

THE CONCEPT OF CIVIL RIGHTS

THE CONCEPT OF CIVIL RIGHTS

The concept of civil rights

By

DORIAN A FREVE, B. A.

A Thesis

Submitted to the School of Graduate Studies

in Partial Fulfilment of the Requirements

for the Degree

Master of Arts

McMaster University

December 1971

MASTER OF ARTS  
(Philosophy)

McMASTER UNIVERSITY  
Hamilton, Ontario

TITLE: The Concept of Civil Rights

AUTHOR: Dorian A. Freve, B. A.

SUPERVISOR: Professor S. Ajzenstat

NUMBER OF PAGES: iii, 85

SCOPE AND CONTENTS:

This thesis is an attempt to look at the concept of civil rights. Usually civil rights have been acknowledged as those rights which are legally extended to the citizen. Recently though, the term has taken on a meaning similar to that of natural rights. I have, therefore, looked at the meaning of natural rights, decided that natural rights reduced themselves to being moral rights and then found that moral rights are an expression of emotion. I was then able to argue that all rights are civil rights, i.e., rights extended to the citizen by the government. It was necessary to look at the social contract which I accepted as valid. I found it to be the means through which the government was established and the instrument through which certain civil rights are guaranteed.

## CONTENTS

I	NATURAL RIGHTS	1
II	MORAL RIGHTS AS EMOTIONS	21
III	SOCIAL CONTRACT	42
IV	CIVIL RIGHTS	60
V	SUMMARY	80
	BIBLIOGRAPHY	82

## I - NATURAL RIGHTS

Sir Frederick Pollock tells us that "the term "Law of Nature" or natural law, has been in use in various applications ever since the time of the later Roman Republic,"<sup>1</sup> so it comes as no surprise when D. G. Ritchie says, "the theory of natural rights was not Locke's invention, neither he nor Jean Jacques can claim the credit of having "discovered the lost title-deeds of the human race".<sup>2</sup> In fact the concept reaches back to Classical Greece. Sophocles is at the head of a long historical line of individuals making claims for the existence of Natural Law. In his play Antigone, Sophocles uses the concept of natural law to justify action contrary to the positive law of Thebes. Creon, the ruler of Thebes, had decreed that the body of Polynéices not be buried. Antigone, sister of Polyneices, defies the decree and buries her brother. She is caught and is accused by Creon of breaking the law, to which she replies:

For me it was not Zeus who made that order.  
Nor did that Justice who lives with the gods below  
mark out such laws to hold among mankind.  
Nor did I think your orders were so strong  
that you, a mortal man, could over-run  
the gods' unwritten and unfailing laws.  
Not now, nor yesterday's, they always live,  
and no one knows their origin in time.<sup>3</sup>

1. Sir Frederick Pollock, Jurisprudence and Legal Essays, St. Martin's Press, Inc., New York, 1961, p. 124.

2. David G. Ritchie, Natural Rights, George Allen & Unwin, Ltd., London, 1894, p. 6.

3. Sophocles, Sophocles I, "Antigone", Washington Square Press, Inc., New York, 1968, p. 178.

Though, as we see, the concept of natural law was not invented by Hobbes, or Locke, my interest in the concept begins with their interpretation. For it is with them that the modern interpretation of this concept begins. Prior to Hobbes and Locke the doctrine of natural law had not given particular prominence to the idea of individual rights. As D. D. Raphael says, ". . . it is no doubt fair to say that the ancient and mediaeval theories of natural law were more concerned with the foundations of moral, legal, and political duty than (with) the foundation of rights."<sup>4</sup>

I have, up to this point, bandied about the terms "natural law" and "natural rights", without making any distinction. There is a distinction to be made between the two terms and I will begin by looking at natural law, for as Maurice Cranston points out, one cannot speak for long about natural rights without confronting the notion of natural law. "For it is customary to say that just as positive rights are rooted in positive law, natural rights - or human rights - are rooted in natural law. The validity of the one depends on the validity of the other."<sup>5</sup> I will follow Cranston, and by positive law I will understand that law which is recognized and enforced by any given actual state. The positive law may, or may not, be written in statute form but in either form it is recognized and enforced by the courts of the realm.

4. D. D. Raphael, "Human Rights", Proceedings of the Aristotelian Society, Vol. 39, 1965, p. 205.

5. Maurice Cranston, What Are Human Rights?, Basic Books, Inc., New York, 1962, p. 12.

Natural rights, i.e. rights derived from natural law, may, on the other hand, be part of the recognized positive law but often are not. A claim to a right recognized by positive law can, as Cranston points out, be proven, whereas a claim to a right which one thinks he has because of natural law cannot be proven, only justified. "There is nothing you can do to prove you have a moral right, and nothing your critic can do to prove that you have not. What you can do is to try to justify your claim, and your critic can try to justify his criticisms. But justification is a very different thing from proof."<sup>6</sup>

What then is this Natural Law which can only be used to justify rights and never can be used to prove rights? Reason is that law, answer both Hobbes and Locke. Says Hobbes, "There can . . . be no other law of nature than reason."<sup>7</sup> And reason is defined as "nothing but reckoning, that is adding and subtracting, of the consequences of general names agreed upon for the marking and signifying of our thoughts . . . ,"<sup>8</sup> in a word, logic or ratiocination. Reason then is logic. Since law "determineth and bindeth", and reason being the law of nature, then it follows that men must live a rational i.e., logical, life or suffer the consequences of living irrationally.

Locke in a similar vein claims that nature functions according to reason, that is, "The state of nature has a law of nature to govern

6. Ibid., p. 9.

7. Thomas Hobbes, The Elements of Law, Frank Cass & Co., Ltd., London, 1969, p. 75.

8. Thomas Hobbes, Leviathan, Collier-Macmillan, Ltd., London, 1968, p. 41.

it, which obliges every one; and reason, which is that law, teaches all mankind who will but consult it. . . ."9 And if one does consult the natural law, i.e., use his reason, he will discover what he ought to do and what rights he possesses by nature.

Though it may be the case that not all natural law theorists accept that reason is the natural law, I believe, we can go along with Pollock when he says that though there is a variety and apparent diversity in the various applications of the term "natural law", there is a central idea which underlies all applications, that is that "there is an ultimate principle of fitness with regard to the nature of man as a rational and social being. . . ."10 And because of this rationality men can understand the natural law which is itself rational.

Rousseau is one such example. He does not, so far as I can find, stipulate that reason is the natural law, but, he does use, as an underlying principle, the rationality of man. For, Rousseau says, "man's first law is to watch over his own preservation. . . ; and as soon as he reaches the age of reason, he becomes the only judge of the best means to preserve himself. . . ."11 That is, a person may not judge for himself until he becomes a rational being, until he can apply and utilize the precepts of reason. Hence the basic rationality of men underlies Rousseau's claim for natural rights.

9. John Locke, The Second Treatise of Government, Bobbs-Merrill, Co., Inc., Indianapolis & New York, 1952, p. 5.

10. op. cit., p. 124.

11. Jean-Jacques Rousseau, The Social Contract, Penguin Books, Baltimore, 1968, p. 50.

It is this rationality which is the fountainhead of "the laws of natural justice." It might be said then, that in one form or another reason is the natural law.

Having asserted, if not established, that reason is the natural law, and that this law can only justify, never prove a claim to a right, and whose authority is only individual conscience and morality, then it seems to me, that one must ask what kind of law this is, that is to say, "Is natural law, law?" The answer depends upon a further question, and that is "What is Law or what is the definition of the term "law"?" With a minor modification, I think, we can use Sidgwick's definition. "Law. . . is a body of rules intended to control the conduct of members of a political society, for the violation of which penalties may be expected to be inflicted by the authority of the government of that society; and which, therefore may be regarded as imposed by government."<sup>12</sup> This definition I would modify by substituting for the word "rules" the word "regulations" or "commands". I would make this substitution because the words "regulations" and "commands" connote coercion which is of the character of law. As Raziel Abelson says, "To follow a rule or principle means to choose to act in a certain way. If one is coerced into acting in that way, one is not following a rule, but obeying a command or a law." He goes on, "We may then characterize laws . . . as "coercive imperatives",

12. Henry Sidgwick, The Elements of Politics, Macmillan and Co., Ltd., London, 1919, Kraus Reprint Co., New York, 1969, p. 33.

and . . . rules . . . as "advisory imperatives".<sup>13</sup> If this then is law, then all law must be of the character of positive law, as defined above, i.e., that law which is recognized and enforced by the courts of the realm.

It is quite clear that natural law is not law in this sense and must therefore not be law. Not so! says Maurice Cranston. "Natural law is entitled to the name law because it is authoritative, something which can be obeyed or disobeyed. This is not to say that the principles of natural law are in any crude sense imperatives. But neither are the laws contained in positive law. Each kind of law," he goes on, "has its own authority: positive law the authority of force, natural the authority of conscience or morality."<sup>14</sup> I am not sure what Cranston means by the statement "But neither are the laws contained in positive law, imperatives." What is positive law, if not imperatives to act or abstain from acting in a certain fashion? What is a positive law if not a 'coercive imperative'? Furthermore he seems to be contradicting himself, for he says in the next sentence that 'positive law has the authority of force!'. What is force if not an imperative? My only point here is that if Cranston means that law is not imperative then there is no need for force, and this is contrary to the idea of law, which is to force, when necessary, certain kinds of behavior. Or, as Sidgwick said, law is 'to control the conduct of members of a political society.'

13. Raziel Abelson, "Unnatural Law", Law and Philosophy, Sidney Hook, ed., New York University Press, 1964, pp. 162-163.

14. Cranston, op. cit., pp. 20 & 21.

Let us now look at Cranston's contention that natural law can be obeyed or disobeyed and that it has as its authority, conscience or morality. Having earlier drawn upon Cranston to define natural law, I am in agreement that its authority is conscience or morality, but I heartily disagree that it can be obeyed or disobeyed. Furthermore it is somewhat surprising that Cranston would hold this position, for earlier we noted that he maintained that moral claims could only be justified not proven. And elsewhere, he says, "it is essential to keep in mind the logical distinction between what is and what ought to be, between the empirical and normative, between the realm of fact and that of morality."<sup>15</sup> Now if a natural (moral) law cannot be proven, as can a positive law, then I fail to see how it can be said that anyone can obey or disobey the natural law. For how can it be said that I have disobeyed, or for that matter, obeyed, a directive of natural law? Might it be because I happen to act contrary to someone's belief about certain natural law directives, that I can be said to have disobeyed? Of course a person can offer justification for his belief but ordinarily I could offer counter-justification for my action, and in all probability show with equal forcefulness that I had acted according to the directives of natural law. That is, at least, as I see the directives.

I think, it can be concluded that if we follow Cranston then the word "law" loses its force and it becomes an 'advisory imperative' and we now have lost a perfectly good word for expressing 'coercive imperatives', that is to say, by following Cranston, "law" becomes

15. Ibid., p. 10.

meaningless, if not meaningless, at least powerless. Consequently I would say that natural law is not law but rather a moral principle which authority is conscience and morality, carrying with it all the advantages and disadvantages of other moral concepts.

Given that natural rights are derived from natural law as positive rights are derived from positive law, then natural rights must themselves reduce to being moral rights. Let us see how this works out.

In the Leviathan Hobbes says, "By LIBERTY, is understood . . . the absence of external impediments: which impediments, may oft take away part of a man's power to do what he would. . . . RIGHT, consisteth in liberty to do or to forbear. . . ."16 Elsewhere he says "It is not against reason that a man doth all he can to preserve his own body and limbs, both from death and pain. And that which is not against reason, men call RIGHT, or jus, or blameless liberty of using our own natural power and ability."17 And 'natural right' or "THE RIGHT OF NATURE . . . 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. . . ."18 A right then is having a freedom to act, in other words, an entitlement; a natural right is an entitlement derived from natural law, i.e., from reason. And for Hobbes this natural right is the freedom or entitlement each man has to act as he sees fit and finds necessary to survive.

16. Hobbes, Leviathan, op. cit., p. 103.

17. Hobbes, The Elements of Law, op. cit. p. 71.

18. Leviathan, op. cit., p. 103.

Locke does not, so far as I can find, define the word "right", but he seems to mean something like 'having a just claim or title to.' How does one acquire such a claim or title? The claims or titles are derived from the moral, legal, or natural obligations others have toward you. Those rights derived from natural obligations are natural rights. We learn what these natural obligations and rights are by consulting the law of nature. It teaches us that "being all equal and independent, no one ought to harm another in his life, health, liberty or possessions."<sup>19</sup> It should be noted here that Locke is making rights and duties correlative and that rights are derived from the obligations or duties that others have towards you. Or as Sidgwick puts it, for Locke, "'A right' is really an obligation regarded from a different point of view: i.e., regarded in relation to the person to whom the obligation is intended to be useful."<sup>20</sup> So then the 'just claim or title' is derived from the duties others have.

From the general obligation everyone has to abide by the natural law, there arise two other rights, holds Locke. First, "everyone has a right to punish the transgressors of that law to such a degree as may hinder its violation. . . ."<sup>21</sup> and secondly, besides the right of punishment, one has "a particular right to seek reparation from him that has done it. . . ."<sup>22</sup> It should be noted that these two rights exist only in the state of nature, These rights, though natural, are given up upon entering into political or civil society, according to Locke.

19. Locke, op. cit., p. 5.

20. Sidgwick, op. cit., p. 32.

21. Locke, op. cit., p. 6.

22. Ibid., p. 8.

A natural right, then, is, for Locke, a correlative of a natural obligation, which obligation is derived from natural law.

Though a man be in 'a state of perfect freedom', i.e., in the state of nature, "yet he has not liberty to destroy himself, or so much as any creature in his possession; but where some nobler use than its base preservation calls for it."<sup>23</sup> In other words, everyone must do what he can to preserve himself. Being so bound and since "nobody can give more power than he has himself; and he that cannot take away his own life cannot give another power over it,"<sup>24</sup> a man, therefore, cannot give up, that is, alienate, his natural rights of life, health, liberty and possessions. The reason that men have a natural right to property, is that "God . . . has given the world to men in common . . . to make use of it to the best advantage of life and convenience. (And) . . . though the earth and all inferior creatures be common to all men, yet every man has a property<sup>z</sup> in his own person; this nobody has any right to but himself. The labor of his body and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature has provided and left it in, he has mixed his labor with, and joined to it something that is his own, and thereby makes it his property."<sup>25</sup> In short, property is a natural right, because it is essential for the preservation of one's life and because the results of one's labor cannot for any reason belong to others.

23. Ibid., p. 5.

24. Ibid., p. 15.

25. Ibid., p. 17.

Natural rights are directly derived from natural law, as we have seen, for both Hobbes and Locke. Since, as we have shown earlier, natural/<sup>law</sup>is in reality a moral principle, then any rights derived from it can be no more than moral rights, though neither Hobbes nor Locke admit as much. Yet even if Hobbes' natural rights were more than a moral right, since natural right is the right every man has to do whatever he thinks necessary to preserve his life, this being an equal right that every man has, and since for Hobbes a right is an entitlement to do, and is not just a correlative of another's obligation, in this case an obligation to forbear, then, as Macpherson points out, every man's right would be zero.<sup>26</sup> With rights being at level zero, men, then, as Hobbes had already explained, while in the state of nature, are in a 'condition of war of every one against every one.' Now since one of the precepts of natural law is that "a man is forbidden to do that which is destructive of his life"<sup>27</sup> then another precept follows and that is, "that every man, ought to endeavor peace, as far as he can hope of obtaining it. . . ."<sup>28</sup> To obtain this, i.e. peace, men must give up their natural rights, as natural law prescribes, to an all powerful sovereign who will in turn protect them and extend to them those civil rights which he sees fit to give them. But once again men in society have, for all essential purposes, zero rights, with one very important exception, that is "no man can be understood by any words, or other signs, to have abandoned, or transferred . . . the right of resisting them, that

26. C. B. Macpherson, "Natural Rights in Hobbes and Locke", Political Theory and The Rights of Man, D. D. Raphael, ed., Indiana University Press, London, 1967, p. 4.

27. Hobbes, op. cit., p. 103.

28. Ibid., p. 104.

assault him by force, to take away his life. . . ."29

There is but one problem with this one retained right. If rights are derived from law and law is something which binds, and if the law withdraws your right to life, then it can no longer be said to be a right that you have. Consequently, though Hobbes is quite correct in saying that one may resist anyone, including the sovereign, who has designs upon his life, he is wrong in calling it a right, but should better have called it an 'inalienable power', or an 'inalienable prerogative' or some other more appropriate term. Consequently Hobbes' natural right of every man to do what he thinks necessary to protect himself, is in fact not a right but an 'inalienable power'.

Natural rights, in Locke's theory, we have noted are derivations of other men's obligations, such obligation being imposed upon them by natural law. The question then is "What kind of obligation is this?" If the obligations are derived from law, then it must be expected that some kind of penalty will be imposed if the individual fails to fulfill his obligation. In the case of Locke's natural rights the obligation is that one not interfere with other men's life, liberty, and property; therefore, rather than 'fulfill', a better term for me to use would be 'to abide by' the obligation. The obligation is derived from law, that is, from natural law, What then

29. Ibid., p. 105.

is the penalty if one fails to abide by the obligation of natural law? The penalty for such action as we have already noted, is a guilty conscience on the part of the offender, if he happens to think that he has in fact broken the natural law. The other possibility, unless the natural law is part of a legal system, is public opprobrium for having gone counter to a prevailing morality. In fact, it should be noted that Locke realized that his natural law carried no more obligation than conscience or morality for he says that if one consult the natural law it will teach him what one ought to do.<sup>30</sup> It is significant that he should use 'ought' and not 'must' or other obligatory term which one would use when referring to the law. Consequently, since the term "ought" is an 'advisory imperative' and not a 'coercive imperative' then the obligation that follows from it can be no more than a moral obligation and its correlative right must be a moral right.

I believe we can conclude by saying that the natural rights of both Hobbes and Locke are not derived from law but from a moral principle and in both cases the rights derived from this principle are moral rights.

Must we say then that there are no natural rights, that all such rights reduce themselves to being moral rights? Given that there are any moral rights at all, whether derived from 'natural law' or not, H. L. A. Hart says, "it follows that there is at least one natural right, the equal right of all men to be free."<sup>31</sup> By this

30. Locke, op. cit., p. 5.

31. H. L. A. Hart, "Are There Any Natural Rights?", The Philosophical Review, Vol. 64, 1955, p. 175.

Hart explains himself to mean that without there being certain special conditions consistent with the right being an equal right, any adult has, first, "the right of forbearance on the part of all others from the use of coercion or restraint against him save to hinder coercion or restraint and (second) is at liberty to do (i.e., is under no obligation to abstain from) any action which is not one coercing or restraining or designed to injure other persons."<sup>32</sup>

This 'equal right of all men to be free' is a natural right because (1) all men have this qua men regardless of membership in a society or special relationship between men. And (2) because "this right is not created or conferred by men's voluntary action . . . ,"<sup>33</sup> as are other moral rights.

Hart says that his thesis is not as ambitious as that of classical theories of natural rights. Although all men are equally entitled to be free, in the sense explained, ". . . no man has an absolute or unconditional right to do or not to do any particular thing or to be treated in any particular way; coercion or restraint of any action may be justified in special conditions consistently with the general principle."<sup>34</sup> He says that his argument is not an attempt to show that men have absolute, infeasible, imprescriptible rights, save the equal right of all to be free.

Hart next discusses rights and the correlativity of these with duties and obligations. He says that there is at least one

32. Ibid.

33. Ibid.

sense of 'a right' from which it does not follow that someone else has a duty or obligation and these are the rights derived from 'liberties'. The rights of liberties have no correlative duties. Except for this special case of 'a right', anyone having 'a right' entails someone having an obligation. Obligations<sup>5</sup> says Hart, "may be voluntarily incurred or created (and) . . . they are owed to special persons (who have rights)."<sup>35</sup> Obligations, notes Hart, must be distinguished from duties which do not have correlative rights.

Moral and legal rights are intimately connected, claims Hart. Men not only speak of their moral rights when advocating they be incorporated into a legal system, but the concept of a right is that part of morality which is specifically concerned with determining when a person's freedom may appropriately be limited by law. The important thing about this area of morality, says Hart, ". . . is that there is no incongruity but a special congruity in the use of force or the threat of force to secure that what is just or fair or someone's right to have done shall in fact be done; for it is in just these circumstances that coercion of another human being is legitimate."<sup>36</sup> That is to say where the concepts of justice, fairness, rights and obligation come into play "coercion of another human being is legitimate" to keep the distribution of human freedom as it should be, i.e., equal.

As already noted above, it is not the case that for every duty there is a correlative moral right, maintains Hart. Anyone

34. Ibid., p. 176.

35. Ibid., footnote p. 179.

36. Ibid., p. 178.

holding that for every moral 'duty' there is a correlative 'right', is, contends Hart, assuming that to have a right is to simply be capable of benefiting from the performance of a duty. But this is not a sufficient condition and probably not a necessary one for having a right. Hart gives the example of X promising to Y that he (X) would take care of Y's mother. Even though Y's mother will be the one to benefit from X's action "it is Y who has a moral claim upon X, is entitled to have his mother looked after and who can waive the claim and release X from the obligation. Y is, in other words, morally in a position to determine by his choice how X shall act and in this way to limit X's freedom of choice; and it is this fact, not the fact that he stands to benefit, that makes it appropriate to say that he has a right."<sup>37</sup>

What Hart is arguing for here is that when X promised Y to take care of Y's mother, X took on the responsibility of an 'obligation' and a 'duty' simultaneously. The 'obligation' is what created Y's 'right' and there is no correlative right to the 'duty'.

Hart maintains that except for those rights which are a direct result of the liberties one has, to have a right or rights it becomes necessary to enter into some kind of special or contractual relationship with others. Consequently anyone or anything incapable of entering into such a relationship cannot be said to have such rights, e.g., babies and animals. Hart argues that we may have duties towards animals and babies but that they cannot be

37. Ibid., p. 180.

said to have rights for duties are not right producing.

Having "a right entails having a moral justification for limiting the freedom of another person. . . ."38 There are two types of acceptable moral justification. First is the Special Rights which arise from special individual transactions, such as, for example, a promise. In this case the promisee has a special justification for interfering with the promisor's freedom, that is, he has a right which others do not have. Promises and other contracts create special rights, allowing one to interfere with another's freedom.

The second situation giving one moral justification for interfering with another's freedom are General Rights. "In contrast with special rights . . . general rights . . . are asserted defensively, when some unjustified interference is anticipated or threatened, in order to point out that the interference is unjustified."39

"To assert a general right is to claim in relation to some particular action the equal right of all men to be free in the absence of any of those special conditions which constitute a special right to limit another's freedom. . . . The assertion of general rights directly invokes the principle that all men equally have the right to be free. . . ."40

When asserting a right, Hart goes on, it is necessary to recognize that this interference with another's freedom requires moral justification, otherwise rights could not have a place in morals. Though moral discourse usually does presuppose this it is

38. Ibid., p. 183.

39. Ibid., p. 187.

40. Ibid., p. 188.

not enough. It must also recognize some kind of restriction on the kind of moral justification which will be considered acceptable. If such a restriction were not understood in the meaning of 'a right', anything would then constitute acceptable moral justification for interference. The idea would be empty. It would become possible to adopt the principle and then assert characteristics of certain men as being moral justification for interference, e.g., that they are Jews, Negroes, or whatever else was convenient. "It may well be that the expression "moral" itself imports some restriction on what can constitute a moral justification for interference which would avoid this consequence. . . ."41 But Hart goes on to admit that he cannot show this to be so.

As we have seen Hart breaks the concept of moral rights into at least two categories, special rights and general rights, and it seems, possibly, a third category, which is made up of at least one natural right, the equal right of all men to be free. Hart says that he has two reasons for describing this equal right to freedom as a natural right; first it is natural because all men capable of choice have it qua men, and secondly, because "this right is not created by men's voluntary actions, other moral rights are. . . . save those general rights which are particular exemplifications of the right of all men to be free."42

Now if we look closely at what he says of General Rights, it seems to me that his natural right reduces itself to a general right. He says of general rights, "(1) General rights do not arise out of

41. Ibid., p. 190.

42. Ibid., p. 176.

any special relationship or transaction between men. (2) They are not rights which are peculiar to those who have them but are rights which all men capable of choice have in absence of those special conditions which give rise to special rights. (3) General rights have as correlatives obligations not to interfere, to which everyone else is subject and not merely the parties to some special relationship or transaction. . . ."<sup>43</sup> It seems to me, that one and two of the definition of general rights are exactly the same as the reason he gives for his natural right being natural. And three of the general rights definition simply elaborates upon what it means to recognize equality of freedom. Given this, it seems to me, that Hart must say that all general rights are natural or that his natural right is simply a general right, or better yet, it is a necessary part of a right being a general right.

If, as already noted, general rights are but one category of moral rights and if the natural right reduces itself to a general right, as I believe I have shown it to, then the natural right is in actuality a moral right. To say that "the equal right of all men to be free", is a natural right, is to do no more than to extrapolate one particular moral right from the group of general rights and to christen it with a different name. It still remains a moral right.

I think we can conclude by saying that natural rights are really no more than moral rights, though those rights ordinarily designated as 'natural' ordinarily differ from other moral rights

43. Ibid., p. 188.

in a very special way. This difference is, as Margaret Macdonald points out, "their political character."<sup>44</sup> But even with this important difference they still remain moral rights.

<sup>44</sup>. Margaret Macdonald, "Natural Rights", Proceedings of the Aristotelian Society, Vol. XLVII, 1947, p. 240.

## II - MORAL RIGHTS AS EMOTIONS

In the previous chapter we tried to show that there was a distinction to be made between natural law and natural rights. The former we found, reduced itself to being a moral principle in which natural rights were rooted. We also found that natural rights, not only those of Hobbes and Locke, but also that of at least one modern writer, reduced themselves to being moral rights. We found that it might be said that natural rights were those moral rights which are political in nature. That is to say, moral rights such as the right to have promises kept, the right to be told the truth, etc. are not ordinarily given the name "natural rights" such as are the moral rights of life, liberty, property and some others.

The list of natural rights has now been extended considerably and has been given the name of "Human Rights". In the United Nations Declaration of Human Rights, rights that are social and economic in nature have also been singled out and have been inserted into the category of human rights. Rights such as the right to free education, the right to work, the right to free choice of employment, and the right to a standard of living adequate for health and well-being are now recognized. I think it is quite obvious that these rights and many others listed in the Universal Declaration of Human Rights are moral rights and the categorizing of these under the name of human rights does not in any way change them.

That they remain moral rights is borne out by the fact that

even though the very word "right" connotes something like having at least a claim to, if not having an actual entitlement, we yet find that people, the world over, do not have, or are in some way denied the minimal natural rights and even more people are not guaranteed the more comprehensive human rights. If these natural and human rights are rights, how can it be that so many individuals do not have them? I think the answer to this can be found by looking to see what a natural or human right is, that is, what kind of right is a moral right?

In the first chapter a partial answer has already been suggested. That was that many people are denied these rights because the moral rights have but moral force and conscience as their guarantor, and as R. M. MacIver says, "Conscience is no sufficient brake for the chariot of power."<sup>1</sup> And even if morality and conscience were an adequate force, I think we will find that not all people view the obligation from the same perspective. Let us see how this works and why this is so.

When one asserts a moral right one is expressing a value judgement, points out Margaret Macdonald.<sup>2</sup> And "In so far as statements of value are significant," says A. J. Ayer, "they are ordinary "scientific" statements; and that in so far as they are not scientific, they are not in the literal sense significant, but are simply expressions of emotion which can be neither true nor false."<sup>3</sup>

1. R. M. MacIver, The Modern State, Oxford University Press, London, 1932, p. 432.

2. Margaret Macdonald, "Natural Rights", Proceedings of the Aristotelian Society, Vol. XLVII, 1947, p. 228.

3. A. J. Ayer, Language, Truth and Logic, Dover Publications, Inc., New York, 1952, p. 103.

We have already shown that natural rights reduce themselves to being no more than moral rights and if this is so then it must be concluded that any assertion claiming natural rights is but an expression of emotion. Yet it seems that natural rights should be more than that; that is to say, it is often claimed that assertions concerning natural rights can be verified and are true or false. They can be verified because natural rights are based upon the essential nature of man. In short, if moral rights cannot be true or false, then it would be claimed that natural rights are not moral rights, for they are logically derived from fact, i.e., derived from the essential nature of man.

If this is so then either natural rights are not moral rights, but, I think, we have shown that this is certainly not the case, i.e., they are moral rights; or Miss Macdonald is wrong and moral rights are not value judgements; or finally Ayer is wrong in saying that value judgements are not significant.

Miss Macdonald tries to show how the essential nature of man is baseless and founded upon a confusion of propositions. For her analysis she chooses three types of propositions: first, tautological or analytic propositions; second, empirical or contingent propositions; and third, assertions of values.

She says that natural rights theorists hold, for example, that the natural right of freedom of all men is based upon the *fact* that all men are similar and equal, and that this similarity and equality is natural, not conventional. The theorists hold that "every man is human "by nature"; no human being is "by nature" a slave of another

human being."<sup>4</sup> Theorists then went on to speculate that there must be an essential human nature and a law which governs all human relations independent of conventional laws. But, points out Miss Macdonald, "essential" human nature is established by definition, and though definitions are necessary, they are certainly conventional. Theorists did not see this and by fusing the characteristics of the two different types of propositions, i.e., empirical and tautological, statements about natural rights were seen as necessary natural facts.

She goes on to point out that another problem presents itself. The statements of natural facts are not even of actual facts. A man must be that which yet he is not, for, though a slave has the necessary "right" to be free, because of his essential human nature, we find that yet he is not. So then "it follows from the definition of "human being" that every human being is, or must be free - or possess any other "natural right" - though his freedom is ideal and not real. But the ideal as well as the actual is natural fact."<sup>5</sup>

This ideal law is neither written nor customary and may yet be unknown, but still it is supposed to apply to all men at all times. Reason is supposed to be the way through which this ideal law is discovered. Propositions about natural law and natural rights are not generalisations from experience but are not entirely disconnected from natural fact either. "They are known as entailed by the intrinsic or essential nature of man. Thus they are known by

4. Macdonald, op. cit., p. 228.

5. Ibid., p. 229.

reason. But they are entailed by the proposition that an essential property of men is that they have reason. The standard of natural law is set by reason and is known because men have reason. But that men have reason, i.e., are able to deduce the ideal from the actual, is a natural fact."<sup>6</sup>

Miss Macdonald goes on to say that, it is granted that most people are rational and that that which is known by reason is certainly true, moreover is what must be true, but it is not necessarily the case that it is true of matters of fact, even though it may be what ought to be true. Logically certain statements are tautological and are never verified nor falsified by what exists. And "ought" statements never say anything about what is. Therefore, she goes on, "because it is confused on these distinctions the theory of natural law and natural rights constantly confounds reason with right and both with matter of fact and existence. The fact that men do reason is thought to be somehow a natural or empirical confirmation of what is logically deduced by reason as a standard by which to judge the imperfections of what exists."<sup>7</sup>

But what exists does so at the same level, or "is of the same logical type." There is not by nature a good, better, best. Standards are human choices, they are not established by nature. Natural events are unable to tell us what we ought to do. "Natural events themselves have no value, and human beings as natural existents have no value either, whether on account of possessing intelligence or having two feet."<sup>8</sup> Therefore that men do reason establishes

6. Ibid., p. 231.

7. Ibid., p. 232.

8. Ibid., p. 238.

no natural criteria for making objective value judgements about what exists.

In support of this Ayer says, "we can and do give reasons for our moral judgements . . . but the question is: In what way do these reasons support the judgements? Not in a logical sense. Ethical argument is not formal demonstration. And not in a scientific sense either. For then the goodness or badness of the situation, the rightness or wrongness of the action, would have to be something apart from the situation, something independently verifiable, for which the facts adduced as the reasons for the moral judgement were evidence. There is," he goes on, "no procedure of examining the value of the facts, as distinct from examining the facts themselves." Ayer concludes, "My own answer to this question is that what are accounted reasons for our moral judgements are reasons only in the sense that they determine attitude."<sup>9</sup>

Elsewhere Ayer says, "The fundamental ethical concepts are unanalysable, inasmuch as there is no criterion by which one can test the validity of the judgements in which they occur. . . . The reason why they are unanalysable is that they are mere pseudo-concepts." Consequently says Ayer, "in saying that a certain type of action is right or wrong, I am not making any factual statement. . . . I am merely expressing moral sentiments. In every case in which one would commonly be said to be making an ethical judgement, the function of the relevant ethical word is purely "emotive". It is used to express feeling about certain objects, but not to make any

9. A. J. Ayer, "On the Analysis of Moral Judgements", A Modern Introduction to Ethics, Milton K. Munitz, ed., The Free Press, Glencoe, 1958, p. 540.

assertion about them."<sup>10</sup> Ethical language not only expresses a person's attitude but is also often used to arouse another's feeling, to evoke a similar feeling to one's own in others. Whenever the ethical language fails to persuade, we then have an unresolvable disagreement, for there is no way that one can prove that one or the other is correct, except in those cases where the disagreement hangs upon a factual belief which can be scientifically verified.

Since, as I believe we have shown in the first chapter, natural rights do reduce themselves to moral rights, and since natural rights are not based upon fact, as Miss Macdonald has shown, and that they are but value judgements, and since value judgements are not literally significant, as Ayer has shown, we can conclude that "Assertions about natural rights, then, are assertions of what ought to be as the result of human choice,"<sup>11</sup> but as value judgements natural rights are neither true nor false, and their only significance as statements are as a kind of record of decisions made. They do not express a fact but indicate on what side of the question one has chosen to be.

The emotive theory explains then why natural rights are not rights such as are positive rights. Positive rights can be asserted and proven, natural rights can be asserted but they cannot be proven.

E. M. Adams, however, claims that the emotive theory rests upon the confusion of equating "I approve of X" with "I like X", and that the failure to distinguish between liking and morally approving has given the position whatever plausibility it may seem to have.

10. Ayer, op. cit., p. 107-108.

11. Macdonald, op. cit., p. 242.

He says that the emotivists' failure to analyze approbation and disapprobation is a fatal weakness in the emotive theory. "Failure to analyze approbation enables them to employ it, for the most part, as if it meant the same thing as liking, or at least did not differ from it in essentials, the only recognized difference being in the kind of emotive response. With this the only recognized difference between the two, the plausibility that X is good (in the generic sense) means that the speaker likes X accrues to the theory that X is right means that the speaker approves of X or likes other to approve of it."<sup>12</sup>

Adams says that by analyzing approbation and disapprobation we can find whether the plausibility of an 'ego-centric interest theory' can be transferred to an 'ego-centric approbative theory' (Ayer) or an 'ego-centric optative approbative theory' (Stevenson).

"No attitude is merely emotive," says Adams. "There is a cognitive aspect, a judgement, which mediates the attitude and gives it direction. Take away the mediating judgment and the attitude vanishes or subsides into an undirected general emotional state."<sup>13</sup> Adams goes on to say that approbation is a peculiar kind of attitude and that though there is no doubt that the emotive response, in moral approbation and disapprobation, is somewhat determined by an individual's conditioning, "the difference between moral approbation and merely liking . . . is not to be found exclusively in the emotive response. There is a fundamental difference in the cognitive aspect.

12. E. M. Adams, "A Critique of the Emotive Theory of Ethical Terms", Journal of Philosophy, Vol. 46, 1949, p. 550.

13. Ibid., pp. 550-551.

The mediating judgment is of a peculiar kind."<sup>14</sup>

The peculiar mediating judgement of approbation is that in judging that a situation X has properties l, m, n, X is subsumed under some accepted rule, whereas in merely liking, the mediating judgement is that X has the properties l, m, n, and this knowledge evokes the favorable response, this, without any other rule.

Adams says that the fundamental distinction between moral approval and other kinds of approval, e.g., approval of a solution to a mathematical problem, is that the mediating judgement, of the different kinds of approval, is subsumed under the different kinds of rules functioning in the different approbations. Thus "moral approbation is so named because the rule involved is a moral rule of the form: For all X, or for most X, if X has properties l, m, n, X is morally right. Without this there is no basis for calling the response moral. Moral codes are constituted by such rules.

". . . There is no moral emotive response without the mediation of the moral judgment that X is right. If one should be for X for any other reason than that it was judged to be morally right, the being for would not constitute a moral approbation."<sup>15</sup>

Adams goes on to analyse both Ayer's and Stevenson's theory in terms of what has just be<sup>en</sup> said and concludes that if the fundamental aspects of the analysis of approbation be granted both "Ayer and Stevenson have completely begged the question and hence have not touched the ethical problem at all."<sup>16</sup>

I hope to show that Adams' analysis itself begs the question

14. Ibid., p. 551.

15. Ibid., p. 551.

16. Ibid., p. 552.

and cannot be granted. Therefore the remainder of his analysis does not in fact destroy either Ayer's or Stevenson's theories.

Adams says that no attitude is merely emotive — some kind of judgement mediates the attitude . He says that before one has the attitude of liking any X, there must be a mediating judgement that X has properties l, m, n, and that this knowledge evokes the favorable response of liking. This, it seems to me, is quite reasonable, and I doubt that Adams will find either Ayer or Stevenson disagreeing with him, for it would be quite difficult to like something without being aware of its presence, which is all that Adams is saying, and consequently in that way the attitude is not purely emotive. Still, it seems to me that Adams has failed to show that "liking" as such is anything more than an emotion. It is that emotion which is stimulated, it is the attitude which comes to the fore, when one becomes aware, through Adams' mediating judgement that X, with properties l, m, n, is present.

But even if I am wrong about what I have just said and Adams is saying more about 'liking' than I am giving him credit for, it does not matter for it is in his next step that he is, I believe, begging the question.

He says that unlike what the emotivists say, moral approval or approbation differs from merely liking because in the different kinds of approval the judging of X having properties l, m, n, is subsumed under some accepted rule. In the case of moral approbation the rule involved "is a moral rule of the form: For all X, or for most X, if X has properties l, m, n, X is morally right." It seems

to me that this is the question being discussed in the emotivist theory, that is, the rules under which the judgements are subsumed. These rules are what is under question. The question being, if A and B do not agree about some rule X, how can they settle their disagreement? If their disagreement is not over some mistaken belief on the part of one of them, then empirical evidence will not suffice, nor will logic suffice if the disagreement does not stem from some kind of illogical argument. Therefore their disagreement must be one of attitude; in the one case liking or accepting rule X, in the other disliking or not accepting it. To acquire agreement one cannot simply make a mediating judgement subsumed under some other rule Y, for now Y comes into question and so on. Thus to attain agreement A "may build up, by the contagion of his feelings, an influence which will modify B's temperament, and create in him a sympathy . . . which didn't previously exist. This is often the only way to obtain ethical agreement, if there is any way at all. It is persuasive, not empirical or rational. . . ."17 There is then, in short, no way of proving these rules; either you like and accept them or dislike and reject them. To argue that a moral rule is used in making a moral judgement about a moral situation is to beg the question for it is the rule itself which is in question. Consequently the emotivist theory is not as far as I can see weakened by Adams' criticism.

Kai Nielsen is another critic of the emotive theory of ethics.

17. Charles L. Stevenson, "The Emotive Meaning of Ethical Terms", Mind, Vol. 46, 1937, p. 29.

In his article<sup>18</sup> Nielsen gives a few highlights of the emotive theory of ethics as it is presented in A. J. Ayer's article "On the Analysis of Moral Judgements".<sup>19</sup> After giving the highlights of the theory he criticizes it. We will follow him through the presentation and through his criticism.

Nielsen says that the emotive theory of ethics holds that ethical words are emotive, that is to say these words do not describe.

Ethical agreement constitutes an agreement in attitude of two or more persons.

Moral judgements and other value judgements are not verifiable and any ethical statement can be denied without self-contradiction.

From the above linguistic facts the emotivists concluded that moral claims do not literally assert anything, that is to say, there are no moral facts, therefore ethical statements are neither true nor false.

"The fact that there are no moral facts carries with it the corollary . . . that there is no moral knowledge. There are no moral facts to be learned; there is no moral information to be gained or forgotten.

"Moral utterances are not used to state facts or assert truths; their essential role is a non-cognitive one. They typically express emotions, attitudes and conations, and evoke actions, attitudes and emotional reactions."<sup>20</sup>

18. Kai Nielsen, "On Looking Back at the Emotive Theory", Methodos, Vol. XIV, 1962.

19. Ayer, op. cit.

20. Nielsen, op. cit., p. 6.

Nielsen says that the emotivists do accept that we give reasons for moral judgements even though they hold that "there are no rules implicit in the meaning of 'right' or 'good' which allow us to say whether or not there are properties that 'right' or 'good' stand for,"<sup>21</sup> and that in fact there is no good reason to assume that 'right' and 'good' are property words at all.

But granted that we give reasons, Nielsen points out that Ayer says ". . . the question is: in what way do these reasons support moral judgements? They do not support them in a logical sense. And they do not support them in a scientific sense either."<sup>22</sup> The upshot of this is ". . . that when we reason morally we note what the facts are and then just decide what to do. There is no way of just observing what to do. . . . We can neither have scientific evidence nor purely demonstrative proof of our fundamental moral claims.

"If this is so in what way then can there be good reasons for moral claims? Ayer, like Stevenson, says that whatever in fact determines our attitude is a good reason for a moral judgement."<sup>23</sup>

Nielsen goes on to say that he agrees that fundamental moral claims cannot be demonstratively proven or inductively established . But he says he disagrees with the "claim that whatever moves or prods us to act as the moral claim prescribes is a good or relevant reason for a moral claim. . . . Something isn't a good reason for a moral judgement simply because it moves someone to do what

21. Ibid., p. 7.

22. Ibid., p. 8 .

23. Ibid., p. 9.

the moral judgment prescribes or to take a favorable attitude toward doing it."<sup>24</sup>

Nielsen says that as in science, morality has a limited but distinctive mode of its own, it has what he calls, a practical point. Each mode of discourse has its own procedure and with this procedure it can be decided whether something is a good reason for a claim or not. Upon close examination it will be found that the 'procedural rules connected with morality' specify the limits of acceptable, or good, reasons for moral claims.

Morality is a practical activity and moral discourse is practical discourse. He says that moral questions are questions asking what to do. The primary intent of moral utterances is not to assert that something is the case but rather to advise, admonish, suggest. "Moral knowledge is knowledge about what to do or about what attitude to take toward what has been done, is being done or is intended.

"As we want and need to know what is the case, so we want and need to know what to do. Indeed we could not know what to do if we did not know something about what is the case, that is, something about how the world goes; but we also need to know what to do. There are no grounds for assuming that such questions are more subjective than factual questions or that such language is more untrustworthy than theoretical discourse. It is just different."<sup>25</sup>

Nielsen equates, not without justification I believe, emotivists with ethical conventionalists. But he claims that he can show objectively his own belief that there is moral knowledge and

24. Ibid., p. 10.

25. Ibid., p. 11.

thereby refute the conventionalists, i.e., the emotivists. He says that the conventionalist is interested in refuting the one who claims that all moral rules are <sup>not</sup> merely justification or rationalization of custom, conventionalist morality being made up of accepted social rules and of the actions and attitudes appropriate to these rules.

"In challenging conventionalism we must show how it is possible to assert correctly and objectively that certain social practices are morally justifiable; and in a like manner we must show how it is possible to assert correctly that the whole moral order has a rational claim to our assent."<sup>26</sup>

Nielsen goes along with the conventionalists who hold that morality is a rule-governed practice, these rules being that which are ordinarily specified as rights and duties, and these he refers to as 'procedural rules'. These procedural rules, similar to the rules of a game, but not so strictly specific, define the practices of any given society.

"If my action falls under an existing practice which I accept and if my action does not fall under a conflicting practice which I also accept, I have no moral alternative, while accepting the practice, but to try to act in accordance with it."<sup>27</sup> If I am reading Nielsen correctly it seems that the reason for this is that if I did not act in accordance *with* the practice, which I supposedly accept, then I cannot be said to still be acting according to the accepted practice.

26. Ibid., p. 12.

27. Ibid., p. 13.

Nielsen gives the example of the practice of promising. He says that if I promise something then I must act according to the procedural rule of promise-keeping if I am to be said to have made a promise. So if I promise something, I cannot later decide not to keep the promise on the simple ground that slightly more good would be served by not keeping the promise. For if I were to do this I cannot be said to still be acting in accordance with the practice of promise-keeping. He says that there are legitimate excuses for not keeping a promise but that these excuses are specified by the procedural rules of the practice of promise-keeping.

I guess Nielsen does not consider that the 'serving of more good' is among the procedural rules, as a legitimate excuse for not keeping a promise. It seems to me that Nielsen's last argument is circular, but I will let it go at that for now and accept that it may be legitimate argumentation.

Nielsen says that once we know the procedural rules which govern or define social practice we may ask for a justification of these rules. Furthermore there are standard methods and procedures for appraising these rules. He gives three such procedures for judging the morality of a given society.

He claims, first, that morality has developed in such a fashion that we can now correctly say 'that in morality we are concerned with the reasoned pursuit of what is in everyone's best interest'. In short, the principle of utility can be applied, the principle in this case being defined as "the most extensive welfare or well-being of all concerned". His second rule for the evaluation of moral systems.

is the equality of everyone. "In a moral situation," he says, "we cannot just be concerned with the maximum welfare of those involved; we must also be concerned with the welfare of everyone involved. Quite independently of what we judge human welfare or well-being to be, these distinctively human values must, from a moral point of view, be distributed as equitably or fairly as possible to all people involved."<sup>28</sup> Here Nielsen is applying a sort of Categorical Imperative, that is if I would have a right to X, to be moral, I must allow that everyone in a similar situation would have a right to X.

The third rule which must be applied when asking for justification for the social practices is that of ideal objective observer. "Ideally, moral judgments are made in the light of full knowledge of the relevant facts; and they must be made in the light of the facts which the moral agent can be reasonably expected to have in his possession when he must render judgment. In making moral judgments we must attempt to render impartial judgments in the light of the relevant facts, using the relevant consideration-making beliefs: but to gain the moral insight that mature morality requires, we should also, before rendering judgment, vividly imagine and emphatically rehearse and review what we know."<sup>29</sup> With this ideal observer attitude and the two previous rules, i.e., utility and equality, one can appraise the moral practices of any given society. If this is so, Nielsen concludes, then conventionalism cannot be true.

28. Ibid., p. 14.

29. Ibid., p. 14-15.

Finally Nielsen says that though a conventionalist might claim that his criteria for testing was itself conventional, "the conventionalist claim is mistaken." There are even Hobbesian reasons for accepting the moral point of view. A rational egoist would naturally desire the most extensive liberty compatible with his own self-interest. Nielsen goes on, saying that the egoist will soon see that this is completely achievable only in a society in which the moral point of view prevails. "Thus, in quite a non-moralistic sense of 'reasonable', it is reasonable for men, even self-interested men, to acknowledge that it is better for people to behave morally than amorally or immorally."<sup>30</sup>

Nielsen concludes that if what he has claimed is correct then neither conventionalism nor emotivism can be correct accounts of moral reasoning. "What one ought to do, one ought to do, anyone's bidding apart. But it is not the case that there is no logical limit to what could count as a valid moral judgment. . . . There are unequivocal material procedural rules that help define morality. They limit the scope of what counts as a 'moral judgment' and they have a rational point. . . . Though moral utterances express attitudes and have a moving appeal, moral reasoning remains a rule governed activity with an objective rationale."<sup>31</sup>

This is not the end of Nielsen's article but there is no need to pursue it any further. In the next section he replies to a criticism of Richard Brandt's, which criticism does not follow the line that I will follow, consequently Nielsen's reply will not affect it.

30. Ibid., p. 15.

31. Ibid., pp. 15-16.

In the final section he is, I would say, making a stronger appeal for the acceptance of his arguments, concluding that "there are good but not necessarily conclusive reasons for an individual in an ongoing moral community to behave as a moral agent behaves."

There is, I think, much that can be negatively criticized in what Nielsen has said. I will, however, restrict my remarks to the three points he gives as rules by which one can evaluate any given moral rule or principle. First the fact (if indeed it is a fact) that morality has developed in such a fashion that the principle of utility is widely accepted. does not in any way make the principle an objectively verifiable principle which can be applied to evaluate a given moral principle. That is to say, if one justifies a particular moral principle i.e., gives reasons for accepting certain moral principles, the fact that these moral principles run counter to Nielsen's principle of utility does not in any way invalidate them. The principles, and reasons given in support of the principles, running counter to Nielsen's principle of utility are invalid only for Nielsen and for those who hold an attitude similar to his. Nielsen has in no way proven that his principle of utility and those of equality and of ideal observer are the only acceptable principles for judging a moral rule. Of course it should be noted that he admits as much himself. He said there is no conclusive reason for acting morally but there are good reasons for doing so. But the point at issue is just exactly "what is the reason" not what is considered by some to be a "good" reason. By saying that there is no 'conclusive reason' but that there are

'good reasons', it seems to me that Nielsen is compounding the problems. Not only do we now have to find out how to verify the reasons but we must now also deal with 'good' which is one of the major terms in question here. This seems to me a clear case of failing to apply Occam's razor.

Nielsen also says that there are good Hobbesian self-interested reasons for accepting the moral point of view. And probably there are such reasons. But the question here would be 'which moral point of view should one accept?' Such self-interested reasons do not necessarily lead to accepting Nielsen's moral point of view, and I think that this is what he is implying would happen, i.e. that his point of view would be accepted.

I think then that we can conclude by saying that there are reasons which can be given for a particular moral judgement or claim, so long as one accepts a particular moral system or moral point of view. But Nielsen has not in any way proven that either his moral point of view or any other must be accepted.

I think that probably it can be said with Nielsen that "Moral questions are fundamentally questions about what we are to do." But we cannot go along with him and say that there is a moral knowledge which can tell us what to do. As Ayer says, there is nothing to be done about answering the question, "except look at the facts, look at them harder, look at more of them, and then come to a moral decision. Then, asking whether the attitude that one has adopted is the right attitude comes down to asking whether one is prepared to stand by it. There can be no guarantee of its correctness,

because nothing counts as a guarantee. Or rather, something may count for someone as a guarantee, but counting something as a guarantee is itself taking a moral standpoint."<sup>32</sup>

I think we can conclude then, by saying, that if natural rights do reduce themselves to moral rights, as I have tried to show that they do, and that they are consequently value judgements, as Margaret Macdonald has shown them to be, then it must be accepted that natural rights are nothing more than individual preference. This is not to say, as Ayer points out, "that anything that anybody thinks right is right . . . . for if . . . . (the) theory did entail this, it would be contradictory; for two different courses of action cannot each be preferable to the other. . . . To say that something which somebody thinks right really is right is to range oneself on his side, to adhere to that particular standpoint, and certainly I do not adhere to every standpoint whatsoever."<sup>33</sup>

32. Ayer, *op. cit.*, p. 544.

33. *Ibid.*, p. 545.

### III - SOCIAL CONTRACT

Sir Ernest Barker tells us that the social contract expresses fundamental values which the human mind clings to. It expresses "the value of Liberty, or the idea that will, not force, is the basis of government, and the value of Justice, or the idea that right, not might, is the basis of all political society and every system of political order."<sup>1</sup> Since the social contract is generally an out-growth of natural rights, and having, as it were, in my last chapter put away natural rights, does it therefore mean that we have also put away the social contract? For if we have, and if what Sir Ernest Barker says, is so, and I think it is, then have we also damaged Liberty and Justice? Can there be Liberty and Justice without the social contract?

"Before the state began, there was society," says MacIver.<sup>2</sup> This society is often seen as the result of a social contract. Individuals in the state of nature came together and contracted to form a society. This took place in what Barker calls a pacte à'association. Though this can be the only contract entered into, usually a second pact or contract is entered into - that of government. "We must . . . hold," says Barker, "if we are thinking in terms of contract that, besides the contract of government, and prior to the contract of government, there is also a contract of society, a social contract proper (in the strict sense of the word "social"); and we must conclude that the State, in the sense of a political community

1. Ernest Barker, Social Contract, Oxford University Press, London, 1953, p. vi.

2. R. M. MacIver, The Modern State, Oxford University Press, London, 1932, p. 446.

and as an organized society, is based on a social contract. . . ."<sup>3</sup>  
Therefore the pacte de gouvernement creates political power and authority, but only that. The pacte d'association creates the society and we are to recognize that it is greater than the government or at least before it, and also that it creates the State.

MacIver says that the worst of all confusions is to identify the social with the political, and tells us that they must be separated for the social is always prior to the political. "It is perfectly obvious," he says, "if only we look at the facts of the case, that there are social forms, like the family or the church. . . , which owe neither their origin nor their inspiration to the state; and social forces, like custom or competition, which the state may protect or modify, but certainly does not create; and social motives . . . too intimate and personal to be controlled by the great engine of the state."<sup>4</sup> The state regulates, supports, exploits, encourages, or may even destroy these institutions, but it is not the life of them. The society then, and the state, are separate and distinct and the society may exist without establishing a state.

MacIver defines the State as "an association which, acting through law as promulgated by a government endowed to this end with coercive power, maintains within a community territorially demarcated the universal external conditions of social order."<sup>5</sup> This I find a good definition except to add that a modern state is one whose government is established in the creation of a constitution, which gives and at the same time restricts the government's coercive powers.

3. Barker, op. cit., p. xii-xiii.
4. MacIver, op. cit., p. 4-5.
5. Ibid., p. 22.

This constitution can be established over a period of time, e. g. England, or all at once as with the United States. In the U. S. constitution I am regarding the amendments to it as appendages to the clause which provides for its amelioration. It can also be viewed as a developing constitution, but the case in point, is simply that a specific date can be given for its enactment. If my exception to MacIver's definition is not universally acceptable, I will not argue the point, but surely it must be accepted for any state founded upon the spirit of the social contract as is found in much of the Western World.

Sir Ernest Barker points out that if we accept the pacte de gouvernement we must also implicitly accept the pacte d'association, and further, that it is possible to accept the latter without accepting the former. This, I do not accept as completely true. It is certainly the case that one may accept a social contract without taking the next step of accepting a contract of government - Rousseau was one such example. The individuals form a pacte d'association but never take the next step, they become and remain self-governing, i.e., they become and remain a pure democracy. The problem with this position is that it is historically untenable.

It is perfectly obvious, as was already suggested above, that today the social contract has no historical significance. MacIver points out that in primitive societies 'custom is the king of man', i.e., that custom is the unwritten law. These customs are enforced by the community and not by any kind of state. As origins are always unclear, so is the origin of these customs unclear. But that these customs

are not something which were established in a social contract is obvious from the way the society itself came into being. "The first of all societies," says MacIver, ". . . is the family, but it cannot exist in mere isolation. The mating impulse leads the adolescent outside the old family to form a new one. Each new family is the union of two families. The web of blood-relationship is thus woven and rewoven which creates and sustains the kin with all its potentialities of extension and subdivision. The kin arises out of the recognition of consanguinity, but it grows into an order of society."<sup>6</sup> As the society evolved so did its customs, usually as a reaction to some necessity which needed control. MacIver suggests that the first controls to evolve were those to control the instinct of sex, and from there all other customs, e.g., marriage, dowry, property, etc. I do not know that this process is more than speculation on the part of MacIver, but even if one does reject this particular explanation it does not weaken the proposition that society and its customs are a process rather than a one-shot contract. Therefore the historical foundation of the social contract is without validity. And this is antithetical to what Barker said, i.e., "that if we accept the pacte de gouvernement we must also implicitly accept the pacte d'association." Unlike what he said, we do not have to accept this. Rather, if we accept that there was a pacte de gouvernement, then all that it is necessary to hold, is, that there was an established society. And MacIver has shown us how this society came about.

I am not saying here that Barker claims the social contract

6. Ibid., p. 26.

to be a historical fact. I am only saying that he holds that if one is 'thinking in terms of contract, that besides the contract of government, and prior to the contract of government, there is also a contract of society'. This contention of his is what I am denying. It could be that since Barker is making an analysis of the social contract rather than holding it as a necessary historical fact to the contract of government, that his only claim is that the relationship between individuals must be seen as contractual. This would imply that society itself is based upon a contract, i.e., the pacte d'association. It is not clear to me, however, that this is what he is saying.

That there has never been a social contract in the strict sense of the word does not preclude there having been a pacte de gouvernement. As Bertrand Russell points out in A History of Western Philosophy, the social contract theorists were trying to overthrow the idea of the divine rights of kings, and yet retain some reason for government authority. That is, a formula was needed to provide the government with "a right to exact obedience, and the right conferred by a contract seemed the only alternative to a divine command." Of course Hobbes is a definite exception to this. For he wanted to place into the lap of the sovereign, a package called society, neatly tied up by a social contract, to be done with as the sovereign willed. Hobbes postulated a social contract, not to take the power out of the sovereign's hands, but to fasten it there more securely. Though Hobbes, as I have already said, was an exception, in general the social contract theorists were

trying to wrest power from the king and give it to the people in terms of natural rights. But in doing this it was also necessary to find a way to exact obedience to government, as Russell pointed out, and avoid anarchy, or what would at that time have been thought of as a return to the state of nature. The idea of voluntarily establishing a government was hit upon and ipso facto we have a government with the right to exact obedience, for it was a right voluntarily conferred on it.

At this point we have established that the state and society are distinct institutions and the latter may exist without the former. Further it has been shown that there has not been a pacte d'association, therefore if there ever was a social contract it must have been a pacte de gouvernement, and those entering into the pacte de gouvernement were the individuals of a society. It is also possible for two or more societies to enter into such a contract, but still, the contract is based ultimately upon the individuals. It should be noted here that the pacte de gouvernement, the political contract ". . . is not for a moment meant to explain the chronological antecedents of the State in general, the State at all times and places in all its manifestations. It serves only to explain, and is meant only to explain, the logical presuppositions of the State in particular: the State as it exists at the present time, and as it exists at the present time in the Western world. . . . If we look at the State . . . as it exists in our own time and in the area of the Western world, we are . . . bound to recognize

that it lives and has its being in a climate of contract. . . ."7

The utilitarians have claimed that the principle of utility put an end to the social contract theory. The utilitarians deem utility and not the social contract as the necessary and sufficient reason for obedience to the government. But has the social contract been laid to rest? As J. W. Gough says, "It would indeed be surprising if a theory which had commanded such widespread support for so many centuries were wholly worthless."<sup>8</sup> Of course, as a historical explanation of the origin of society and of government, I believe, it has been shown that this is certainly not the case. But originally the theory also intended "to explain the nature and limits of the duty of allegiance owed by subjects to the state, and of the right on the part of the state or its government to control the lives of its citizens."<sup>9</sup> This latter part of the social contract, I believe, is in part still tenable; and this, I think, is what H. D. Lewis has shown in his article "Is There a Social Contract?"<sup>10</sup>

Mr. Lewis says, "Some of our duties are conditioned by

7. Ernest Barker, Principles of Social & Political Theory, The Clarendon Press, Oxford, 1952, p. 190.

8. J. W. Gough, The Social Contract, The Clarendon Press, Oxford, 1952, p. 244.

9. Ibid.

10. H. D. Lewis, "Is There a Social Contract?", Philosophy, Vol. XV, 1940.

mutual agreement, although their ultimate ground consists in a purpose which is promoted by the observance of this agreement."<sup>11</sup> And he goes on to say that political obligation falls within this category, and furthermore the State is the maintainaner of this kind of special agreement.

Hume asked, "Why are we bound to observe our promises?"

Lewis tries to answer with the following argument. "This question cannot be answered without going beyond the mere idea of a promise. We shall have to say, for instance, that we have a moral obligation to keep a promise as such, or that the honouring of promises, especially certain promises, is indispensable to the furthering of ends which we ought to realize. It may even be the case that we abandon moral considerations altogether and regard the fulfilment of some private aims as the purpose which is served by our fidelity. But the necessity of appealing to considerations of this kind does not nullify the significance of the fact that it is the honouring of a promise that finds its justification . . . in such considerations."<sup>12</sup>

At this point I want to differ with Mr. Lewis. First, not some, but all of our duties are conditioned by mutual agreements. I assume that Lewis has moral duties in mind, and thought that such duties would exist without any previous agreement. But in regards to this I agree with Bernard Mayo who says that if a duty was laid on, it was upon entering into a contract; "an activity governed by the rules of an institution, distinct from the law, but with which the

11. Ibid., p. 66.

12. Ibid., pp. 66-67.

law, as it happens, may be concerned."<sup>13</sup> The provisions for legal action are varied, but each specific situation is what generates legal and contractual duty.

Secondly, I disagree with Lewis when he says "that we have a moral obligation to keep a promise as such, or that the honouring of promises . . . is indispensable to the furthering of ends which we ought to realize." First, as has been already pointed out, moral obligations do not have any substantive meaning, they are merely an expression of emotions, consequently there are no ends which ought to be realized. There may be ends which it would be desirable to realize, or useful to realize, but again no ends which ought to be realized. Lewis does protect himself and suggests that we can drop moral considerations "and regard the fulfilment of some private aims as the purpose which is served by our fidelity."<sup>14</sup> This I have no quarrel with and would maintain that, though it may not be a person's reason for doing his duty, it is the only justification which can be given for getting a person to perform his duty.

13. Bernard Mayo, "Human Rights", Proceedings of the Aristotelian Society, Sup. Vol., 39, 1965, p. 223.

14. Lewis, op. cit., p. 66.

The state involves a contract or agreement, continues Lewis, on the basis that no society can survive without some kind of compromise on the part of its members. An individual is forced to repress some of his desires, or organize them to fit within the organization of a society. Because of the uniqueness of every individual there arise situations where individuals disagree. "Means must be found whereby particular persons can come to agreement with regard to the way each one is to suit his purposes to those of his fellows. . . . Such a method involves entrusting some person or persons with the power of making decisions on behalf of others. The authority constituted in this way does not necessarily involve a moral title to obedience. Its basis is the consent of the persons over whom it extends. . . ."15 Of course the importance of this consent, i.e., to be obliged by the decisions of a person or persons in the way a constitution provides for these powers to certain persons in a society, "is particularly evident in the case of the State, in view of the fact that the State provides that framework of society as a whole, within which all other organizations function."16 The State becomes supreme, all other relations must limit themselves to the framework established by the State. Though it is at times unpleasant to have to constrain oneself or be constrained, in the realization that one's interest is best served in accepting these constraints, one then co-operates in retaining the State as the supreme institution. That is, one agrees with others that each person should co-operate to retain the State. The agreement may be

15. Ibid., pp. 68-69.

16. Ibid., p. 69.

tacit or explicit. The government could at times become so oppressive that one would want to consider changing it or reforming it in some way, but on a whole the State is to be regarded as having supreme authority. The order, protection and services it generally provides calls to all men to co-operate with its authority.

From this point on Lewis deals with four possible objections to his social contract theory. Some of his rebuttals are acceptable, but some not. Those answers I agree with I will simply give the objection and his answer. In those that I do not agree with I will criticize his answer and where I can I will provide what I think to be a better rebuttal to the original objection.

The first objection he deals with is that the social organization referred to can be implemented without the consent of even the majority of the people. This would be the case where a powerful individual or group were to impose their will. In such a case laws will be obeyed from fear of the tyrant and not from the desire to retain the basis of social co-operation, i.e., not from the desire to avoid returning to the state of nature. Lewis has <sup>three</sup>~~two~~ answers to this objection. First, he says, "I allow that the few are sometimes in a position to dominate the many. But I refuse to dignify a community where such conditions prevail with the name of State."<sup>17</sup> This, though a weak reply, must be accepted in view of our definition of what constitutes a State. Such a relationship is one of master-slave rather than ruler-subject and does not rest upon a constitution which was voluntarily accepted by both parties, and this we

17. Ibid., p. 73.

established as part of our definition of what constitutes a state. I realize that this seems to fly in the face of what we said earlier, i.e., that though definitions were necessary propositions, that is, are necessarily true, they are not necessarily what is true of matters of fact. That is to say a State may exist and yet not adhere to our definition of what constitutes a State. Though this is so, it is also the case that it is our choice whether or not we will 'dignify such a community with the name of State.' Therefore if such a community more closely adheres to another definition, then we would name it with that name which we ordinarily use to stand for that definition, that is, we would apply to it the name whose lexical definition most closely tells us what kind of community we are dealing with.

Lewis' next rebuttal is that it is "impossible . . . to rule in the teeth of the people. . . ." In other words, something more than fear and force are necessary to rule over an extended period of time. That which is necessary is the consent of the people. Lewis does say that with today's war machines available to tyrants this is probably less true. But he goes on to express the thought that even today this has some truth. A tyrant cannot rule over an extended period of time with force only; he must eventually win the opinion and support of the people, or fall.

His third rebuttal to the above objection is a compromise on his first answer. Instead of denying that a despotic system is a State, one is to make a distinction between a "perfect and faulty or perverted State." This kind of distinction might be

acceptable on the international scene where other states have to maintain some kind of relationship with the despot, but on the individual or societal level this is totally unacceptable. To give it the prestige of State, albeit a perverted one, is to put barricades in the way of the people in their attempt to free themselves from it. People generally obey from habit, so if one gives it the dignity of the name State, then the people will be more generally inclined to obey the despotic regime, rather than resist it, because of their past habit of obeying the State. So I find this answer, suggested by Lewis, unacceptable, both on the count that such a system does not conform to our definition of a State and therefore is not one, and because if one dignifies such a system with the name of State one confuses the people with a rationalization for obeying the tyrants when they should be resisting.

The second objection to the contract theory dealt with by Lewis is that it is impossible for an individual or group to withdraw from the State if they want to. If one were to retract his consent the State would very quickly deprive him of both property and liberty.

Lewis points out that this complaint is barren. For, as he says, "We cannot have everything our own way, and this forces a . . . choice upon the individual, namely, that between the State and anarchy. It is absurd to complain that our property and freedom are taken from us if we disregard the State, since without the State, we should not have any property or freedom."<sup>18</sup> Of course one must

18. Ibid., p. 178.

admit that the State is necessary to attain the good life, yet the choice is not one forced upon the individual by the State.

The State only exists because people "consent to have a government over them in preference to anarchy." This or that particular State may not be the choice of each individual but this does not nullify what has just been said.

The third objection dealt with by Lewis is that under the terms set forth there is no limit to the authority of State. To this objection he answers that "The authority created by the contract is . . . absolute in a legal, but not in a moral sense. The contract itself does not create a moral authority. Morality is not the creation of men. It is ultimate and unique."<sup>19</sup> Therefore the government is subject to moral limitations. There are some laws which ought to be enacted rather than others. And misgovernment can reach a point where men can exercise their right to resist, I suppose, though Lewis does not say so, that this is a moral right. If one does resist, Lewis points out, he repudiates the State in its entirety not in limitation. "We can dispense with a particular State as an instrument for the promotion of our ends, with a view ultimately to the creation of a better State. That is what the moral and political limitations imply. But to the extent that we accept any State . . . we must grant to it uncircumscribed authority. This follows from its nature. Government cannot function successfully unless it is the highest human authority. If it is wise, a government will set very definite limits to itself. But its limits cannot be

19. Ibid., p. 183.

imposed from outside."<sup>20</sup>

I must disagree with almost everything Lewis says in this rebuttal.

First, Lewis holds that the State is limited by moral authority. As was shown in the previous chapter there is no absolute and unique morality against which the State's authority can be measured. The State, therefore, cannot be limited by a non-existent morality. Thus if the State is absolute it must be absolute in every sense, it is neither legally nor morally restricted.

Next, I disagree that one repudiates in entirety and not with limitation. To repudiate means to reject in entirety, but surely, one is not repudiating every time he takes exception to what the State is doing, be it democratic or other kind of state. For example, a government may pass a law which a person thinks to be an infringement upon his rights as guaranteed by the constitution of that State. This person may wish to disobey the law, that is, may want to repudiate the particular law, without wanting to repudiate the State as a whole, the idea here being that the disobeying of the law would be in the spirit that the State had broken the contract and consequently the law was not in fact enforceable because it falls outside the limitations of the contract of government. Therefore every act of "civil disobedience" is not, it seems to me, necessarily a repudiation of the State.

There is, of course, the case where the person may be trying

20. Ibid., p. 184.

to get the original contract amended or changed completely. In such a case it might be said that he was repudiating the State. Here an act of resistance to the State would be an act of repudiation; but not every act of resistance is to be construed as an act of repudiation.

That the state must be granted absolute uncircumscribed authority, because this follows from its nature, is, I think, a gross error on Lewis's part. The state can be limited and is limited wherever a pacte de gouvernement is entered into which is established by a constitution that sets limits upon the State. I agree that to function successfully the State must have the highest human authority, but this does not mean that it must have unlimited authority. The question might <sup>be</sup> asked, that if it is the highest human authority how can it then be limited. The answer is that the State came to be on the back of a constitution which gives and at the same time restricts its power. The constitution can and does impose limitations from outside, unlike what Lewis tries to hold. And this, I believe, also answers the criticism lodged against the contract theory, i.e., "that there is no limit to the authority of the State."

The final objection Lewis deals with is that put forth by the utilitarians which seems to render the contract superfluous. Hume says, "It is evident that, if government were totally useless, it never could have place and that the SOLE foundation of the duty of ALLEGIANCE is the advantage which it procures to society, by preserving peace and order among mankind."<sup>21</sup>

21. Ibid., p. 184, quoted by Lewis.

Lewis' reply, and I think it is one that is well taken, is that the principle of utility presupposes the free acceptance of government, when applied to politics. Political obligation is undoubtedly tied to the purpose or end of the government, be it satisfaction of desires and pleasure, as would maintain the utilitarians, or whatever end the people want its government to pursue. But, "nevertheless, it is of first importance to realize that the State, as an instrument for the attainment of an ultimate purpose, presupposes the agreement to be governed."<sup>22</sup>

I think we should return momentarily to a concern expressed at the beginning of this chapter. That was, had we, with natural rights, done away with the social contract and thereby disregarded Liberty and Justice? I think we can answer that the social contract at least in its pacte de gouvernement aspect is still very much a viable theory. As for Liberty and Justice, they do not necessarily survive with this aspect of the contract. They are retained only if the people include them in the spirit and content of their constitution. That is to say that "Liberty, or the idea that will, not force, is the basis of government," is only part of the constitution if the spirit of Liberty is included when the constitution is formulated. Of course, as we have seen, force generally will not allow a government to retain power for an extended period of time. Yet there is a continuum between the extreme ends of absolute Liberty or Anarchy and the other extreme of absolute control. The Liberty and control must be balanced in the constitution to attain the end desired by the people.

22. Ibid., p. 185.

"Justice, or the idea that right, not might, is the basis of all political society," must also be included in the constitution. The constitution must define what the people want to consider to be right. In so doing they are in effect saying to the government which will be established that this is what we consider to be right and wrong and in those areas where people act wrongly you may use force to restrain them, otherwise any use of force is an imposition of might which we deem unacceptable.

So then we can say that Liberty and Justice are preserved, but only in those terms which the people want to define them in. They are not absolute and can be changed if they so will it.

#### IV - CIVIL RIGHTS

I do not know that we have come a very long way, but at this point we have reasonably established that there are no natural rights, (or more precisely natural rights are moral rights by another name). We have also made an attempt to substantiate a social contract, which we will hereafter refer to as a 'contract of government'. We will call it a 'contract of government' because it more closely expresses what we mean, and does not give the connotative idea of there having been a 'social contract' in the sense of a pacte d'association. Of course the idealist, the utilitarian, the marxist, and others will disagree with us about a social contract, though they would agree with the conclusion we have reached concerning natural rights. But their agreement would only be with the conclusion and not with our method of getting there, and as with the social contract they would disagree because of first principles. And unless one or the other can convince his opposition to reject their set of first principles and accept his there is not much hope of a reconciliation.

It might be said that the first principles which I have abided by and will continue to do so, are similar to those of Thomas Reid, or as someone once characterized them, the principles of 'naive realism.' In other words, if I bump into something and my forward progress is stopped, then there is a material object in my way. If I am hungry then my stomach is in need of food, or water in the case of thirst, and pain is real, not some ideal manifestation of the mind, or platonic form. As Thomas Reid says, "I take it for granted, that

there are some things which cannot exist by themselves, but must be in something else to which they belong, as qualities or attributes.

"Thus, motion cannot exist but in something that is moved.

. . . In like manner, hardness and softness, sweetness and bitterness are things which cannot exist by themselves. . . . That thing, whatever it be, of which they are qualities, is called their subject, and such qualities necessarily suppose a subject."<sup>1</sup> Similarly with pain, freedom, pleasure, they all exist in a subject and otherwise have no existence. In the same way that a person can have the concept of a unicorn one can have a concept of liberty and pain, but this does not give them a separate existence. So then a person is free or not, in pain or not, but there is no pain or freedom as such, and similarly there are no rights as such. People have rights guaranteed them by their governments, but rights are not otherwise substantive.

What does it mean for a person to have a right? In other words, what are rights? When I use the word "right" I shall understand that a person has a legal entitlement to do or act in a particular fashion, without fear of legal prosecution or retribution. In fine, what I am saying is that all rights are Civil Rights. Of course when I say 'legal entitlements' I do not mean that a particular law or statute is necessarily on the books authorizing every act an individual may perform. What I do mean is: 1/ that no law has been passed forbidding such an act—we might call these 'common law rights'; or 2/ that a

1. Thomas Reid, Essays on The Intellectual Powers of Man, The M. I. T. Press, Cambridge, Mass., 1969, p. 36.

statute is on the books granting me a particular right, and these we might name 'statutory rights'. The statutory rights break down into two varieties; the first we will name 'constitutional rights' and they are those rights guaranteed by the constitution of a State. The second, for lack of a better name, we will call 'legislated rights', and they are those rights established by the government, e.g. the right extended to an individual to have a driver's license after attaining a certain age and passing a standard examination.

The constitutional rights are ordinarily much stronger than the legislated rights, the reason being that the legislated rights may, like the common law rights, be altered or withdrawn at any time by the governing body. Constitutional rights, on the other hand, cannot, ordinarily, be so altered or withdrawn without going before the people. The constitutional rights restrict the governing body. It restricts them from passing any law which will interfere with the constitutional rights until such time as the statute restricting the government is repealed. Constitutional rights may not, then, be changed at the whim of the government.

For example, though no law has been passed saying that I can or must take a bath on Saturday night, there is also no law forbidding it and therefore I have a common law right, i.e., I am legally entitled to take a bath on Saturday night, or to refrain from doing so. There is in most communities a law against my taking a bath in the body of water from which the community draws its drinking water, so I do not have a right to take a bath in that reservoir, be it Saturday or any other night. On the other hand if there had

been at some point of time a law passed saying that I had a statutory right to bathe wherever I wanted, then that law forbidding<sup>d</sup> my bathing in the reservoir could not have been passed, or if it were passed, I could pay no attention to it with no other necessary justification than that of its infringing upon my right. This is assuming that this statutory right had not been previously repealed, either by oversight or some other reason.

If the statutory right were a legislated right then the governing body could simply reverse its previous decision and withdraw my right to bathe wherever I wanted. If the right were, on the other hand, a constitutional right restricting the government from passing laws forbidding me from bathing in the reservoir, it would be necessary for the government to have the constitution changed. This change is ordinarily more difficult than the changing of legislated law, and would have to follow whatever procedures were established in the constitution for such changes.

How does this relate to the more important questions of liberty, freedom, justice, and civil rights?

I think that if we accept rights to be legal entitlements then changes in thought must be made when thinking in terms of the political and social situations. After decades of making claims for moral rights and natural rights and not getting any further in the attainment of justice it is time to abandon these ideas and look at the situation as it exists. For every moral right or natural right

that you claim or deny, I can claim or deny its opposite with complete justification. Furthermore, it is foolish nonsense to talk of having rights, be they moral, natural or human, that are against the law. One such right often claimed recently, particularly in the United States, is the moral right of civil disobedience to such laws as a person may think immoral. Several persons have acted in a civilly disobedient manner and have shortly thereafter found themselves in prison. A right means that you will not be "legally" prosecuted for your action, or if you are prosecuted you can justify yourself by pointing to the law giving you the right. Those people who acted in a civilly disobedient manner were prosecuted, and, in a sense, shown that they did not have such a right in the United States. In other countries it may be different and such a right may exist. In the United States these people were either fined or imprisoned, and justifiably so, for they did not have such a right. To look at rights as legal entitlements is to avoid this situation. Individuals would no longer go about claiming rights which they do not, in fact, have. Of course, merely avoiding this situation does not get us very far. It does little to improve a situation which men feel needs to be corrected, or to alleviate what they feel to be exploitation or repression, or both. But the realization of what rights actually are would help men to re-assess their methods of obtaining legal and social change, i.e., of obtaining new rights <sup>or</sup> recovering old ones. It would help to avoid wasting time behind bars uselessly, Uselessly, in the sense that they would not go to court making claims to rights they do not have, with their convictions a foregone

conclusion, barring unusual circumstances.

How then do we have rights established? Rights begin with the contract of government, i.e., the constitution. The constitution must set forth how the government is to be established and how it is to function. But more important the constitution must establish those rights which the people want, that is, the civil rights. Many rights can be established or taken away after the government begins to function; but a constitution should set forth those rights which the people feel that the government can never infringe upon. That is to say, the individuals, in effect, say, "Yes, I will enter into a contract of government with you and the others, so long as the government we establish is never permitted to prohibit or infringe upon the following: freedom of speech and religion, trial by jury, and so forth. If you establish at least these minimal rights then I will enter into the contract." These are incorporated into the constitution so that if ever the majority (in the case of a democracy) passes a law which counters these rights the minority can point to the broken contract and say, "Your law is null and void". Or they may say, "If you continue to enforce this law, then you have broken the contract and we are no longer bound by it." This latter choice leads to rebellion or revolution, the former choice would be a suit in a court of law.

The rights established by the constitution become, in a word, civil rights. They are the minimal rights of the people. Every citizen has these rights and they can never legally be infringed upon. Of course the constitution can have incorporated in it the machinery for change. But every time such a change is incorporated into the

constitution every individual who opposed such a change must decide anew whether or not he should remain bound by this contract. Those who decide against remaining within the confines of the constitution, admittedly, have very little choice of action. They may leave the state which they find themselves in or they may revolt. Neither choice is necessarily a right, though the first may be a right in some states

Some people speak of the 'right of revolution', but it is not a right, in our sense of right, in any state that I know of. It is what Samuel Rutherford called a natural power of self-defence, which the people cannot alienate, and of which exercise they may at anytime resume.<sup>2</sup> Having the 'power to' is not at all the same as having the 'right to'.

A third alternative is to remain at peace with the state and within the state and agitate for a reversal of the change one opposes. It would probably be wise to include in the civil rights of the constitution a right for such agitation, in the form of a right to print or speak whatever one wishes to. In this way it is possible for individuals to attempt to convince the majority of the people to rescind any or all particular amendments made to the constitution, i.e., to the contract of government.

All this then reduces<sup>to</sup> there not being any such thing as the inalienable right of life, liberty, property, and pursuit of happiness. But what if the state attempts to take one's life, infringe upon one's liberty and pursuit of happiness, and to confiscate one's property?

2. Gough, op. cit., p. 93, a paraphrase of what Rutherford said.

In each of these cases the individual may resist. He does not, however, have the right to resist, for few if any are the states which would legislate such a right. Conversely it is essentially useless to legislate against the power of an individual to resist, for this power is inalienable and an individual may utilize it whenever he so wishes. As Hobbes says, "If the sovereign command a man, though justly condemned, to kill, wound, or maim himself; or to abstain from the use of food, air, medicine, or any other thing, without which he cannot live; yet hath that man the liberty to disobey."<sup>3</sup> Therefore, if the state impinges upon an individual's life, liberty or property to the extent that an individual thinks is unjustified or unfair, or even if he thinks it justified but does not like it, he may resist the state and recruit whatever support he can muster to help him resist. The extent to which the state forces him to resist and the strength which the individual can recruit to help him resist will mark the difference between quiet resistance, legal or illegal, and open rebellion. No easy distinction can be made, but then, such a distinction is not necessary.

Though it is useless to legislate against the power the individual has to defend himself against the state or other individuals, this power is what the individual consents to suspend when entering into the contract of government. The individual agrees to allow the government to utilize the power of other people to protect him and the civil rights he has. And at times, if it becomes necessary, he may be called upon to use his power to help support the government and

3. Hobbes, Leviathan, op. cit., p. 164.

other individuals. The government's use of a person's power is to be utilized both for external and internal security - external, when a foreign power threatens; internal, when individuals break the law. It must be emphasized that the individual's power is never alienated, he simply consents to suspend the use of it, or to use it for the benefit of the state, and this only during such times as the state is not a threat to him personally. The consideration which he receives for suspending his use of power is civil rights. In a purported state of nature there would be no rights, only anarchy.

Hobbes expresses much better what has just been said: "In every city, that man or council, to whose will each particular<sup>ly</sup> man hath subjected his will (so as hath been declared) is said to have the supreme power, of chief command, or dominion; which power and right of commanding, consists in this, that each citizen hath conveyed all his strength and power to that man or council, which to have done (because no man can transfer his power in a natural manner) is nothing else than to have parted with his right of resisting."<sup>4</sup>

What we gain by looking at rights from this point of view is that the people can now legislate new rights to themselves whenever they find it necessary or desirable. This they now can do without having to go through the arguments and counter-arguments of trying to show or prove that what they want is a natural right, or that it does not infringe upon someone else's natural rights. The fact that some men feel that such a right would be desirable is justification enough. Furthermore it is now unnecessary to show how it does not infringe upon natural rights; for people do not have such things. Those

4. Hobbes, De Cive, Appleton-Century-Crofts, Inc., N.Y., 1949, p. 68.

who want a new right have but to convince the majority of people that such a right would be desirable. Once this is accomplished the people then legislate it to themselves. It now becomes possible for people to legislate not only political rights but also economic and social rights. It is now possible without very much difficulty for them to legislate to themselves economic security, at least to the level which the resources of that state will provide. It can now be easily seen that there is no 'inalienable right' to property, as John Locke, the French Constitution and others maintain. The right is alienable and can be legislated against. Therefore the people can make all property communal, or private, or any variation they choose. What, of course, comes up immediately from this is that not only politics is democratic but economics can also be made democratic. The only limitation imposed upon the people are those of natural resources and the capability of extracting and processing these. It would of course be unreasonable for the people of the Cayman Islands to legislate to themselves the right for everyone to have a brick house, when there are neither the resources nor the facilities for making bricks on the islands. They could of course try to find a country which was willing to trade bricks for their papayas and build the houses. But the point is simply that there are limitations upon the economic rights which may be legislated, but these limitations are dictated only by the natural resources available and the technology available for exploiting them.

In the social sphere it now becomes possible to legislate rights to attain equality of status, such as has been done in India, and as was attempted in the United States with the 'Civil Rights'

laws of the late fifties and early sixties. In both cases these laws had little or no success. This I would contend was because the laws were passed by legislators and not because it was the will of the majority of the people. Whether or not it should have been the will of the people is not the point at issue here. But rather it shows that legislating contrary to what the bulk of the people want is to legislate something that will necessarily fail. This only serves to point out that any minority must attempt to convince the majority of the desirability of their position before any law concerning that position be instituted. There are various avenues open to the minority to show the majority why their position is desirable and should be accepted and legislated. One such avenue may be an appeal to people's better nature, or for that matter, to their baser nature. Another <sup>avenue</sup> might be to show that if the majority continues to follow its present course some natural disaster is likely to occur. Finally the threat of rebellion or revolution may be necessary. The minority may attempt to convince the majority that it would be preferable to accept its position rather than to go through a rebellion. The minority may declare its intention to not allow the society to proceed in a peaceful manner unless the majority accedes to its demands. Finally, of course, if the majority does not capitulate then the minority must either go through with its rebellion or go home. It is obvious that the majority will in all probability send out its police force against such a minority, but again that is not the point at issue here.

This position, some will worry, opens Pandora's box. From the box comes the possibility of the majority passing laws which will

discriminate against certain minority groups. This, of course, is true, but also, this has always been true. To call some rights, often guaranteed by a constitution, 'natural rights' does little or nothing to justify them. If a society does legislate discriminatory laws within the context of there being no 'natural rights', such a society could also easily find a way to rationalize away as a 'natural right' any such discrimination in a so-called 'natural rights' context. Such a society is at the very least misguided and in all probability a sick society. It is misguided in the sense that it would force a minority to no other alternative than that of rebellion or revolution.

From this something else follows, if not logically, certainly it follows from common sense, and that is, that if a particular society or given State is to survive it must provide a means for its citizenry to control the government. This control must extend beyond the controls of the constitution. And this it can only do through some form of democracy. Democracy, direct or representative, or some variation on democracy, is necessary if the people are to express their desires and have some way to implement them. By democracy I mean, "a form of social organization under which decisions on questions of public policy are made by the many. Democratic processes are present in any community in which the final word on matters of public policy rests with the many. The adult members of a democratically controlled community decide public questions directly . . . or they select representatives. . . . Under a representative government both the public servants and the policies which they are pursuing are subject to criticism by the citizenry."<sup>5</sup>

5. Scott Nearing, Democracy Is Not Enough, Island Workshop Press, 1945, p. 7.

Nearing points out that democratic government must presuppose certain freedoms. These freedoms are so basic to democracy that they should be incorporated into the constitution, and are at least seven in number. He says they are freedom of personal ownership, i.e., of one's own body; freedom of movement; freedom of livelihood, i.e., free enterprise or industrial democracy; freedom of thought, of expression, of inquiry; and freedom of association. "These freedoms measure the extent to which democratic practices are present in any community. If all seven freedoms are enjoyed and exercised without restraint by the adult members of a social group, the term democracy may justly be applied to such a community. If some of the necessary freedoms are absent, the social processes fail in that degree to be democratic."<sup>6</sup>

I would add one more and that is the right to privacy, or expressed as a freedom, the freedom from unjustified private and governmental scrutiny. The government or others could record about you either of the information which you give to it, e.g., income tax returns, or that which is public knowledge, e.g., newspaper articles. The government or others could not otherwise pry into your personal affairs except by court order, this to be given only after sufficient information were given to the court suggesting that you might have broken the law. If you are caught breaking the law then no court order would be necessary. Nor would it be if you applied for a position in the government which required such an investigation. The latter, however, should only be carried after your permission had been obtained.

These freedoms and rights are necessary if the common man is to take part in determining the life pattern of the society and to help decide the public policy necessary to implement this pattern. If these freedoms and rights, and the necessary machinery for some kind of functioning democracy are not established it is impossible to think of having a government that will function on any other terms except repression. Even if the government were a so-called enlightened and benevolent monarchy, without the rights and the machinery for the people to make known their new ideas and desires for new life patterns and put them into effect when they have won general acceptance, the government can only be at loggerheads with the people.

Everything that has been said up to now dealt with men as isolated individuals, as Marx said ". . . The circumscribed individual, withdrawn into himself."<sup>7</sup> I have treated the individual like a 'self-sufficient monad'. But this is to de-contextualize the individual and <sup>to</sup> look at him from a point of view which is neither true of him today and for all practical purposes was never true in the past. This kind of analytical treatment establishes an egoistic man. Up to this point we have failed to "go beyond the egoistic man, (and to see) man as he is, as a member of civil society;" we have seen him as "an individual separated from the community, withdrawn into himself, wholly preoccupied with his private interest and acting in accordance with his private caprice."<sup>8</sup> We have viewed man as though society were completely separate from him and an evil which he

7. Karl Marx, "On the Jewish Question", Karl Marx Early Writings, McGraw Hill, New York, 1964, p. 25.

8. Ibid., p. 26.

must necessarily put up with. "Society appears as a system which is external to the individual and as a limitation of his original independence. The only bond between men (being) . . . natural necessity, need and private interest, the preservation of their property, and their egoistic persons."<sup>9</sup>

This outlook has led men to the gateway of disaster. Self-interest is not enough, a social consciousness is necessary. As President John F. Kennedy so eloquently said, "Ask not what your country can do for you, but what you can do for your country." Or as Scott Nearing says it, ". . . The generally accepted techniques of democracy are not adequate to meet modern conditions. These pertain to the relationship between rights and duties on one hand and freedoms and disciplines on the other."<sup>10</sup> That is to say, that until now because of the analytical de-contextualization of men, the rights and freedoms of the individual have been emphasized without due regard to duties and disciplines. The rights of individuals have been protected to the point where the individual thinks he is the only thing that is of any importance. He becomes blind to the fact that most of what he has is due to the society in which he finds himself. He views the society as something separate from himself even hostile to him. Society becomes something to be exploited or used in whatever manner he thinks he can get away with. Men, from using this point of view, i.e., that rights are king, with no regards to duties and disciplines have become so insular, that we can have someone, with seriousness, writing about The Virtue of Selfishness.

9. Ibid., p. 26.

10. Nearing, op. cit., p. 124.

Nearing tells us, "Bills of rights, drawn in 18th and 19th century Europe and America, emphasized rights and freedoms as means of protecting the citizen against the state. Twentieth century constitutions must parallel rights and freedoms with duties and disciplines as one means of linking the citizen with the tasks of government. Freedoms detail the rights of the individual as against the authority of the social group. Disciplines assert the duties of the individual to the social group. If popular government is to survive and enlarge the sphere of its influence it must lay at least as great an emphasis on disciplines as it lays on freedoms."<sup>11</sup>

Nearing says that there are seven disciplines required if we are to attain the betterment of everyone through democratic procedures. These are, the discipline of mind and body; disciplined movement and a discipline of livelihood; and disciplines of creative expression, truth seeking and organization.

The discipline of the body is simply the duty to retain good health and physical fitness, and to utilize the materials made available by the society to attain that end.

"Freedom of thought and of belief carries with it the duty to train the mind to observe, examine, to draw conclusions and verify them, and to subject all beliefs to rigorous analysis. The mind, like the body, may be untrained and flabby or trained to vigorous, flexible usefulness."<sup>12</sup>

Disciplined movement is simply a rooting of each individual to a community so as to be of utmost use. And when traveling it should

11. Ibid., p. 125

12. Ibid., p. 130.

be with care and purpose. This is not to say an individual may not move from snow country to the sun of the south if he wishes to, or that he may not go on vacation and travel. What it does mean is that when doing these things one refrains from driving over hill and dale and ravaging the countryside. It also means that anyone caught violating traffic regulations should be severely punished. It also means that teenagers, and many adults also, are not to joyride about the city in circles with no purpose except to ward off boredom. And further it means that an emphasis is made upon public transportation because fewer individuals should now feel the 'need' to have private accommodations simply for going to and from work, the drugstore, the newspaper-stand.

"The essential livelihood duty in a democracy is for every ablebodied adult to do his share in providing the goods and services upon which the well-being of the community depends. If 'every man an end, no man a means' is a fundamental principle of democracy, private ownership of the means of production must be terminated; all forms of vested, unearned income must cease, and each citizen must be expected to perform a part of the necessary social labor."<sup>13</sup> Once this is attained, i.e., public ownership, the livelihood discipline requires that everyone train himself adequately in some useful occupation; and when the resources and tools of production belong to the community, it now becomes necessary to use them with care and to conserve them.

13. Ibid., p. 129.

The discipline of creative expressions is simply a balancing of the freedom of expression through one's creation, invention, discovery, with helping to add to the sum total of men's achievements.

The discipline of truth seeking is the duty of everyone to help add to the total of human knowledge. The duty becomes difficult when the truths uncovered run counter to convention, habit, comfort and vested interest.

Finally the discipline of organization, which is an indispensable element of social achievement. "Organization presupposes and imposes discipline. In a free society, the needed discipline may be largely self-imposed", but nevertheless necessary.

This then are the disciplines which one man thinks necessary for the proper functioning of a democratic society. How the society could impose such disciplines or duties as, for example, that of truth seeking, on the one hand, yet oppose it on the other hand because the truths revealed counter the present comfortable way of life is something Nearing does not deal with. I do not think he meant it to be an imposition by society but rather that each individual should take it upon himself to do so.

Of course we cannot say that society ought to impose or accept these disciplines. What we can say and do say is that if individuals do not recognize that some of these disciplines are necessary, then there will soon be no society or state, for its contradictions will tear it apart. The tearing apart will have several facets; it will not happen in any unique way. If, for example, the food industry

continues to super-refine foods and add chemicals for better color and preservation, all in the name of the right of property, i.e., higher profits, then we will be left with a malnourished and cancerous society.

If in the name of liberty, men continue to procreate at their present rate, they will copulate themselves off the face of the earth. If they do not accept the duty of limiting the size of their families by choice for the benefit of society, then the society will, if it wants to survive, have to impose this by law.

In short, what I am saying, is not that men should recognize the need for some of the above disciplines if they are to continue enjoying their rights and freedoms, but that they must recognize them if they are to survive.

What does this mean? It means that production is to be undertaken to satisfy human needs, not to create a profit for someone who happens to own the means of production and is sinister enough to sell medication or food, for profit, to those who have the money and to withhold from those who lack the money.

It means that if we are to have the right to life, we must recognize our duties to the society which protects this life of ours and provides us with the necessities and luxuries of life.

It means that if we are to have the liberty of leaving our homes unattended and of being reasonably sure that everything will still be there and intact when we return, then we must recognize our duties to the society which makes the liberty possible through the protection it provides.

It also means, and this follows from what has already been said, that if the society does not provide one with the rights and freedoms then one has no duties to this society. For, as Thomas Jefferson once said, "If a slave can have a country in this world, it must be any other in preference to that in which he is born to live and labor for another. . . ." And similarly with anyone else; if they are to have duties to a society they must also have rights and freedoms. Without the rights and freedoms there are no duties, and the individual is at liberty to use his power to overthrow such a society.

## V - SUMMARY

In the first chapter we looked at the concept of natural law and natural rights and reduced them to moral principles and moral rights.

We then looked at moral rights and found that one could not prove such rights and that whenever one made a claim for a moral right he was doing no more than expressing his feelings and declaring which side of a question he was on.

Since the theory of the social contract had traditionally rested upon natural rights, and since natural rights collapsed into being no more than an expression of emotion, we looked to see if the social contract had also collapsed. We found that the social contract as an explanation for the raison d'etre of society was incorrect, that society had not come to be out of a contract, but rather that it had evolved slowly. On the other hand it was found that the social contract was also used as an explanation for the generation of government. Though social contract theorists often did not make clear which aspect of the social contract they were talking about, we found that if we made a definite distinction between a pacte d'association and a pacte de gouvernement, this latter contract was useful as an explanation of government. We looked at H. D. Lewis' proposal for a pacte de gouvernement and with some exceptions accepted it.

After having decided that there were no natural rights, we suggested that all rights come from <sup>law</sup> and are protected by the state, that is, that all rights are civil rights. We found the implications of this to be that people could now legislate to themselves whatever rights they desired and not only political rights but also economic and social rights also.

Finally we said that emphasizing individual 'rights against' the society to the exclusion of 'duties to' the society was to de-contextualize the individual. We held that it is necessary to emphasize equally the duties of individuals to society as well as their rights. We concluded that individuals who did not share in the rights and freedoms of a society had no duties to such a society.

## BIBLIOGRAPHY

- Abelson, Raziell, "Unnatural Law", Law and Philosophy, Sidney Hook, ed. New York University Press, New York, 1964.
- Ayer, Alfred Jules, Language, Truth and Logic, Dover Publications, Inc., New York, 1952.
- , "On the Analysis of Moral Judgements", A Modern Introduction to Ethics, Milton K. Munitz, ed., The Free Press, Glencoe, 1958, pp. 537-546.
- Barker, Ernest, Principles of Social & Political Theory, The Clarendon Press, Oxford, 1952.
- , Social Contract - Essay by Locke, Hume and Rousseau, Oxford University Press, London, 1953.
- Bentham, Jeremy, A Fragment On Government, The Clarendon Press, Oxford, 1891.
- , An Introduction to the Principles of Morals and Legislation, Doubleday, Doran & Co., Inc., Garden City, New York, 1935.
- Brandt, Richard B., "The Emotive Theory of Ethics", The Philosophical Review, Vol. LIX, 1950, pp. 305-318.
- , "Stevenson's Defense of the Emotive Theory", The Philosophical Review, Vol. LIX, 1950, pp. 535-540.
- Brown Jr., Stuart M., "Inalienable Rights", The Philosophical Review, Vol. LXIV, 1955, AMS Reprint Co., New York, 1964.
- Cranston, Maurice, What Are Human Rights?, Basic Books, Inc., New York, 1962.
- Falk, W. D., "Goading and Guiding", Mind, Vol. LXII, 1953, Krauss Reprint Ltd., Nendeln/Liechtenstein, 1967.
- Feinberg, Joel, "Duties, Rights, and Claims", American Philosophical Quarterly, Vol. 3, Apr. 1966, pp. 137-144.
- Foot, Philippa, "The Philosopher's Defence of Morality", Philosophy, Vol. XXVII, 1952, pp. 311-328.
- Girvetz, Harry K., The Evolution of Liberalism, Collier Books, New York, 1963.

Gough, J. W. The Social Contract, The Clarendon Press, Oxford, 1957.

Green, Thomas Hill, Lectures on the Principles of Political Obligation, Longmans, Green, and Co., London, 1895.

Hart, H. L. A., "Are There Any Natural Rights" The Philosophical Review, Vol. LXIV, 1955, AMS Reprint Co. New York, 1964.

Hobbes, Thomas, De Cive or The Citizen, Appleton-Century-Crofts, Inc., New York, 1949.

-----, The Elements of Law, Frank Cass & Co., Ltd, London, 1969.

-----, Leviathan, Collier Books, New York, 1968.

Hobhouse, L. T., Liberalism, Henry Holt and Company, New York,

Hook, Sidney, The Paradoxes of Freedom, University of California Press, Berkeley and Los Angeles, 1962.

Hume, David, A Treatise of Human Nature, The Clarendon Press, Oxford, 1967.

-----, Enquiries Concerning The Human Understanding and Concerning The Principles of Morals, The Clarendon Press, Oxford, 1966.

Lewis, H. D., "Is There a Social Contract?", Philosophy, Vol. XV, 1940, pp. 64-79 & 177-189, Johnson Reprint Corp., N. Y., 1965.

Macdonald, Margaret, "The Language of Political Theory", Proceedings of the Aristotelian Society, 1941, pp. 91-112.

-----, "Natural Rights", Proceedings of the Aristotelian Society, Vol. XLVII, 1946-1947, pp. 225-250.

MacIver, R. M., The Modern State, Oxford University Press, London, 1932.

Macpherson, C. B., "Natural Rights in Hobbes and Locke", Political Theory and The Rights of Man, D. D. Raphael, ed., Indiana University Press, London, 1967.

-----, The Political Theory of Possessive Individualism, Oxford University Press, London, 1967.

Marx, Karl, Karl Marx Early Writings, T. B. Bottomore trans. & ed., McGraw-Hill Book Co., New York, 1964.

McCloskey, H. J., "Rights", The Philosophical Quarterly, Vol. 15, 1965, pp. 115-127.

- Mayo, Bernard, "Human Rights", Proceedings of the Aristotelian Society, Sup. Vol. 39, 1965, pp. 219-236.
- Mill, James, Essays on Government & Jurisprudence, Doubleday, Doran & Co., Inc., Garden City, N. Y., 1935.
- Nearing, Scott, Democracy Is Not Enough, Island Workshop Press, 1945.
- , Freedom: Promise & Menace, Social Science Institute, Harborside, Maine, 1961.
- Nielsen, Kai, "On Looking Back at the Emotive Theory", Methodos, Vol. XIV, 1962, pp. 3-20.
- Paine, Thomas, Rights of Man, Pelican Books, Aylesbury, 1969.
- Pickles, Dorothy M., Introduction to Politics, University Paperbacks, Methuen:London, 1964.
- Pollock, Sir Frederick, Jurisprudence and Legal Essays, St. Martin's Press Inc., New York, 1961.
- von Pufendorf, Samuel, The Two Books on the Duty of Man and Citizen According to Natural Law, Oxford University Press, New York, 1927.
- Raphael, D. D., "Human Rights", Proceedings of the Aristotelian Society, Sup. Vol. 39, 1965, pp. 205-218.
- , "The liberal Western tradition of human rights", International Social Science Journal, Vol. 18, 1966, pp. 22-30.
- , Political Theory and The Rights of Man, Indiana University Press, London, 1967.
- Reid, Thomas, Essays on the Intellectual Powers of Man, The M.I.T. Press, Cambridge, Mass., 1969.
- Ritchie, David G., Natural Rights, George Allen & Unwin Ltd., London, 1952.
- Robinson, Richard, "The Emotive Theory of Ethics", Proceedings of the Aristotelian Society, Sup. Vol. XXII, 1948, Johnson Reprint Corp., New York, 1969.
- Rousseau, Jean-Jacques, The Social Contract, Penguin Books, Baltimore, 1969.
- de Ruggiero, Guido, The History of European Liberalism, Beacon Press, Boston, 1967.

- Sabine, George H., A History of Political Theory, Henry Holt & Co., New York, 1938.
- Schiller, Marvin, "Are There Any Inalienable Rights?" Ethics, Vol. 79, July 1969, pp. 309-315.
- Schmandt, Henry J., A History of Political Philosophy, The Bruce Publishing Co., Milwaukee, 1960.
- Sidgwick, Henry, The Elements of Politics, Macmillan and Co., Ltd., London, 1919, Kraus Reprint Co., New York, 1969.
- Sophocles, Sophocles I, Washington Square Press, Inc., New York, 1968.
- de Spinoza, Benedict, The Chief Works - Tractatus Theologico-Politicus, George Bell and Sons, London, 1883.
- Stevenson, Charles L., "Brandt's Questions about Emotive Ethics", The Philosophical Review, Vol. LIX, 1950, pp. 528-534.
- , "The Emotive Meaning of Ethical Terms", Mind, Vol. 46, 1937, pp. 14-31, Kraus Reprint Ltd., Vaduz, 1963.
- , Ethics and Language, Yale University Press, New Haven, 1948.
- , "Persuasive Definitions", Mind, Vol. 47, 1938, pp. 331-350.
- Strauss, Leo, Natural Right and History, The University of Chicago Press, Chicago, 1959.
- Wasserstrom, Richard, "Rights, Human Rights, and Racial Discrimination", The Journal of Philosophy, Vol. LXI, 1964.
- Wilson, John, Language & The Pursuit of Truth, Cambridge University Press, London, 1967.

