forever "unborn beings (non-né)""(p. 229). Few people are, in fact, total slaves to this extent. Even people living in captivity will often have some time and space to have a life: "Real slaves may have biographies, but only because they are not total slaves" (p. 230). Thus somebody can only have a biographical life of this kind to the extent that he or she has liberty:

> Liberty makes lives not beautiful, but possible. But this is not to say that liberty is like air, causally necessary for lives. Rather, it is like motion, a component of living.

> Liberty constitutes our lives through the free choices and actions that embody it (p. 231)[1]

Let us draw a comparison here with the way that we relate to our environment. Obviously, the air that we breathe, the food that we eat, and so on, are causally necessary for life. They are causally necessary in order for us to have biological lives, which in turn is a causal requirement for a human biographical life. Our environment also plays an important role in our activities. It is causally necessary to the projects and commitments that we have. But does a person's environment play an even more fundamental role than this? Previously in this chapter, I have made the case for thinking that environment is not just causally necessary for having a life, but also that it is a *component* of it. Certainly on the biographical level that Rachels and Ruddick are speaking of, environment is not just a subject of our narratives, but an integral part of them. Thus if we understand liberty as being properly considered a right because of the role that it plays at the heart of human identity, we must be able to say the same things about environment.

But what of non-human animals? As I argued in the previous section, there do seem to be some good reasons for supposing that some non-human animals can, to some extent, have biographical lives. Is the consequence of Rachel and Ruddick's view that to the extent that they have biographical lives, animals also have rights concerning their environments? This comes back to the old chestnut of what types of being can be the possessors of rights. However, Rachels and Ruddick may have come some way toward providing an answer to this. If what gives liberty (usually considered the most fundamental right) its ultimate importance is its role as constitutive of biographical identity, this would seem to suggest that the reason we value it is because we value that biographical identity. It would not be absurd to conclude from this then that the proper subjects of rights are those beings who are capable

[1] Of course, Rachels and Ruddick are not arguing that it would be acceptable to do what we wanted to anyone who *was* a total slave in this sense because they would not be a subject of a life. Rather, for beings who *can* be subjects of a life, it is the right state of affairs that they are allowed to be.

of having biographical identities. Otherwise we would be arguing that what gives liberty its status as a right is separate from what gives it its status as a valued moral and political concept.

But can we only talk of the importance of *biographical* identity in this way, or might other types of identity be able to confer rights? It seems plausible that we might be able to say some similar things about psychological identity, although without any sense of a 'biographical life' in the way that Rachels understands it, there would be a thinner conception of identity, constituted by fewer elements, and thus fewer actions that would constitute right violations. Following on from this, it seems that any rights conferred in this way at the biological level (when no psychological or narrative identity is present) would be of a weaker and more defeasible form. As we have seen though, these types of identity do not function entirely independently of each other.

Biological and psychological integrity can be important to biographical lives. This is true of our own biological and psychological integrity, and of the integrity of other beings that feature significantly in our narrative lives. And indeed, for people and other animals in normal situations, biological and psychological identity are necessary conditions for the existence of a narrative identity.[1] This way of understanding what confers rights may help to explain the intuition that, while we are happy to ascribe rights to human beings and certain non-human animals, we are less happy about talking in this way about (for example) trees. What some people might find surprising is that this view potentially allows room for us to ascribe rights to cultural groups and communities without ascribing rights to plants or to inanimate objects. Proponents of group rights and group moral status sometimes struggle to articulate why we should afford importance to entities that have no biological or psychological existence of their own. Arguably though, they do have narrative existence,

[1] I use the term 'normal situations' to avoid bizarre 'brain in vat' style thought experiments. These are certainly useful for thinking about what is metaphysically possible, but arguably less so in the consideration of what is practically important to us.

albeit contingent upon the biological and psychological existence of their members. For this reason, a theory such as this might allow us to speak about obligations concerning future generations in rights terms. The rights of a cultural group will involve obligations towards its future components, some of them people who are not yet born.[1]

One question that might be raised at this point is whether this confers on all communities an equal right to *exist*. For example, are we morally obliged to respect the integrity of organisations or communities whose aims we find hateful? A possible answer here is that we do not have such obligations to the extent that the group is destructive to the integrities of other groups, individuals or creatures. If the destruction of such integrity is taken to be so fundamental to the identity of that group that it could not exist intelligibly without that aim (we might, for example, say such things about racist or murderous organisations) then it would be incoherent to support the continuous existence of that group simply for the reason that we wish to preserve integrity. We would then have to decide whether the integrity of that group, or the integrity of what it sought to destroy, was a more weighty concern. We could not simply wish the end of all destroyers of integrity, since this might lead us (for example) to cull all tigers because of their detrimental effects on the integrity of their prey. We need to resist the notion that anything that destroys another being's integrity is not entitled to an integrity of its own. This may be a tricky problem to solve, and I suspect the solution will be very complex. However, a number of points might help us to pick our way through such minefields.

To begin with, we should bear in mind that if we are taking a right-based approach to these issues, there are many existing theories about how we should deal with competing rights claims. This is not a problem that is unique to the approach that I am suggesting here.

[1] It could be maintained (as it is for example by Alasdair MacIntyre) that our narratives can continue after our deaths. From this we might conclude that we can have certain kinds of obligations to people whose biological lives are over. A narrative view might then support the views on obligations to the dead that I have suggested in chapter five and elsewhere.

This may mean that we have to accept some notion of prima facie or 'manifesto' rights (as we saw in chapters four and seven) or it may mean that we can accept only negative rights (i.e. rights imposing duties not to act). If we take the first option, the ways of thinking about identity that I mentioned earlier in the chapter may go some way toward providing us with a framework for thinking about whose rights may be defeasible. A variety of levels for thinking about identity will provide us with sets of rights-claims that are more or less strong and more or less nuanced. The degree to which the integrity of the being in question is being violated will feature in our decisions, as will the level and complexity of the identity that is under threat. This means that we might want to give greater precedence to lives that are a rich interplay between narrative, psychological and biological factors than to those which are merely biological. This does not mean however that human interests will always win out. If my integrity is at risk of a small diminution if a total fragmentation of a more basic level of life is to be avoided, the more basic level of life might win out. To pervert Hume for my own purposes, it would not be reasonable in all circumstances to prefer the destruction of the world's species to the scratching of my little finger.[1]

## 9. Chapter Conclusion

This chapter has advanced the thesis that we can explain environment not just as an external entity to which we have a particular right, but also as an important element of the self, to which we have rights in the same way that we have rights over other crucial elements of our identities. I have looked at the way that environment is involved in identity on the biological, psychological and narrative levels. It would be a mistake to treat these levels as entirely independent. They speak to each other continually. My psychological and narrative identities are both contingent upon my possession of a biological identity, and are also informed by what happens to me at the biological level. Thus we have an interweaving

[1] Although my little finger might win out in some cases. We would not necessarily want to preserve the existence of even non-fatal bacteria that have major negative impacts upon human life.

between body, mind and narrative that engages the world on every level. In this sense, many of the ways in which we experience the world are the product of a continual ongoing exchange between our narrative, psychological and biological selves. So it seems not only true that environment, as well as liberty, can be understood as a fundamental component of 'having a life', but that this life, even when understood in the narrative sense, is not independent of biology or psychology. Human integrity of identity (and arguably integrity of identity of certain animals) will involve *all* these factors.

# Conclusion

In the introduction to this thesis I mentioned a tension that exists between some environmental ethicists, who maintain that we must reject rights on the basis of their individualism and anthropocentrism, and some environmental activists, who welcome rights-discourse as an appropriate vocabulary for dealing with environmental problems. I addressed this tension by looking at theories of rights, including their historical origins, and identifying which features are arguably definitive of theories of rights. This also drew out the extent to which theories of rights have evolved over time to reflect the political and intellectual contexts in which they have existed. I then applied a number of ways of thinking about rights to a range of challenging cases that are faced in environmental ethics.

My central claim is that if we accept that environmental problems cannot be adequately addressed by theories that are anthropocentric and individualistic, this still does not preclude the possibility that certain types of theories of rights can address these problems. I made the case for a theory of rights that takes the same kind of form as interest or benefit theories of rights. I acknowledged that the notion of 'interest' is a difficult one to formulate, but suggested that we may be able to proceed if we adopt a view that at least some rights are based on needs, where 'need' is understood in terms of identity. In the final chapter, I began to address ways that we might think about identity. I argued that there are several levels on which environment is partially constitutive of identity, and that this can in some cases confer rights that are 'essentially' environmental.

## Areas for Future Research

This thesis is in many ways a precursor to the substantive project of formulating a detailed theory of environmental rights. It argues that such a task is possible and worthwhile, rather

than outlining the precise form that such a theory can take. There are various questions that need to be examined in further detail if a more concrete system of environmental rights is to be developed. Firstly, there are questions surrounding which types of rights can be understood in these ways: can we have environmental rights that are positive as well as negative, in rem as well as in personam, and so on? Some tentative answers to these questions have been suggested in various places in the thesis, but more work needs to be done here if a detailed theory of environmental rights is to be developed from them. As I have suggested, there may be some help at hand in theories that deal with rights in the context of other complex global issues, such as those that suggest that there is a right not to suffer from poverty. At the very least though, I think it is reasonable to suppose that there are negative environmental rights that impose duties on all of us, and that there may be some positive environmental rights that impose duties on governments and international institutions. In the future, I would like to pursue further research in this area.

A second question relating to the formulation of a theory of rights is whether we would want to develop a moral theory *based* entirely on rights, or whether rights would be one moral concept among others in a wider moral theory. I remain open about this question, but it may be that while many environmental concerns can be discussed in terms of rights, there are wider elements of our moral lives (for example, supererogation) that cannot be accommodated adequately by a wholly rights-based approach.

Another area that needs to be explored further concerns how, and in which circumstances, the environmental aspects of identity can be said to confer the kinds of needs that should be understood in terms of rights. One question that deserves further attention is whether we make a significant distinction between the built environment and the natural environment, and whether the natural environment confers any special kinds of rights. Much of what has been said in the preceding chapters can be applied equally well to natural and

man-made environments, but the concern of a lot of environmental philosophy is with the natural. We may therefore want an account of whether natural environments are particularly significant in some way, and whether estrangement from nature should be considered to be some form of 'self-estrangement'. One approach to this may be to say that natural environments are fundamental because they provide the necessary conditions for the existence of all other types of environment. My identity is largely shaped by human factors, and other people with other backgrounds may be shaped by rather different human factors. Ultimately though, these factors depend on the existence of a natural environment, and natural environments are therefore the ultimate contexts within which all our lives are lived. Exploring these ideas further may even enable us to get beyond David Cooper's concept of *an* environment towards some coherent notion of what might be meant by *the* environment. The problem with this view is that if we are to take the Developmental Systems approach to evolutionary theory (according to which the object of our concern is the ever-developing dynamic between organism and environment, rather than the organism alone) it might be very difficult to determine what we mean by a 'natural' environment, at least for a human being.

A further avenue for exploration is the application of such theories to concrete cases. In this thesis I have considered the idea of rights to such things as an 'adequate' environment, an environment essential to one's flourishing, to one's identity, and so on. What I have not had the opportunity to explore in detail is the ways in which this might be cashed out in terms of specific issues or problems. These have featured by way of providing examples, illustrations and thought experiments, but not as the subjects of detailed analysis. An issue that I would be particularly interested to explore would be the environmental rights of certain groups of indigenous peoples in cases where the landscape is bound up in their mythology and cultural life.

This covers some of the more general points that come out of this thesis, but many more possibilities for further research present themselves at various points in the different chapters. For example, chapter five observes that different metaphysical theories of time are likely to have a bearing on our views about the moral status of future people. However, these views and their implications are not fully explored, and I make no commitment to any particular theory of time in the thesis. The same might be said of the notion of group rights, which I sketch out, but do not fully develop (although some indication of how this might be done is given in chapter eight). There remain some interesting questions about what types of group are subjects of moral concern and possible subjects of rights. I take human cultural groups as the prime example, but some of the idea explored here may be applicable to other kinds of groups. In the context of environmental ethics it would be interesting to see if they could be applied to communities of animals, to species of organisms, to ecosystems and perhaps even to the earth itself, which is sometimes claimed to be a self-sustaining system in its own right.

These questions will relate closely to the questions raised in chapter eight about what types of identity can confer rights. I maintain that narrative identity and psychological identity can confer them. I also observe that these types of identity often have a complex and co-dependent relationship with biological identity, which can affect our narratives and psychology. However, I leave it open whether biological identity is the type of thing that can confer rights. One way to approach this might be through Gary Varner's account of 'biological interests'. Varner argues that "every living organism has an interest in the fulfilment of the biological function of each of its components" (Varner 1998, p. 74). Varner also claims that interests of this kind have normative implications, suggesting that although sentient creatures have priority, all organisms' interests ought in principle to be protected. Taking an account like this as the basis of a theory of rights may be thought to jar with the

presumption of equality that runs through many theories of rights, and these difficulties would have to be resolved. One solution might be to say that biologically founded rights are on an equal footing with regard to each other, but are subservient to psychological and narrative based rights. This would enable us to claim that all beings with a given right possess that right *equally*, but that some beings can have rights of a more demanding kind than others. We may be able to use Dworkin's notion of 'trumps' here, claiming for example that psychologically founded rights can trump biologically founded ones. As Dworkin accepts, trumps might not always be thought to be absolutely decisive. They can be overridden when other demands are unusually extreme. I am not certain at present whether biological rights can be defended, but this gives us some idea of how we might approach the question.

**Two Possible Criticisms**

Obviously, I cannot anticipate all the objections that might be raised to what I have suggested in this thesis, but I like to conclude by mentioning two criticisms that immediately come to mind. Voltaire once observed that the Holy Roman Empire was "neither holy, nor Roman, nor an empire" (Voltaire 1963, pp. 683). Similarly, a critical response to some of the 'environmental rights' that I propose in this thesis might be that they are neither environmental nor rights.

The first of these criticisms is aimed at the concept of 'essentially' environmental rights, which I ground in theories about the identity of the right-holder. My claim is that these rights are environmental in a fundamental sense, because environment is a component of the identity of the right-holder. Therefore a violation of environment becomes a violation of *self*. This is not the same as 'instrumentally' environmental rights, which are only environmental since environmental means are employed to serve other rights (liberty, property and so on). The objection here is that the 'essentially' environmental rights that I

describe are not environmental in any more fundamental respect than the other environmental rights that I mention, since the ultimate aim of the right is to preserve the integrity or flourishing of the self. Thus these rights are also instrumental in that they serve an ultimate purpose beyond the environmental one.[1]

To answer this question, I think we need to look to Rachels' and Ruddick's account of the value of liberty. This account argues that liberty is not to be understood merely as instrumentally valuable, nor as *intrinsically* valuable, "simply because of what it is in itself" (Rachels and Ruddick 1989, p. 221). Rather, liberty is important because it is a *component*, not a cause, of a life: "this is not to say that liberty is like air, causally necessary for lives. Rather, it is like motion, a component of living" (p. 231). I make the case for environment occupying a similar role to liberty as a component of identity. Of course, we can still maintain that essentially environmental rights are instrumental in the sense that they are *necessary* to identity, but in this sense, other rights including the right to liberty would be merely instrumental. The sense in which both rights can be considered instrumental to identity relies on a relation of constitution, not of causation. Thus I argue that rights to environment can operate on the same fundamental level as rights to liberty and need not be considered valuable only to the extent that they are derived from more basic rights.

The second criticism that my account might face is that at least some of the kinds of environmental rights that I propose are not in fact *rights*. There could be a number of reasons for holding this view. One might hold that rights are things that can only be applied to agents or to individuals, or that require a certain level of rationality or membership of a reciprocal moral community. To an extent I am willing to accept this criticism. If we define rights in the strictest and most rigid sense, this may be the case. However, I still hold that the language of rights is an appropriate medium for discussing moral requirements of the kinds

[1] Many thanks to Beth Hannon and Sue Mendus for raising this concern.

that I discuss. Rights are typically employed in broader senses than the more rigid accounts can accommodate (see, for example, the criticisms of Tierney's account in section four of chapter one) and are also dynamic concepts which have changed over time to reflect the social and philosophical challenges that they have to address. Ultimately then, my answer to this criticism is the same as the central claim of this thesis: if certain theories of rights are at odds with environmental concerns, we have more reason for developing an account of rights that can address these problems than we do for maintaining that the language of rights is inappropriate.

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