

REMARKS AT THE  
BOOK LAUNCH

23 January 2008

James Griffin

My interest in human rights began with feelings of irritation. I thought that we all had a pretty poor grasp of what a ‘human right’ was — indeed that sometimes, when a question about rights arose, we could not tell even what was at issue. It was not that the term was nonsense, certainly not nonsense on stilts; it was just unsatisfactorily indeterminate in sense. Now, my irritation was felt to some degree by many others, though not always to the same high degree. I thought that we did not even have an adequate grasp of what one might call the ‘existence conditions’ of human rights — that is, what one had to show in order to establish that a particular human right exists, and what it is a right to. And many others would not go so far.

Now, what I was interested in is the term ‘human rights’ as it figures in our political life — for example, as used by John Locke in his justification of the Glorious Revolution of 1688, by the American colonists in justifying their declaration of independence, by the French in justifying their revolution, and of course by the United Nations in our time. That is the notion that has had a major effect in history and has largely been, it seems to me, a force for the good. It is the notion that, for the most part, political theorists and philosophers and lawyers now mean when they speak of ‘human rights’. It is to be distinguished from the sense of the term as it was used by some philosophers. For example, Kant derives human rights (what he calls ‘natural rights’) from one of the most abstract principles of his ethics — from ‘The Universal Principle of Right’, which goes: ‘any action is right if it can co-exist with everyone’s freedom in accordance with a universal law’. The rights that he derives from it turn out to cover much of morality — not quite all but far more than is covered by the historical notion that I am interested in. And John Stuart Mill, in the final chapter of *Utilitarianism*, introduces

‘rights’ as claims on specifiable persons, ultimately derivable from the Principle of Utility, taking especially into account the disutility of formulating and enforcing rules. He too ends up with a notion of rights that covers much more of morality than do the human rights of the political life of the last few centuries. Neither Kant nor Mill was trying to explore the notion of human rights that appears in our political tradition. They just commandeered the term to do service in the exposition of their own general moral theory. There is nothing wrong with that, so long as we are not misled by it. The extension of their term ‘rights’ is so substantially different from the extension of the term in the tradition that they are introducing a different concept, that they are, in effect, changing the subject. That is *not* what I wanted to do in this book.

Let us go back to what most of us agree on: that the term ‘human right’ is unclear. How have contemporary philosophers tried to make it clearer? Very many of the most important of them have done so by focusing on the function of human rights — on the role that they play in our political thought. My approach is different: I try to explain human rights through the substantive values that they protect. It is not that the functionalists I have in mind do not also appeal to values; their functionalist accounts are embedded in larger views that include values. Still, they wish to explain human rights in largely functional terms. The functionalists I have in mind are Joel Feinberg, Ronnie Dworkin, Robert Nozick, and John Rawls — as I say, important figures.

Let me take Dworkin as my illustrative example. Dworkin characterizes human rights as ‘trumps’ over appeals to the general good. Most of our political thought is about promoting the welfare of the people as much as we can. But in our political thought someone who plays a human right card trumps anyone who has played the general good

card. That is the point of human rights. But the unpalatable consequence of Dworkin's proposal is that rights have no point in restraining most of the agents whom, in the long course of their history, they have been used to restrain: over-reaching Popes, absolute monarchs, dictatorships of the proletariat, murderous thugs who seize political power, not all of whom (to put it no higher) had the general good as their goal. Nor is the claim much more plausible if we reinterpret Dworkin, more sympathetically, to be referring only to ideal political conditions, when the state is indeed committed to pursuing the impartial maximization of the good. The point of rights, we can then understand Dworkin to be saying, is as trumps over the best policy of promoting the good of all. But that cannot be right either. It does nothing to lessen the implausibility of denying human rights the role they have played throughout their history. Besides, justice and fairness are likely also sometimes to trump the promotion of the good of all, and the domain of justice and the domain of human rights, I should be willing to argue, are only overlapping, not congruent. If more than rights are trumps, one cannot use trumping to characterize rights.

Why have functional accounts been so attractive? My guess is that it is partly a hangover from the days of logical positivism and its immediate successors, in which value judgements were second-class uses of language: subjective expressions of emotion or attitude, or mere exercises in persuasion. Dworkin does not give us what we should require from an account of human rights: criteria that will tell us whether a certain right exists and, if so, what it is a right to. Neither do the other functional accounts, though for reasons of their own. What is needed is an account of human rights that has more evaluative content.

In my account, the values in question are commonplace, even banal. We human beings reflect; we form picture of what a good life would be and try to realize these pictures. That is what we mean by a characteristically human existence. And we value our status as human beings especially highly, often more highly than our happiness. The human status that is meant here is our status as rational agents — or, more specifically, as normative agents. My proposal is this: that human rights should be seen as protections of our normative agency — what I shall call our ‘personhood’.

But personhood cannot be the only ground for human rights. It leaves many rights too indeterminate. For example, we have a right to security of person. But what exactly is that a right to? Would it exclude some public body’s forcibly taking a few drops of blood from my finger. Perhaps not. To up the stakes, would it also not exclude forcibly taking one of my kidneys? After all, the two weeks it would take for me to recover from a kidney extraction would not deprive me of my personhood. Where is the line to be drawn? The personhood consideration, on its own, would not make the line determinate enough for practice. To fix a sufficiently determinate line we should have to introduce considerations such as these: Given human nature, have we left a big enough safety margin? Is the right too complicated to do the job we want it to do? Is the right too demanding. And so on. To make the right to security of person determinate enough we need to consider facts about how human beings and societies actually work — call these ‘practicalities’.

I propose, therefore, that we explain human rights in terms of two grounds: personhood and practicalities. The existence conditions for a human right would, then, be these: one establishes the existence of such a right by showing, first, that it protects an

essential feature of personhood, and, second, that its determinate content may sometimes also result from the sorts of practical considerations that I have roughly sketched.

That proposal may indeed seem banal to you. I should be happy if it did. But it is not widely held. And it has what many would consider its embarrassments. One potential embarrassment is that, on my account, only normative agents have human rights; babies and the elderly demented, for instance, do not. This looks terribly embarrassing because to our modern ears to say that a baby does not have human rights sounds like saying that one may do to it what one wants. But this confuses the special, relatively narrow, domain of human rights with the whole of morality. A baby may not have the human right to life, but there are perfectly powerful reasons why one may not murder it.

And there are certain practical reasons for keeping the domain of human rights narrow. One could alter one's account of human rights so that babies had human rights. For example, one could ground human rights not in personhood but, as some propose, in human needs. But I think that need accounts are less good than personhood accounts, though I shall not go into that. And I suspect that broadening the notion of personhood to include babies, the demented, those in a persistent vegetative state, and so on, is likely to have undesirable consequences. My aim is to make the sense of the term 'human right' satisfactorily determinate. As we have witnessed over recent decades, there are strong inflationary pressures on the term, leading to what is widely called the 'proliferation' of rights — for example, human rights to paid holidays, rights of fetuses, and so on. There is a widespread belief that human rights concern what is most important in morality; so whatever any group in society regards as highly important, it will be strongly tempted to declare a human right — for example, to claim that a human foetus has a right to life.

There is also an all too well supported belief that getting something widely spoken of as a human right is a good first step to having it made a legal right; so there is a great temptation to assert that anything to which one wants to have a legal guarantee is a human right. I suspect that the UN's recent beatification of a right to a healthy environment has followed that route.

For these and other reasons, my belief is that we will have a better chance of improving the discourse of human rights, of giving it an adequately determinate sense, if we stipulate that only normative agents bear human rights — no exceptions. Of course, once one admits elements of stipulation into the determination of human rights, one seems to be abandoning a central feature of the human rights tradition: namely, that human rights are grounded in something objective: human nature. But I think that one does not abandon it. On the contrary, the decision embodied in the stipulation is the decision to derive human rights solely from certain values constitutive of human nature.

I have lectured off and on to audiences of international lawyers, laying before them the virtues of my account, and generally they have sent me away with a flea in my ear. In general, their attitude has been: what makes you think we need the advice of a philosopher? It is not that they were jealously guarding their academic turf; rather, they were insisting on the autonomy and self-sufficiency of the international law of human rights. International law, I have been told, has already remedied the indeterminateness of sense that I make such a big thing of. International law, it is claimed, has by now authoritatively settled the extension of the term 'human right' and, in settling its extension, has thereby adequately determined its sense.

I don't believe it. No matter who we are, we cannot establish the existence of a human right just by declaring it to be one. Not even the Universal Declaration of Human Rights by the assembled United Nations is enough. We — whoever we are — can get it wrong, and we owe attention, therefore, to what are the criteria for right and wrong here. For example, the Universal Declaration contains a right to periodic holidays with pay, to which the overwhelming and cheering reaction has been that, whatever the supposed entitlement to a paid holiday is, it is certainly not a human right. The Universal Declaration also included a right to democratic participation, but it is possible to argue in an intellectually respectable way about whether that really is a human right. Again, we owe attention to how we would settle that argument. And there are widespread doubts about welfare rights — for instance, whether they are human or only civil rights, or whether some of them are not too lavish. We quite reasonably want to know how strong the case is for considering them human rights. Again, how would the case be made? And we need more than just their names: for example, a 'right to welfare' or 'a right to life'. We must know their content. But how do we decide it? And we need to know how to resolve conflicts between them. A judge on an international bench cannot resolve conflicts by fiat. The resolution must be reasoned. But what are to count as good reasons? I doubt that the list of human rights in current international law is authoritative, but, even if it were, it would not give us all we need. We also need answers to these questions.

Now, I am not trying to keep the law out of answering these questions. The decisions of judges have helped, and will go on helping, to make the content of human rights clearer. And international law certainly helps to establish the extension of the term,

which in turn helps to settle its sense. My point is only that philosophy also has a role to play.

I have noticed that certain philosophers who have also been trained in the law find my account too simple. They are not necessarily opposed to the idea that personhood is a ground of human rights, perhaps even the most important ground, but they are pluralists: there are, they think, several grounds. They find my account too tidy — the tidiness, perhaps, that is the occupational hazard of philosophers who have not enjoyed the benefit of acquaintance with the messy complexity of the law. There are two pluralist critics of my views present this afternoon: John Gardner and John Tasioulas. I do not know what heavy artillery they may be training on my monism. None the less, I shall end with an *apologia* for tidiness. It is a good place to end, because to my mind, their doubt about my tidiness is the most serious doubt about my whole approach.

One might well wonder whether all human rights are derived from as slender a base as personhood. Take an example. The long established right not to be tortured does not seem to be derived just from the idea of normative agency. True, torture typically renders us unable to decide for ourselves or stick to our decision. What is wrong with torture, though, is not just that it thus undermines normative agency but also, and far more obviously, that it involves excruciating pain. So it seems plausible, and certainly more straightforward, to say that the basic human interest in avoiding pain is weighty enough on its own to justify a right against torture.

Think, too, of our right to basic education. No doubt it is, as I say, grounded on education's being a necessary condition for effective normative agency. But another

obvious ground for the right is simply the considerable importance to us of achieving certain kinds of understanding.

There is much in those arguments that I would not deny. If the question were what is wrong about torture, of course the most obvious thing to say would be that it causes great pain. But the question that concerns us now is not nearly so broad. Our question is: Why is torture a matter of human right? And the answer to that cannot be, Because it causes great pain. There are many case of one person's gratuitously inflicting great pain on another that are not a matter of human rights. Take some common-or-garden domestic nastiness. One partner in an unsuccessful marriage, say, might treat the other coldly and callously, and the suffering caused the second partner over the years might add up to something much worse than a short dose of physical torture. The first partner, however, simply by being cruel, does not thereby violate the second's human rights. Or an older sibling might beat a younger sibling about the head from time to time out of the not uncommon resentment that a displaced older child feels of a younger, but, even if painful, it would be odd to call it 'torture' — except in the extended sense in which any considerable pain (bad sunburn, say) can be called 'torture'.

Torture has characteristic aims. It is commonly used to make someone recant a belief, reveal a secret, 'confess' a crime, abandon a cause, or do someone else's bidding. All of these characteristic purposes involve undermining someone else's will, getting them to do what they do not want to do, or are even resolved not to do. In one way or another, they all involved an attack on normative agency. As we can inflict great pain without intending to destroy normative agency, we can intentionally destroy agency without inflicting great pain. There are truth drugs that sometimes help extract secrets.

We could not call this ‘torture’ because it is essential to the sort of ‘torture’ that I am speaking of that the infliction of pain, or the threat of it, be the means. What concerns us here is whether the painless chemical undermining of one’s victim’s will raises any issues of human rights. And it does, because painless domination is still an undermining of personhood.

There is another challenge to pluralists. Clearly, not any human interest will be a ground of a human right. I have an interest in getting a good night’s sleep, but it hardly follows that I have a human right to it. How, then, will the pluralist limit the interests that are a ground? And how will the pluralist meet our pressing initial problem: making the sense of the term ‘human right’ much more determinate? And which gives us the better way to speak about human rights: the personhood account or the pluralist account? Nearly all of us want to see a less free-wheeling, more criteria-governed use of the discourse of ‘human rights’. Unless the vagueness of the pluralist account can be reduced, unless it can resist the inflationary pressures on the extension of the term that I mentioned earlier, the likelihood of its having the required effect will be low.

So the crucial question is: can the pluralist adequately restrict the human interests that serve as grounds of human rights? Well, clearly they are restricted to the interests that human beings have simply as human beings; that restriction follows immediately from the sort of universality that human rights have. But well-being, even at high levels where rights are no longer involved, qualifies as such a human interest. An obvious further restriction, then, is that the human interests be important or major or urgent. But not all important or major or urgent interests can plausibly be considered grounds for human rights. Things can be of great importance to our lives — indeed, greater than a lot

of issues of human rights — without themselves thereby becoming grounds for human rights. Recall the example of the cold and callous spouse: the cold and callous treatment may well be worse than the infringement of certain of the unfortunate spouse's minor human rights. The degree of importance of human interests is not a promising way for pluralists to try to limit the interests that ground human rights.

Let me mention just one last way they might try. There is a highly influential explanation of a 'right' that we owe to Joseph Raz. Applied to the case of human rights, it would go like this: a human right arises when there are universal human interests sufficient to justify imposing the correlative duties on others. This definition has the advantage of allowing more human interests to serve as grounds for rights than just personhood, yet imposes the constraint on these additional interests that they be able to justify the imposition of duties on others. This is still not enough, though. The suffering of the spouse with the cold and callous partner is surely enough to justify imposing a duty on the partner to stop this sort of behaviour. To strengthen this conclusion, consider an example that is universally relevant. We have an important interest in our society's providing a rich array of opportunities from which to choose. The benefits of our having such a rich array are so considerable that they would justify imposing on the citizens of the society the burden of promoting such a society. It would not be such a burden, in any case, because our fellow citizens would equally be beneficiaries. To have a rich array of opportunities would require having a fairly high level of social wealth and a fairly advanced culture, which most of us are already independently motivated to produce. The trouble with this is that it is likely to justify a human right even to quite high levels of well-being. It would justify any level, no matter how high, at which the benefits are great

enough to justify imposing the burden. But this conflicts with our belief that we have a human right to material and cultural resources only up to a minimum acceptable level beyond which they are not a matter of right.

So back to my tidiness. My tidiness is not the occupational hazard of a philosopher sadly deprived of legal training. It is (I hope you will agree) perfectly good sense.

John Gardner, I am told, has just come out with a paper on these subjects, which I have not yet had a chance to read. John Tasioulas, I know, is writing a book on human rights, defending, I presume, a pluralist account. My practice has been to publish what I have to say on a subject, then leave it. Don't answer critics. Go on to something else. But can I leave the field to Gardner and Tasioulas? I feel that I am in a situation rather like one I witnessed some years ago. Isaiah Berlin gave a lunch party at which Freddie Ayer announced that he was going to write his autobiography. He asked Isaiah, 'Are you going to write yours?' Isaiah replied darkly, 'You may force me.'