

Natural rights theories

Their origin and development

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Introduction

This book began as an attempt to solve some of the problems which twentieth-century philosophers have found in writing about rights. The thirty years since the war have witnessed a curious phenomenon: the language of human rights plays an increasingly important part in normal political debate, while academic political philosophers find it on the whole an elusive and unnecessary mode of discourse. With the exception of Robert Nozick,¹ no major theorist in the Anglo-Saxon world for almost a century has based his work on the concept of a right, and when most philosophers have looked closely at the concept it has seemed to collapse quickly into other, less intractable notions. One argument in particular has meant that the language of rights is difficult to use straightforwardly: it is the famous argument stemming ultimately (as we shall see) from Samuel Pufendorf, though generally associated with Bentham, that to have a right is merely to be the beneficiary of someone else's duty, and that all propositions involving rights are straightforwardly translatable into propositions solely involving duties. If this is true, then the language of rights is irrelevant, and to talk of 'human rights' is simply to raise the question of what kinds of duty we are under to other human beings, rather than to provide us with any independent moral insights.² The residual Utilitarianism of many Anglo-American political theorists has made this argument particularly attractive, but its force has always largely been that it appears to embody a logical truth. And yet to dismiss such a key area of political thought in this way seems a foolhardy enterprise – there must be *something* to the language of rights.

The conviction that these problems, like much in the area of moral and political philosophy, could be solved *historically*, by an investigation of how the relevant language had developed, led to a consideration of what such an investigation might look like. One thing it seemed that it should not be is simply an exercise in historical lexicography. We cannot satisfactorily talk about the meaning of a particular word in the past merely by giving examples of its use, and constructing the dictionary with which

¹ R. Nozick, *Anarchy, State, and Utopia* (Oxford, 1974).

² For a fuller discussion of this, see below, pp. 4–7.

contemporaries never provided us.³ Because the meaning of a term such as *a right* is theory-dependent, and we have to be sure about what role the term played in the various theories about politics which engage our attention, we will in practice be writing something much more like the traditional history of ideas. This is true even to the extent that much of our material will be provided by the literature traditionally studied as part of that history. The elucidation of a complex notion such as a right requires a fairly full account of the possible theories about politics which involve the concept, and in general those theories (given the obvious facts about our culture) are embodied in particular texts. The pursuit of a set of common assumptions possessed by people independently of or outside the historical literature and informing that literature is likely to be fruitless: in a culture such as ours has been since the Roman period, understanding a political language involves understanding the literature of political theory, and that applies to the speakers of the language as much as to its historians.

Given this, there seemed to me to be two important periods which have to be studied if we are to make sense of the language of rights. The first is clearly the period in which the language first appeared and developed into something close to what we see today, and as I show in the first chapter, that was essentially the early and high middle ages. The second is the period of what can be termed the classic texts of rights theory, stretching from Grotius through to Locke. In order to link these two periods together, I provide in Chapter Two a discussion of why the rights theories which were developed in the later middle ages failed at the Renaissance, and what the circumstances were which led to their revival at the very end of the century in both Catholic and Protestant Europe.

For obvious reasons, my enterprise has certain parallels with that of Professor C. B. Macpherson in *The Political Theory of Possessive Individualism*. He too turned to the seventeenth-century rights theorists in an attempt to understand the confusions of contemporary political theory, in his case liberal democratic theory as a whole. A continual assumption of Macpherson is that the great nineteenth-century democratic thinkers such as Bentham and even Mill built on the seventeenth-century rights theorists' foundations, and that the seventeenth-century theory is therefore basic to all current liberal and democratic political thinking. The oddity of this claim (for, as we have seen, one of the things which characterises a Utilitarian view of politics is a deep scepticism over the validity of a language of rights – a scepticism which we can see emerging as part of an explicit repudiation of the classic seventeenth-century theories) does not however vitiate his enquiry: it remains true that at least one powerful way of talking about politics is correctly rooted in those writings, even if there is an important kind of democratic theory which is not.

³ To some extent, this is the failing of a work such as Raymond Williams's *Keywords* (London, 1977).

Moreover it is also true that Macpherson correctly divined the 'possessive' character of the classic works; a concept of man as the *owner* of his liberty and other moral attributes is undoubtedly central to them. But this is a much more complex matter than might appear from Macpherson's book. He was content to explain it in terms of the social realities of the day – 'the relation of ownership, having become for more and more men the critically important relation determining their actual freedom and actual prospect of realising their full potentialities, was read back into the nature of the individual'.⁴ But as we can see from my first chapter, from its inception the language of rights had an ambiguous character, and already by the fourteenth century it was possible to argue that to have a right was to be the lord or *dominus* of one's relevant moral world, to possess *dominium*, that is to say, *property*. To have a strongly individualistic theory of rights was inevitably, given this political language, to have a *possessive* theory. If it is true that the difficulties of modern liberal–democratic theory are attributable to the possessive quality of the individualism at its heart (a belief which I do not share), then those difficulties cannot be solved by seeing how we stand in relationship to the classic seventeenth-century texts; they are far more fundamental and long-standing.

Furthermore, it is very far from clear that any sort of *liberal* political theory can easily be traced back to these works. An important conclusion to which one is forcibly led is that most strong rights theories have in fact been explicitly authoritarian rather than liberal. Hobbes is representative, not exceptional. The medieval rights theorists, Molina, Grotius, Selden (one of the most important and yet neglected of the seventeenth-century figures), Selden's followers and Hobbes all openly endorsed such institutions as slavery and the absolutist state. It is true that more liberal rights theories developed out of this conservative and authoritarian tradition, and that Grotius was the vital figure here; in his early works and to some extent in *De Iure Belli ac Pacis* itself he provided a theory which could be read in a liberal way, as it was in their different manners by the English radicals of the 1640s and by John Locke. But the Grotian origins of these liberal theories cannot be ignored, for they were always uneasily close to their authoritarian counterparts. When Rousseau repudiated the entire tradition as conservative, and chose Grotius as his main target, his instincts were absolutely right, however unfair he may have been to the more liberal thinkers such as Locke.⁵

A change in the conventional view of how far someone like Hobbes was

⁴ C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford, 1962), p. 3. There is, of course, a vast literature on Macpherson's thesis; for one of the most comprehensive lists of the contributions to it, see J. Dunn, *The Political Thought of John Locke* (Cambridge, 1969), pp. 271–84. Macpherson's *Democratic Theory: Essays in Retrieval* (Oxford, 1973) should be added to the list.

⁵ The best study of Rousseau's relationship with this tradition is still R. Derathé, *Rousseau et la science politique de son temps* (Paris, 1950).

a deviant and unorthodox thinker should indeed be one important result of this enquiry. As I show in the central chapters of the book, in both his political theory and his ideas on the English constitution, Hobbes should be seen against a background of fundamentally like-minded theorists. But unlike the context in which Quentin Skinner has located Hobbes,⁶ the milieu I propose – Selden and Selden’s friends and followers – was both an influential and important element in the English political scene from 1640 to 1680, and one in which we know that Hobbes himself moved at a formative period of his intellectual life. It thus has some explanatory power over Hobbes’s theories, which the Engagement writers (as Skinner has always been careful to stress) do not possess. Moving a ‘Hobbesian’ ideology (broadly defined, in the way explained in those chapters) into the centre of the intellectual and political stage in this way might in turn affect our ideas about the character of the English Revolution: but to draw that conclusion is outside the scope of the present study.

⁶ That is to say the writings of English pamphleteers in defence of the Engagement in 1650. See for the best statement of Skinner’s thesis ‘Conquest and Consent: Thomas Hobbes and the Engagement Controversy’ in *The Interregnum*, ed. G. E. Aylmer (London, 1972). His argument was first put forward in the classic article, ‘The Ideological Context of Hobbes’s Political Thought’, *Historical Journal*, ix (1966).