CHAPTER 1

Metaethics: meaning and justification

The pages of this introductory chapter focus on two approaches to metaethics as these have bearings on our analysis of the language of rights. Roughly speaking the first half of the following discussion concentrates on one type of analysis, involving the problems of defining relatively technical moral and legal terms. I begin with some very basic ideas on definition, prescinding initially from the specific issues related to the analysis of moral language as such, and relate these ideas to rights-language in use every day. A move is then made to make some hesitant remarks on the evaluative, as opposed to the merely descriptive, meaning of the language of rights, stressing in particular the ways in which aspects of justification tend to be 'built into' our moral and legal vocabulary. The second half of my discussion derives its importance partly from the limitations experienced in trying to reduce the analysis of rights to definition alone. In other words, I begin to recognise explicitly the disadvantages of depending solely on a discursive metaethics. I attempt to complement the discursive approach with a more imaginative metaethical analysis. Where imagination has been advocated in the study of normative ethics, an attempt is made here to use the same valuable tool in the analysis of ethical concepts, such as rights and duties.

In his discussion of metaethics, William Frankena claims that the subject treats of four major questions:

(1) What is the meaning or definition of ethical terms or concepts like 'right', 'wrong', 'good', 'bad'? What is the nature, meaning or function of judgements in which these

and similar terms or concepts occur? What are the rules for the use of such terms and sentences?

(2) How are moral uses of such terms to be distinguished from nonmoral ones, moral judgements from other normative ones? What is the meaning of 'moral' as contrasted with 'nonmoral'?

(3) What is the analysis or meaning of related terms or concepts like 'action', 'conscience', 'free will', 'intention', 'promising', 'excusing', 'motive', 'responsibility', 'reason', 'voluntary'?

(4) Can ethical and value judgements be proved, justified and shown valid? If so, how and in what sense? Or, what is the logic of moral reasoning and of reasoning about value?[1]

Now Frankena suggests that of these four questions, two of them (1) and (4) 'are the more standard problems of meta-ethics',[2] and thus devotes most of his attention to a discussion of the meaning and justification of our ethical terms, judgements and arguments. This is not to deny the importance of questions (2) and (3). From the point of view of the language of rights such questions do have some application.

For instance, with regard to the second question, namely the moral/nonmoral distinction, we can agree that not all rights are moral rights. Alan White, as well as recognising the moral variety, refers to the following types of right: legal, religious, political, statutory, constitutional, customary or conventional, epistemological or logical, and allows for still other examples.[3] The latter are clearly normative; in fact, all rights are normative – but how do they differ from the moral variety? In other words, are there such things as nonmoral rights? One can imagine a normative statement based on aesthetic value, such as 'This painting has a "right" to be included in the exhibition.' How would this use of the term 'right' be similar to, or dissimilar from, what appears to be a clear moral use in the following statement, 'I have a "right" to be included on the register of voters for this election.' (where we have in mind perhaps some discriminatory practice obstructing the right to vote). Or consider the difference between morality and

etiquette.[4] Is the 'right' of a lady to enter the doorway first a right of the same basic type as the 'right' of a woman to equal consideration in the job market? In other words, questions about rights arise in the context of more general discussion of the distinction between the moral and the nonmoral spheres of human life, or where these spheres seem to overlap, as in the complex relationships between law and morality.

The third question involves the analysis of what Frankena seems to regard as secondary moral concepts, or as nonmoral concepts closely related to the moral field. From his list it is not difficult to imagine how their analysis would be important in relation to an analysis of rights language. For instance, are all rights tied to some action, some external form of behaviour, some change in the world about us? If so, is it the right-holder's action that is primary, for example his activity of claiming something? Or do we focus on the activity of the bearer of some correlative obligation? Or is some combination of these activities involved?

Another word requiring analysis, according to Frankena, is 'promising'. This term is important from the point of view of what are sometimes called special moral rights, claims that originate in some form of promise, either explicit (a performative utterance[5]) or implicit (where one gives another some indication, often non-verbal, that she can depend on one for some service). So, the issue of how rights arise from promises is a metaethical question.[6]

Within the compass of normative ethics, distinctions are often made by contemporary philosophers between theory of obligation and theory of value. Usually the former concentrates on act-evaluation, employing the terminology of 'right' and 'wrong', while the latter tends to concentrate on agent-evaluation, employing the terminology of 'good' and 'bad'.[7] Because of the close relationship between rights and obligations and the language of 'right' and 'rights', there is a temptation to study rights language just in relation to the theory of obligation and to ignore the possible connections between rights and the theory of value, especially the ethics of virtue. Can one violate the rights of others by acting from the wrong motive, or if the

consequences of our actions are beneficial, but were not intended to be so? Once one sees terms like 'motive' and 'intention' one moves into a different area of normative ethics – the study of character, personal traits and dispositions – and the question should naturally come to mind, 'Does the analysis of rights have some connection with virtue as well as with obligation?' (We include here the question of when one should waive one's rights – this could be supererogatory. A theory of virtue thus might control our activity of claiming.)

THE DEFINITIONAL APPROACH

Returning to the central questions underlined by Frankena, we first examine the issue of meaning or definition of ethical terms, such as 'right', with its various qualifications: 'human', 'natural', 'special', 'positive' and 'negative', 'inalienable', 'absolute' and so on. Various problems arise initially when we consider the definition of terms. Let us cover some of these issues briefly, borrowing from the ideas of John Hospers in his standard work *An Introduction to Philosophical Analysis* as well as introducing insights from some other philosophers.[8] As we proceed we connect these general issues with our efforts to elucidate rights-language.

The process of defining our terms may involve a number of different approaches. Most often, perhaps, we try to give an equivalent word or set of words. This is the dictionary approach and is particularly helpful when faced with technical terms. What we need is some method of translating such terms into 'ordinary' language, the language of the layman. We hear an unfamiliar term or phrase such as 'male sibling' and the dictionary informs us of a simple synonym – 'a brother'.[9]

Quite often, however, giving a single equivalent word is not sufficient to pin down the meaning of a term. One way of coping with this is to regard words as typically designating 'the sum of the characteristics a thing must have for the word to apply to it'.[10] We then look for the defining characteristics of an object. Being three-sided would be one of the defining characteristics of

a triangle, and without this characteristic we refuse to apply the term 'triangle' to some geometrical figure. Thus, one way of defining a term is to distinguish between defining characteristics and accompanying characteristics (contingent facts about an object), giving as comprehensive a list as possible of the former.

Designation of essential characteristics is one approach to definition, but not the only one. Another approach is by way of denotation. Hospers suggests this method for those situations when 'there may be no set of words which are equivalent in meaning to the word for which a definition is requested' (p. 40). We may not be clear about the defining characteristics of an object, say a human being, but at least we can give some examples of human beings by naming known individuals. Each individual to which the word applies is a denotation of the word. 'The entire denotation of a word is the complete list of all the things to which the word applies' (*ibid.*).

One last approach to definition is called ostensive definition.[11] It is non-verbal and, as the name suggests, it works by means of pointing to an object. Learning a foreign language we may grasp the meaning of a word by having some object, a chair for instance, pointed out to us. Colour words are another example where pointing is one of the best ways of learning the meaning of the word. More complicated are experiences such as pain, fear, frustration, where one cannot point to something internal in a person. Instead one points to certain forms of behaviour which are signs or symptoms of the thing in question.

Regarding the language of rights, what definitional approaches should we apply to our basic terms in order to clarify their meaning?

The basic terminology of rights involves a relatively complex technical vocabulary in moral, political and legal philosophy and yet, at the same time, it appears to be used frequently in popular discussions of morals, politics and law. Can we find an equivalent term or set of terms which will provide a satisfactory verbal definition?

Sometimes a technical term is defined in a way that is logically satisfactory but psychologically unsatisfactory, as when we substitute another technical term for the original one. But

there is no guarantee that the new term clarifies the one being defined. Thus, we may define rights in terms of claims or entitlements, with the effect of leaving those we are communicating with still unclear about the definition of our original term. Presumably, we wish to replace a relatively unfamiliar term with a relatively familiar one so that others will be able to recognise examples from their experience and may more easily work out defining characteristics. In other words, presenting an equivalent word is an aid to discovering both the denotation and connotation of the term at issue. Thus, by giving 'claim' as an equivalent word for 'right' one hopes that 'the penny will drop', that others will say, 'Now I know what you mean. Claims and claiming are familiar to me, and I think I know the criteria for using these terms.' Of course, the mention of 'claim' may give rise to a blank reaction. Then we have substituted one unfamiliar term with another, and we must try again. Or indeed, it could be the case that a person is more familiar with the word 'right' than with the word 'claim', so that the latter word is the technical one in need of elucidation.

Hospers distinguished two main kinds of definition – denotation and designation. He departs from the more traditional use of the term 'connotation' in using designation. Later in this chapter we will examine what he means by connotation. Traditional logicians tend to equate denotation with extension and connotation with intension.[12] Although distinguishable the two notions tend to go hand in hand. In the case of the term 'right', for instance, its denotation or extension would include the whole class of such objects taken as individuals; each right is a denotation of the term 'right'. Clearly, a person may have little explicit notion of what the defining characteristics of the term are, yet still be able to recognise instances. This is probably due to some implicit grasp of either defining or accompanying characteristics, that is, a rudimentary grasp of a term's connotation or intension. Someone might recognise moral, legal and religious rights as rights while not being able to distinguish them as different types of right, just as someone might recognise wrens, sparrows and blackbirds as birds while remaining ignorant of what makes these birds belong to different species.

In this work an underlying assumption is that people in general, including some scholars, are in this position regarding rights. Their grasp of the connotation of rights is limited. Therefore, a major task of metaethics must be to bridge the gap between denotation and connotation regarding the language of rights. Although in this work we are interested in the analysis of the general term 'right', it is the various species of rights, represented by the qualifying words applied to the general term which provide the material for the deepest understanding of this type of language.

Depending on our interests our definitions may vary. Our concern may be extremely broad – we seek the most general defining characteristics which characterise any right. Or we are interested in a narrower field, such as legal rights where the defining characteristics are limited to that one area.

Our definition of rights may be reportive or stipulative: we may follow the dictionary definition, the given societal or group understanding of 'right', or we may feel that this is imprecise, or inconsistent, or simply misses the point, and want to substitute our own personal definition, suggesting that it be widely accepted in lieu of the commonly held one.[13] Wesley Hohfeld's analysis of legal rights is an example of a set of stipulative definitions within a specific, indeed highly specialised, context, aimed at improving judicial reasoning.[14] Another example would be the attempt to redefine human rights by limiting their scope. For example, Carl Wellman argues that human rights are a type of civil right, belonging to citizens, but held only against the State to which one belongs.[15] According to this stipulative definition, one does not have a human right which is claimable against one's neighbour, though the state may have an obligation to protect one from a neighbour's aggression.

As we study the language of rights we see how controversial their analysis has become, especially at the philosophical level, so that the various stipulative definitions are often more to the point than the reportive type. In fact, one of the uses of stipulative definition comes into play when there is no available definition to cover some specialised distinction. Then we have to coin a phrase or invent a term, which may or may not become

widely accepted. An example from the realm of rights is the distinction between 'mandatory' and 'discretionary' rights.[16] The former involve a perfect coincidence of right and duty on the part of the right-holder. I have a right to do x and I also have a duty to do x. The latter implies that one is free to do x but has no duty to act in this manner. (This feature of rights-language is evidence of open-texture, a notion to be discussed shortly.)

DEFINITION AND EXISTENCE

Definition by designation of essential characteristics does not necessarily imply the existence of the object being defined. Or, to put it another way, connotation does not always imply denotation. Hospers gives the examples of the words 'horse' and 'centaur'.[17] The word 'horse' denotes many things, but the word 'centaur' denotes nothing, since no centaurs exist. Yet the meaning of the two words is equally clear in the sense that we know what defining characteristics are required for the application of the words. Fictional objects have connotation but no denotation. What then of the term 'right'? Given it has some connotation, does the term denote anything or is the term the name of some fictional entity?

Alan White reviews some of the opinions given in the past on this matter from the legal or jurisprudential point of view. Bentham, for instance, held that the word 'right' denotes a fictitious object.[18] This was widely agreed on by many nineteenth- and early twentieth-century jurists, including Hohfeld.[19] But White himself states that:

> Clearly 'right' (like 'duty' etc.) does not denote any entity, whether physical, mental, or fictional. Having a right is neither like having a ring nor is it like having an idea. Nor is denying the existence of certain rights like denying the existence of centaurs or of El Dorado.[20]

Yet this is not to deny the importance of rights. For White goes on to say that sentences involving the word 'right' may state facts or express truths (pp. 2–10). And in general White is opposed to the widespread scepticism shown by many philosophers to the language of rights.

Another eminent philosopher, H. L. A. Hart, goes over similar ground in his essay 'Definition and Theory in Jurisprudence'.[21] He finds it quite remarkable that 'out of these innocent requests for definitions of fundamental legal notions there should have arisen vast and irreconcilable theories, so that not merely whole books but whole schools of juristic thought may be characterized by the type of answer they give to questions like "What is a right?"' (p. 23). He goes on to describe the main theories in question, calling them 'a familiar triad'. The American realists[22] tell us that a right is a term used to describe our prophecies concerning the probable behaviour of courts or officials. The Scandinavian jurists,[23] as mentioned by White, insist that rights are not real, but fictitious or imaginary powers. Both theories denigrate the third approach which sees rights as invisible entities that exist apart from human behaviour. Hart himself disagrees with each of these theory types and instead follows the view of Bentham that a functional approach is what is required. With regard to words like 'right', 'duty' and 'corporation' he declares:

> The fundamental point is that the primary function of these words is not to stand for or describe anything but a distinct function; this makes it vital to attend to Bentham's warning that we should not, as does the traditional method of definition, abstract words like 'right' and 'duty', 'State', or 'corporation' from the sentences in which alone their full function can be seen, and then demand of them so abstracted their genus and differentia.[24]

The particular function rights-language has, according to Hart, occurs within the context of a legal system which includes a correlativity between rights and duties, with rights involving a power or freedom of choice over another's duty. This is sometimes called the 'Choice Theory' of rights. We have to admit a certain attractiveness attending this point of view, and it is not too difficult to adapt the Choice Theory to the category of moral rights. Presumably, correlativity of rights and duties, choice whether to claim or waive one's legitimate demands, all in the context of a moral system of values, rules and principles, would be central terms in a possible elucidation of the meaning of moral rights.

Both White and Hart appear to represent the modern analytic approach to language, following Wittgenstein[25] and his emphasis on the use of language, rather than formal definition which tends towards an illegitimate reification of rights. In asking for a definition of the term 'right' we may be bewitched by some picture of a right as some object or entity, whereas for many analytic philosophers such assumptions should not be made; rather one should ask, 'How is the term used in a moral or legal system?' Once this approach is adopted, it is argued, the 'existence' of rights becomes less mysterious.[26]

DEFINITION AND THE OPEN-TEXTURE OF CONCEPTS

It must not be assumed that once a definition is agreed upon that its meaning is settled once and for all. Hart, whose admiration for analytic jurisprudence has just been noted, reminds us in another essay of the important concept developed by F. Waismann, a disciple of Wittgenstein, entitled 'the open-texture of concepts' (*Porositat der Begriffe*).[27] The value of this concept, Hart argues, lies in its stress on the fact that most empirical concepts, not merely legal concepts, are such 'that we have no way of framing rules of language which are ready for all imaginable possibilities. However complex our definitions may be, we cannot render them so precise that they are delimited in all possible directions such that for any given case we can say definitely that the concept either does or does not apply to it.'[28]

Waismann provides a number of examples of unusual situations where we would be uncertain how to apply a common concept or term. For instance, 'Suppose I come across a being that looks like a man, speaks like a man, behaves like a man, and is only one span tall – shall I say it *is* a man?' In response to the objection that such things don't happen, Waismann answers, 'Quite so; but they *might* happen, and that is enough to show that we can never exclude altogether the possibility of some unforeseen situation arising in which we will have to modify our definition.'[29] Hart agrees with this feature of definition, saying that 'We can only redefine and refine our concepts to meet the new situations when they arise.'[30] Hospers states the same point