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Daniel E. Lee and Elizabeth J. Lee
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PART I

PHILOSOPHICAL FOUNDATIONS

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Defining Human Rights in a Coherent Manner

Whenever conversation turns to the ethics of globalization, it is not long before the language of human rights comes into play. It is, however, language fraught with ambiguity. If the language of human rights is to play a role in discussions of the ethics of globalization – and we believe that it should – it is essential that it be used in a careful manner, maintaining as much precision in definition as possible. To help set the context for this semantic discussion, we begin with a brief history of concepts of human rights.

ROOTS IN ANTIQUITY

Though the language of human rights was not widely used until after World War II, notions of what in time became known as human rights have roots in antiquity. Take, for example, the Ten Commandments, which appear in the Pentateuch (Torah) as part of the Mount Sinai story. As generations of Jewish and Christian school children who have been drilled until they can recite the Ten Commandments by heart know, they include prohibitions on killing, stealing, and coveting the property of others (Exodus 20.1–17). While they do not use the language of rights, the Ten Commandments can be interpreted as implying that people have certain basic rights, among them property rights and a right to live.

That having been said, however, it should also be noted that notwithstanding the great emphasis that many with strong religious

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convictions place on the Ten Commandments today, they are, at best, an incomplete statement of basic notions of human rights. For example, the list of property that should not be coveted includes wives and slaves: “You shall not covet your neighbor’s house; you should not covet your neighbor’s wife, or male or female slave, or ox, or donkey, or anything else that belongs to your neighbor” (Exodus 20.17 NRSV). The chapter that follows the Mount Sinai story in Exodus maps out some rules for the way slaves should be treated without in any way questioning the practice of slavery, including the practice of selling daughters as slaves (Exodus 21.1–11). Moreover, viewing wives as property is not in any way questioned.¹ In short, the Ten Commandments, though venerated by many, do not fit comfortably with contemporary notions of equal rights even though they can be viewed as containing implicit claims about certain rights.

Other ancient roots of modern notions of rights include the Roman notion of *ius gentium*, the law, often unwritten, by which those who were not Roman citizens were judged. This was based, in part, on what the magistrate believed to be right or wrong. It was not, however, viewed by Romans as arbitrary justice.² In *De Legibus*, the distinguished Roman statesman and philosopher Marcus Tullius Cicero (106–43 BCE), states, “For Justice is one; it binds all human society, and is based on one Law, which is right reason applied to command and prohibition.”³ He further argues that “we can perceive

¹ The ancient Hebrew practice of viewing the wife as property, albeit a very special form of property, is also reflected in the story of Jacob and Rachel. When Laban, who was Rachel’s father, asked Jacob what his wages should be, Jacob offered to work for Laban for seven years in return for Rachel. The Genesis text states, “So Jacob served seven years for Rachel, and they seemed to him but a few days because of the love he had for her.” When the time came for the property transfer to be celebrated by a feast, Laban, who had not taken a course in business ethics, gave Jacob Rachel’s older sister Leah instead, a switch that Jacob did not notice until the next morning, by which time the marriage had been consummated. When Jacob confronted Laban about the switch, he equivocated by saying that in his country, the oldest daughter was always given first in marriage but offered to give Jacob Rachel as well if he would work for another seven years, which Jacob did because “he loved Rachel more than Leah” notwithstanding the fact that “Leah’s eyes were lovely” (Genesis 29.15–30 NRSV).

² For an insightful discussion of the classical roots of international law published nearly a century ago, see Gordon E. Sherman, “Jus Gentium and International Law,” *The American Journal of International Law*, Vol. 12, No.1 (January 1918), 56–63.

³ Marcus Tullius Cicero, *De Legibus*, trans. Clinton Walker Keyes, The Loeb Classical Library (Cambridge, MA: Harvard University Press, 1928), 345 (I, xv, 43).

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the difference between good laws and bad by referring them to no other standard than Nature” and adds that “it is not merely Justice and Injustice which are distinguished by Nature, but also and without exception things which are honourable and dishonourable.” He concludes, “For since an intelligence common to all of us makes things known to us and formulates them in our minds, honourable actions are ascribed by us to virtue, and dishonourable actions to vice; and only a madman would conclude that these judgments are matters of opinion and not fixed by nature.”⁴

FROM NATURAL LAW TO NATURAL RIGHTS

These passages from Cicero’s *De Legibus* give expression to two basic claims that came to be central to the natural law tradition. One is the ontological claim that there is a moral order imbedded in nature. The second is the epistemological claim that “an intelligence common to all of us” enables us to identify at least a portion of this moral order. The medieval theologian and philosopher Thomas Aquinas (1224/25–1274), viewed by many as the most influential natural law theorist of all time, speaks of “the light of natural reason, whereby we discern what is good and what is evil, which is the function of natural law. . . .”⁵ Turning to more specific precepts, Aquinas suggests that “inasmuch as every substance seeks the preservation of its own being . . . whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law.”⁶ And commenting on the Ten Commandments, he asserts, “For there are certain things which the natural reason of every man, of its own accord and at once, judges to be done or not to be done: e.g., ‘Honor thy father and thy mother,’ and ‘Thou shalt not kill, Thou shalt not steal’: and these belong to the law of nature absolutely.”⁷

The natural law tradition provided the backdrop for the discussion of natural right by Hugo Grotius (1583–1645) in *De Jure Belli ac Pacis*, which was to become a seminal work in the field of international law.

⁴ *Ibid.*, 347 (I, xvi, 44–45).

⁵ Thomas Aquinas, *Summa Theologica*, trans. Fathers of the English Dominican Province (New York: Benziger, 1947), I-II, Q.91, A.2.

⁶ *Ibid.*, I-II, Q.94, A.2.

⁷ *Ibid.*, I-II, Q.100, A.1.

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He states, “Natural right is the dictate of right reason.... The actions, upon which such a dictate is given, are either binding or unlawful in themselves....”⁸ (Grotius is here using the term “natural right” in a more limited sense than John Locke [1632–1704] and others were to subsequently use it; he suggests that “right signifies nothing more than what is just....”⁹ Hence, as he uses the term, “natural right” is simply what is right as defined by the law of nature.) Writing at a time when the Protestant movement had fragmented the church and warring states had fragmented the political landscape of Western Europe, he could not appeal to church or emperor as a source of authority transcending regional and national differences, many of which had resulted in wars both large and small. Hence, his appeal to the nature of humanity itself as he sought a basis for a law of nations that might govern conduct in war and peace alike.

As with Grotius’s *De Jure Belli ac Pacis*, the natural law tradition helped set the stage for John Locke’s *Second Treatise of Government*, published in 1690, less than a half century after the death of Grotius and just two years after the Glorious Revolution, which placed William of Orange on the throne of England with limitations to his power specified by the English Bill of Rights. Locke speaks of a law of nature “which obliges every one; and reason, which is that law, teaches all mankind who will but consult it that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions.”¹⁰ Like Grotius, Locke sees this law of nature as existing independent of anything that any government might say or do.

There is, however, a subtle shift in emphasis, a shift that was to be of great historical significance. In *De Jure Belli ac Pacis*, the emphasis is on *natural right* – that is, what it is naturally right to do. In Locke’s *Second Treatise of Government*, the emphasis is on *natural rights* – that is, on rights that each individual naturally possesses. Grotius’s objective was to encourage restraint in warfare, both in going to war and in the conduct of war. Locke’s objective was to champion the rights of

⁸ Hugo Grotius, *The Rights of War and Peace, Including the Law of Nature and of Nations*, trans. A.C. Campbell (Washington, DC: M. Walter Dunne, Publisher, 1901), 21 (I, 1, x).

⁹ *Ibid.*, 18 (I, 1, iii).

¹⁰ John Locke, *The Second Treatise of Government*, ed. Thomas P. Peardon, Library of Liberal Arts Edition (Indianapolis: Bobbs-Merrill Company, Inc., 1952), 5 (II, 6).

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the individual and challenge the traditional view of the divine right of kings.

Such being the case, it is no accident that it was Locke, not Grotius, who provided the inspiration for the ringing words that Thomas Jefferson penned when he drafted the U.S. Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”¹¹

The U.S. Declaration of Independence was to reverberate through the corridors of history, challenging those who opposed liberty and sustaining those struggling for liberty. The document, along with the Virginia Bill of Rights (adopted the same year), were formative for the Marquis de Lafayette, who played a lead role in drafting the Declaration of the Rights of Man, approved by the National Assembly of France in 1789.¹² Lafayette was familiar with both the U.S. Declaration of Independence and the Virginia Bill of Rights, having served without pay in the American War for Independence during the darkest days of the war at Valley Forge and during the siege of Yorktown, which led to American victory with the surrender of the army commanded by Lord Charles Cornwallis (who as a member of the House of Lords had, in one of history’s greatest ironies, opposed nearly all of the policies that led to revolt in the American colonies.¹³) The Declaration of the Rights of Man states, “Men are born and remain free and equal in rights.... The aim of all political association is the preservation of the

¹¹ While drawing heavily on the work of Locke, Jefferson replaces Locke’s repeated reference to property as a basic right with the phrase “the pursuit of Happiness.” In contrast to what might initially seem to be the case, however, Jefferson’s rephrasing of Locke is more stylistic than substantive. Though we customarily think of real estate and other things that can bought and sold when we see references made to property, Locke included far more when he used the term. For example, in his chapter on the ends of political society and government, Locke suggests that people unite with others to form a government “for the mutual preservation of their lives, liberties, and estates, which I call by the general name ‘property’” (71 [IX, 123]).

¹² Lafayette was also influenced by the writings of eighteenth-century French *philosophes*, among them François Marie Aroet, who was better known as Voltaire (1694–1778), Charles Louis de Secondat, Baron of Montesquieu (1689–1755), and Denis Diderot (1713–1784).

¹³ “The American Revolution” at <http://www.americanrevolution.com/LordCharlesCornwallis.htm> (last accessed November 12, 2007).

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natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.”¹⁴

In time, the notion of natural rights transcended differences in political philosophy. A century-and-a-half after the U.S. Declaration of Independence, the Declaration of Independence of the Democratic Republic of Viet-Nam, drafted by Ho Chi Minh with American assistance (but ignored by American officials when it became politically expedient to do so), quoted the passage noted above from the U.S. Declaration of Independence and added, “In a broader sense, this means: All peoples on the earth are equal from birth, all the peoples have a right to live, to be happy and free.”¹⁵

In the years that have passed since John Hancock, Thomas Jefferson, and fifty four other courageous individuals signed the U.S. Declaration of Independence, it has been quoted in documents and speeches, both official and unofficial, on occasions far too numerous to be counted, as has the French Declaration of the Rights of Man.

ONTOLOGICAL AND EPISTEMOLOGICAL CHALLENGES

Though widely quoted, the natural rights claims given expression in the U.S. Declaration of Independence and the French Declaration of the Rights of Man have not gone unchallenged. Among the harshest critics was British philosopher Jeremy Bentham (1748–1832), one of the earliest and most articulate proponents of utilitarianism. In *Anarchical Fallacies*, Bentham delivered a broadside against the claim in the Declaration of the Rights of Man that there are “natural and imprescriptible rights.” He declares, “How stands the truth of things? That there are not such things as natural rights – no such things as

¹⁴ Declaration of the Rights of Man at <http://www.yale.edu/lawweb/avalon/rightsof.htm> (last accessed October 4, 2007).

¹⁵ Declaration of Independence of the Democratic Republic of Viet-Nam at <http://www.mtholyoke.edu/acad/intrel/vietdec.htm> (last accessed October 4, 2007). The document also quotes the passage noted above from the French Declaration of the Rights of Man and says of the statements on rights quoted from both documents, “Those are undeniable truths.” The quotations from the U.S. Declaration of Independence and the French Declaration of the Rights of Man should not necessarily be interpreted as implying affirmation of Western notions of individual rights. Rather, Ho Chi Minh’s emphasis was on securing independence from foreign domination.

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rights anterior to the establishment of government – no such things as natural rights opposed to, in contradistinction, to legal [rights]. . . . *Natural rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense – nonsense on stilts.”¹⁶

Bentham’s broadside, which was probably motivated as much by political reasons as by philosophical reasons, is directed toward the ontological claim of natural rights theorists, namely, the claim that there is an existing moral order in nature (a matter to which we will return later in this chapter). Far more problematic is the epistemological claim made by natural rights theorists and the natural law theorists who preceded them, namely the claim that “an intelligence common to all of us” enables identifying at least part of what this moral order is. Indeed, it is far easier to say that our cognitive abilities enable discerning what these basic norms might or might not be than it is to demonstrate in any sort of persuasive manner how this might be done.

As noted previously, the U.S. Declaration of Independence asserts, “We hold these truths to be self-evident. . . .” Simply saying that certain things are self-evident, however, does not automatically mean that such is the case. Granted, to those of us who firmly believe that what the U.S. Declaration of Independence says is right, the value claims made in the document might seem self-evident. But, as the eighteenth-century English theologian and philosopher Joseph Butler (1692–1752) recognized, certainty of belief is not the same as something being self-evident. Butler observes, “Indeed the truth of revealed religion, peculiarly so called, is not self-evident. . . .”¹⁷

A similar point is made by twentieth-century British philosopher W.D. Hudson, who poses the hypothetical example of an anguished mother whose son has been reported as having been killed in action but who firmly believes that he is still alive. If it turns out that the report was incorrect and that instead of being killed in action he is a prisoner of war, the mother, upon hearing the corrected report would undoubtedly say, “I knew it all along.” But what of the other

¹⁶ Jeremy Bentham, *Anarchical Fallacies* (200, 230) at <https://www.college.columbia.edu/core/students/cc/settexts/bentanar.pdf> (last accessed October 4, 2007).

¹⁷ Joseph Butler, *The Analogy of Religion Natural and Revealed to the Constitution and Course of Nature* (London: George Routledge and Sons, 1887), 275–76 (II, conc.).

alternative – irrefutable evidence such as the recovery of his remains that made it very clear that he indeed had died on the battlefield? Would she still say, “I knew it all along”? Probably not. Rather, Hudson suggests, she would be far more likely to say, “I felt sure that he was alive, but now I know that he is dead.” Hudson observes, “There are numerous examples of people feeling absolutely sure of something and being right; and apparently equally numerous examples of them so feeling and being wrong. But, as far as any evidence that is available to us may go, there does not seem to be anything necessarily different about the intuition, i.e., the feeling of certainty, in the two kinds of examples.”¹⁸

And so certainty of belief is not the same as something being self-evident. The *Oxford English Dictionary* defines “self-evident” as “evident of itself without proof.”¹⁹ But how can something be “evident of itself without proof”? Locke wrestles with this question in *An Essay Concerning Human Understanding*, published shortly before his *Second Treatise on Government*. There are some things, he allows, that are self-evident – for example, the similarity or dissimilarity of such things as colors or geometrical forms or the fact that a man is not a horse and a horse is not a man. Locke also observes that there are certain mathematical relationships that are self-evident, such as the axiom that says that if equals are subtracted from equals, the remainders will be equal.²⁰

¹⁸ W.D. Hudson, *Modern Moral Philosophy* (Garden City, NY: Doubleday & Company, Inc., 1970), 101–104.

¹⁹ *The Oxford English Dictionary*, 2nd ed. (Oxford: Clarendon Press, 1989), 14:920.

²⁰ John Locke, *An Essay Concerning Human Understanding*, ed. Peter H. Nidditch (Oxford, UK: Clarendon Press, 1975), 591–94 (iv, vii, 1–7). The prevailing epistemological theme in Locke’s *An Essay Concerning Human Understanding* is the assertion that knowledge is gained via experience. He argues, “Let us then suppose the Mind to be, as we say, white Paper, void of all Characters, without any *Ideas*, How comes it to be furnished ...? To this I answer, in one word. From *Experience*: In that, all our Knowledge is founded; and from that it ultimately derives its self (104; ii, i, 2). In discussing self-evident truths, Locke, in effect, is contending that even if there are self-evident truths (which he was willing to concede), that does not stand in the way of saying that all knowledge comes from experience. In response to those who contended that (a) maxims and other self-evident truths are known to the mind prior to and quite apart from experience and (b) other parts of knowledge can be derived from these maxims, Locke insists, “*First*, That they are not the *Truths first known* to the Mind, is evident to Experience.... *Secondly*, From what has been said, it plainly follows, that these magnified *Maxims*, are not the Principles and Foundations of all our other *Knowledge*” (595–96; iv, vii, 9–10).

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And indeed, it is quite apparent that regardless of the words that are used to give expression to the differences, a circle is not a square, a man is not a horse, and red is not blue. But does saying “It is self-evident that all human beings are created equal” have the same degree of certitude as saying “It is self-evident that red and blue are different colors” or “It is self-evident that a square and a circle have different shapes”? While many different words in many different languages are used to identify various colors, once linguistic variations are taken into account one is hard-pressed to find anyone anywhere (at least anyone who is not color blind) who sincerely believes that red and blue are really the same color. Similarly, it does not take extensive study to determine that squares and circles have different shapes because squares have corners and circles do not and that there are observable differences between human beings and horses. Locke was right. It is self-evident that red and blue are different colors, that squares and circles have different shapes and that a man is not a horse.

But can the same be said with respect to the claim that all human beings are created equal or any other ethical claim? Even though many of us sincerely believe that all people are born with the same basic rights, the notion that everyone has the same basic rights is by no means a universally held view. One need not look far, either historically or in the world today, to find examples of tyrants and despots who despise the notion of equality and respect for all persons. Rejection of the notion of equal rights, it might be added, is not limited to tyrants and despots. A number of the signers of the U.S. Declaration of Independence, including Jefferson himself, owned slaves. The equality of all persons, it seems, was not self-evident even to them, notwithstanding the resounding endorsement of equality given expression in the ringing words of that much-quoted and revered document.²¹ The view that there are self-evident basic

²¹ In the “original Rough draught” of the U.S. Declaration of Independence, Jefferson took a strong position against the slave trade, alleging that the British sovereign had “waged cruel war against human nature itself, violating it’s (sic) most sacred rights of life & liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere...” and that the British sovereign was “determined to keep open a market where MEN should be bought & sold” (“Jefferson’s ‘original Rough draught’ of the U.S. Declaration of Independence” in *The Papers of Thomas Jefferson*, Vol. I, ed. Julian P. Boyd [Princeton, NJ: Princeton University Press, 1950], 426.) However, this passage was deleted prior to approval of the document by the Second Continental Congress.