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This study attempts to clarify the nature and value of rights-language in moral philosophy and Christian ethics. It does so partly by means of a conventional analysis of this terminology, and partly through a relatively novel approach involving the use of models and metaphors. The imaginative metaethics which emerges is seen to be rich in possibilities for both Christian and secular understandings of rights-talk, and demonstrates how – while there is a notable overlap between secular and religious perspectives – a specifically Christian understanding of the nature and value of rights might be constructed.

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RIGHTS AND CHRISTIAN ETHICS

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NEW STUDIES IN CHRISTIAN ETHICS

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In recent years the study of Christian ethics has become an integral part of mainstream theological studies. The reasons for this are not hard to detect. It has become a more widely held view that Christian ethics is actually central to Christian theology as a whole. Theologians increasingly have had to ask what contemporary relevance their discipline has in a context where religious belief is on the wane, and whether Christian ethics (that is, an ethics based on the Gospel of Jesus Christ) has anything to say in a multi-faceted and complex secular society. There is now no shortage of books on most substantive moral issues, written from a wide variety of theological positions. However, what is lacking are books within Christian ethics which are taken at all seriously by those engaged in the wider secular debate. Too few are methodologically substantial; too few have an informed knowledge of parallel discussions in philosophy or the social sciences. This series attempts to remedy the situation. The aims of New Studies in Christian Ethics will therefore be twofold. First, to engage centrally with the secular moral debate at the highest possible intellectual level; second, to demonstrate that Christian ethics can make a distinctive contribution to this debate – either in moral substance, or in terms of underlying moral justifications. It is hoped that the series as a whole will make a substantial contribution to the discipline.

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RIGHTS AND CHRISTIAN ETHICS

BY

KIERAN CRONIN

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To
Robin Gill
and
Sandy McCall Smith

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General editor's preface

This book is intended as the first of a series in two senses. It is the first book of the series *New Studies in Christian Ethics*. Fundamental to this series is the attempt to bring together recent discussions in philosophy and the social sciences with the very best in Christian ethics. This is meant to be an intellectually challenging series and, as such, it will make heavy demands on contributors. Nothing less is demanded than expertise in both a secular discipline and in Christian ethics.

Dr Cronin fulfils this admirably. He handles difficult philosophical material on the highly important topic of rights with obvious competence. It would be difficult to find another theological work in this area which displays the same level of expertise on this topic. Indeed, it has been an obvious weakness of theologians writing on the topic of rights, that they have seldom shown that they are fully acquainted with what is now a large body of philosophical discussion elsewhere in the intellectual world.

By combining philosophical and theological skills in this way, Cronin conforms very exactly to the aims of the series *New Studies in Christian Ethics*. He attempts to show that Christian ethics can make a distinctive contribution to understanding rights in society at large – not least in providing distinctively religious reasons for acting morally and in suggesting key models for Christian, as well as for secular, ethics. Cronin's understanding of imagination and models in relation to rights is particularly helpful. Whilst he takes seriously the philosophical literature which attempts to define and analyse the nature of 'rights', he does show that a more metaphorical (and then

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theological) approach also has something important to contribute to the secular debate.

But I hope that this book is the first of a series in a more personal sense. Dr Cronin's contribution is a distinctive one, and will hopefully be followed by many more from him in the future.

I am delighted to welcome this book as the first of what I hope will be a very fruitful series in both senses.

ROBIN GILL

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Preface

'Try to imagine Nowheresville – a world very like our own except that no one, or hardly anyone ... has *rights*.' This is the thought experiment conducted by the philosopher Joel Feinberg at the beginning of his essay on 'The Nature and Value of Rights'.[1] Surely such a world would be a deficient one from the moral point of view. Perhaps it would even be a wicked or iniquitous society, an anarchic place where life is nasty, brutish and short. But let us not jump to this conclusion too readily. Feinberg is quite willing to allow many other moral features of great respectability to exist in Nowheresville. 'In particular, let the virtues of moral sensibility flourish. Fill this imagined world with as much benevolence, compassion, sympathy and pity as it will conveniently hold without strain.'[2]

Go even further, Feinberg suggests. Take into account the Kantians who insist on the idea of moral duty and include such an idea as motive for moral behaviour in our imaginary society. But maybe we have now gone too far. Maybe the introduction of duties has also brought in by the back door the idea of rights, due to the important and widely held doctrine of the correlativity of rights and duties. If people have duties, then there must be corresponding people who can claim these duties. But this does not necessarily hold. Not every duty has a correlative right, as we shall argue later, and the correlativity doctrine is not as tidy as some think. Feinberg considers it possible that the language of duties in Nowheresville would simply mean that there is a law which requires one to act in a certain way but without actually owing this action to someone. One example mentioned by Feinberg is that of a motorist stopping at a red

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light (p. 144). There is a duty to do so required by law, but there is something artificial and strained in saying that other motorists and pedestrians have a strict right to this obedience. Thus, Feinberg insists there can be in Nowheresville the concept of duty without the correlative concept of having a right against someone.

Nor is he finished yet in arranging the moral furniture of this imaginary world. He includes the notion of personal desert, not in the sense that something is due to a person as a reward for something good he has done. This might imply the language of rights again, as in the case of duty. So Feinberg interprets desert not as what is due to another, but what is fitting or appropriate in response to a situation, rather like laughter after a good joke and applause after some performance. Again it is not necessary to say that anyone has a claim to such responses (p. 145).

Therefore, Nowheresville is not the den of iniquity we might have judged it to be at first. Its inhabitants are not necessarily amoral or immoral. But the question remains, 'Is there something missing morally, something significant, in this world without rights?' And Feinberg insists that there is. Since rights involve the activity of claiming, according to this author, its absence from Nowheresville is highly significant morally, since it 'makes for self-respect and respect for others, gives a sense to the notion of personal dignity, and distinguishes this otherwise morally flawed world from the even worse world of Nowheresville' (p. 155).

Feinberg's philosophy of rights will be studied in greater detail later in this work. His thought experiment is highlighted at this initial stage mainly as an example of the distinction that is frequently made in modern moral philosophy and which is germane to this study. That distinction is between 'Metaethics' and 'Normative ethics'. In the Editorial Foreword to P. H. Nowell-Smith's *Ethics*, A. J. Ayer presents this distinction in a brief and succinct manner: 'There is a distinction, which is not always sufficiently marked, between the activity of a moralist, who sets out to elaborate a moral code, or to encourage its observance, and that of a moral philosopher, whose concern is not primarily to make moral judgements, but to analyse their

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nature. Mr Nowell-Smith writes as a moral philosopher.'[3] It is not absolutely clear if the moralist and the normative ethicist are one and the same. Perhaps the normative ethicist may stop at elaborating moral codes and leave the encouragement of observance to the preacher. In any case, what interests us here is the work of the metaethicist, especially when it comes to analysing the language of rights.

Now Feinberg's essay is primarily a metaethical study rather than a normative one. He is not concerned with telling us what rights we have. His aims are twofold as seen in the apt title he uses. He intends to elucidate the 'nature' of rights, whilst also exploring the question of their 'value' or usefulness. Regarding the first quest, reference to the 'nature' of rights directs one's attention to their essential meaning, and Feinberg tends to focus on the notion of claims and claiming in order to draw this out. Turning to the quest for the 'value' of rights and the language of rights one's attention is directed towards the sphere of justification. Given that we are relatively clear about the meaning of our language when we talk about rights, we must ask whether we are justified in using such language in our ethical discussions.

In Feinberg's essay these two questions of meaning and value are closely related. Once one analyses the notion of rights as claims one comes to see that having a claim or claiming something against someone is not a morally neutral matter. Normative judgements are built into this use of language, some positive, some negative. Feinberg insists, as we have seen, that a world without the facility of claiming would be an impoverished world, morally speaking, and that the language of rights contributes to human efforts to promote human dignity and self-worth. This raises important questions about the relationship between metaethics and normative ethics, leading some philosophers to question the distinction itself. For instance, Gilbert Harman claims that 'arguments by W. V. Quine and other philosophers actually undermined the supposed distinction between meta-ethics and normative ethics by showing that there can be no real separation between questions of substance and questions of meaning'.[4]

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I agree with Harman's point that metaethics and normative ethics cannot be separated because of their close links, but I would still insist on a basic distinction, with each subject having its own particular emphasis. In particular with regard to the question of the value or justification of rights-language it is not too difficult to recognise two senses in need of elucidation. On one hand, there is the normative–ethical sense, which Feinberg appears to emphasise in the essay we have been discussing. The language of rights as claims is related to human dignity in so far as this requires that we stand up for ourselves, demanding what is due to us, being self-assertive in a good way, and so on. Actual moral positions regarding human relationships are very close to the surface in this approach to analysis and justification.

On the other hand, there is another approach to the task of uncovering the value of rights which is more typically meta-ethical. This stresses the value of the 'language' of rights or the 'concept' of rights from the more or less logical point of view. We may ask how useful is this form of language as a tool in any kind of ethical discussion. Is it a sharp tool in the sense of being relatively clear, or is it blunt in the sense of being vague and confused? As a tool does it do one job or many jobs? Does it do one job very well and others in a mediocre way? In other words, is our talk of rights a useful kind of moral language in helping to express the complicated and intricate world of morality? Of course we choose tools because we are interested in getting a job done, hence the difficulty in separating the two occupations. Likewise, we have expressed reservations about separating metaethics from normative ethics. However, I would liken the student of metaethics to the tool-maker who knows that the ultimate value of his job lies in the usefulness of his tools in performing skilled work, but who, in practice, concentrates on the production of the tools in themselves. At times he may even forget the customers who will buy his work, but he can never completely ignore that dimension. The tools are for sale, not for remaining on the shelf for his own admiration.

Various images can be used to explain the relevance of the distinction between metaethics and normative ethics. Kai Nielsen likes to refer to the person who does metaethics as 'a

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kind of conceptual cartographer'.[5] The work to be done is to map out the relationship between concepts. Again I find the image helpful. When we buy a map we often take the cartographer for granted. We have in mind a particular task, to make a journey from one place to another. The map will guide us. But reading a map requires some training. There are codes and symbols which must be understood in advance, otherwise the map is just a series of coloured blobs and crooked lines. So, in order to arrive at our destination we need to understand the meaning of the instructions on the map, and we then need to put them to good use as we travel along. Similarly, with moral language such as the language of rights, we must be trained in the meanings of the terms used if we are to use them to get to our moral destination. Again meaning and value are closely linked. Once one knows the meaning of the codes and symbols one knows their value – in helping to avoid getting lost for one thing. The value of a map depends on what you have in mind. Some people use maps to travel direct to their destination. Others just like the colours and hang them as posters on their bedroom walls. Others still may study maps as professional cartographers, judging them from the point of view of the particular standards of the profession. However, such standards must have some reference to the general public who use maps, as well as having reference to the special interests of cartographers who have more time to concentrate on the niceties of layout.

What relevance has all this for Christian ethics? The most obvious response is that Christians use the language of rights like nearly everyone else, and they are equally prone to abuse moral language by being vague in their understanding of the complex relationships between moral terms. Even Christian theology can be accused of ignoring to a great extent the analysis of the language of rights at the metaethical level. I can find only a handful of Christian ethicists writing in the English language or translated into English who treat of the metaethical issues surrounding the concept and language of rights. It is odd that Christianity has moved from a situation of hostility to this form of language, to one of almost naive and unquestioning

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acceptance. John Henley speaks of 'the naivete with which some theologians and church leaders concerned about human rights have understood the relation between *theoria* and *praxis*'.[6] And he goes on, 'This has meant that the cause of human rights has been virtually taken for granted in certain circles, especially those of the World Council of Churches, and little critical attention has been paid to such matters as its foundations' (*ibid.*).

In the following chapters I make an attempt to act as conceptual cartographer, charting the territory of rights-language. To vary the metaphor, as a tool-maker, or better, tool-sharpener I try to sharpen this valuable tool by clarifying its meaning and value. The first chapter presents two major analytical approaches. One is the more traditional approach by way of definition. So I will discuss in a basic way the problems we face when attempting to define and pin down the meaning of complex ethical terms. The second approach is, I think, more original, involving an imaginative perspective in relation to metaethics. This is necessary because of the limitations of the definitional approach, and because of the inherent value of the imagination in the work of analysis and justification of moral language.

My second chapter concentrates further attention on the definitional approach to rights-language, examining terms like 'claim', 'entitlement', 'power' and 'liberty' in order to point out some of the controversy surrounding even such basic attempts to find simple synonyms for a 'right'. Some of the complexity of rights-language is underlined from the point of view of legal philosophy and a number of philosophical problems grounded in these distinctions are brought to light, especially the doctrine of the correlativity of rights and duties.

The first two chapters may have a discouraging effect on the reader who never thought that a form of language used so commonly could in fact be relatively controversial. The next two chapters may be even more discouraging as I face up to radical scepticism about rights-language. Some philosophers have even advocated dropping this way of speaking, abandoning it as a useless tool. These chapters, then, present two

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different forms of scepticism. The conceptual objections tend to be more metaethical in their emphasis. Is this language incurably vague? Is it not redundant in so far as it can be replaced without loss by the language of principles and rules, or the language of duty, or simply by talking directly about human interests? The normative objections come from moral philosophy and Christian ethics. They are more familiar, perhaps, underlining the individualism and egoism inherent in so much of human claiming. Rights language encourages and expresses the adversarial tendency in modern society. Claims have proliferated immoderately. For example, Lisa Sowle Cahill mentions as well as the Quinlan case in the US, where a 'right to die' was in question, the case of 'an eighty-year-old Japanese sandalmaker [who] had won the "right to sunshine" (asserted against the construction of skyscrapers) from the Tokyo District Court, and the Fiji Island gold miners [who] were seeking "the right to a sex break" during their lunch period.'[7]

Clearly a discussion of such scepticism is necessary at the beginning of our treatment of rights-language. There is little possibility of a proper metaethical treatment of our subject without confronting radical scepticism head-on, so to speak, at the very start. While I begin to provide some answer to the sceptics in my third and fourth chapters, a fuller answer is provided, I hope, in the remainder of this work. The last four chapters take up in detail the imaginative approach to metaethics mentioned in my initial chapter. The role of imagination at the metaethical level is brought out in terms of the value of metaphors and models when these are used to elucidate first the meaning of the language of rights and also the value of this language.

I take the concepts of 'freedom' and 'power', which were used in the definitional approach, and I treat them as models of rights. These are elucidated at a humanistic or secular level at first without any reference to religious insights. Later, however, I build on this secular foundation, adding particular Christian insights or understandings of freedom and power. Applying these models to rights I claim that a deeper and richer grasp of the meaning and value of this language is attained. A further

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step in this imaginative approach takes up two additional models – covenant and image of God – which are more directly religious in inspiration. I relate these in turn to the previous models of freedom and power, presenting all four as complementary metaethical models of rights. From the point of view of Christian ethics my position is that these models, while overlapping with humanistic approaches to rights, provide a specific vision of reality which is ultimately God-directed. Such a vision is a controlling factor regarding the 'content' of morality and provides the Christian with special justifying reasons for acting morally.

I am grateful to a number of people who have helped me to the point of producing this work. Professor Robin Gill and Dr. R. A. A. McCall Smith, who supervised my original thesis at Edinburgh are deserving of thanks, not only for their professional advice and direction, but for their friendship over the past few years. I am particularly indebted to Professor Gill for suggesting that I present a rewritten version of my thesis for publication in this series. This being my first publication, I am sincerely grateful to Alex Wright and the editorial staff at Cambridge University Press for leading me through the task of preparing a manuscript for publication. Such support and encouragement has been invaluable over the last year.

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