Overture

"The Spotted Butterfly"

Life is about suffering,
Hang on until it's over.
– Michael Boylan, "Existence 22/7"

It was almost three weeks since the end of the long rainy season. The ground was drinking in the water from the rains. In a small village, Gimbaya N'kufo was doing chores with her daughter, Mangeni. They were going down to the river to wash their clothes. Many people in the village criticized Gimbaya because she did her own washing. They said that the wife of the village chief should have someone else wash the clothes. But Gimbaya was a strong woman. Though slight in height, she had broad shoulders and had developed endurance because of her willingness to work.

It was important to wash clothes early in the day while the locusts were still singing their songs before the water went bad. People got sick when they washed their clothes later in the day. Gimbaya was able to wake up with the sun and do her duty. When she returned she prepared a meal and then attended to the education of her two children.

Life was good. Adaon, her husband, was a tolerant man and rarely beat her. He spent his days attending to people's complaints. It was not an easy task to be a village chief. Gimbaya was generally popular with the village women despite her meek demeanor. Some said she did not deport herself with sufficient pride for a woman of her station. On this day, after she had worked with her own children, a young unmarried woman in the village named Makemba Youlou came over to greet Gimbaya. "Makemba how is it with you today?"

This story is based on an interview I had with Sylvie Mugambe, a human rights worker from the Democratic Republic of the Congo, April 2009.

"It goes okay. But I feel strange like I feel near the beginning of the long rain."

Gimbaya went up to Makemba and placed her large hands on the young woman's shoulders. Makemba was short and slender. Her skin was a little more fair than was the norm in the village (some people said she had Tutsi blood in her). She wore her hair very short. Gimbaya gave the younger woman a squeeze with her hands that evoked a smile. "Why don't we sit down under that tree over there and I'll tell you a funny story about what Mangeni said to me not more than a few minutes ago?"

Makemba agreed and so they sat down together. A large spotted butterfly hovered overhead for moment displaying its daring pink patches of color against its black body. And Gimbaya began, "Well, Mangeni began her dream as if she were a fish!" Makemba laughed because 'mangeni' means 'fish.' "Well, Mangeni was swimming with her friends when she sees the shadow of a man wading. The man was carrying a spear" – at that moment Gimbaya was interrupted by the sound of gunfire. Four men (not of the village) had burst onto the scene. Gimbaya and Makemba scrambled to their feet. The men were large, stocky, and very dark skinned. They were also carrying machine guns.

Quickly they stormed to the center of the village. "Come on, we have to find Mangeni and Bonyeme." The two women tried to retreat into the trees in a looping motion toward Gimbaya's home. They didn't need to go far before Gimbaya saw her children. They cried, "Mommy!" Gimbaya tried to gesture to them to be silent, but it was too late. The attention of one of the gunmen was drawn their way. He was a young man not many years older than Makemba. As he approached Gimbaya could detect a deep scar under his left eye.

"Don't you move!" The accent was unmistakable: Hutu. "*You*, come over here." He was talking to Makemba. The young girl clung to Gimbaya who was holding her with her left arm. (Gimbaya's right arm was protecting her children.)

"Are you deaf? Get over here." Makemba was shivering with fright. Gimbaya's strong, large hands maintained their grasp. Gimbaya's attention was all on Scarface, so she didn't see that the entire village was lingering just out of view (including Gimbaya's husband, Adaon). The other three men were fanned out so that no one could come up to them from behind.

"Why have you come here?" asked Gimbaya in a strong, clear voice.

Scarface lifted his gun to the sky and discharged three rapid-fire rounds. "We're roaming about with a small army. Anyone who gets in our way will die. Do you want to get in our way?"

"Do you want food? We can give you some food and then you can be on your way. We want no fuss. We will give you what you want," Gimbaya's voice remained strong, but her tight grip on Makemba and on her children was causing the muscles in her arm to quiver. It was beyond her control."We want that Tutsi girl."

"She's not Tutsi. She lives here. She was born here."

"She's Tutsi, bitch. Now you hand her over." Scarface was approaching Gimbaya.

"We'll give you food. We'll give you francs. Please, just don't hurt us."

Then Scarface lifted up his gun stock and knocked Gimbaya to the ground with a fierce blow to the side of her head. The village chief's wife tumbled to the ground. Her head was bleeding. Her children were crying and climbing onto her. The rest of the villagers watched behind trees. Adaon N'kufo, the village chief, began inching backward for his escape.

Scarface then ordered Makemba to the center of the common area. It was then, in front of everyone, that the stockiest of the group stripped and raped Makemba. But that wasn't all. Gimbaya was next. They picked up the dizzy woman and separated her from her children. As they stripped off her clothes, Makemba arose to try to help her friend.

Makemba was met with ten bullets to her face. She fell backward into the dust.

It was the middle of the night when Gimbaya found the road north. If nothing else worked, she'd try to walk to Uganda and her uncle Akiki. It was hard to walk. She was so very sore. But her children needed her. She hadn't eaten since morning. As the physical shock began to wear off, she strove to concentrate her thoughts. It didn't work. She had to keep moving until her legs would take her no further. Then Gimbaya and her two children lay down by the edge of the Kivu Lake, took a drink, and held each other for dear life.

The next morning Gimbaya awoke as a praying mantis was walking over her face. Her body ached. Her mind wouldn't go into its normal mode. She wasn't herself. But she had her two children. She knew the road led north so they got themselves up, drank some water, and kept their eyes out for some plants to eat. By the time the sun was high they had consumed several mini-meals.

Around mid-afternoon they met another woman on the main road north. She was coming from the west. Her name was Nabutungi Tsiba and she had a daughter, Abbo, who was about the same age as Gimbaya's own daughter, Mangeni. "Where are you going?" asked Gimbaya.

"To Goma at the north end of the lake; they have a place there for women like us."

Gimbaya didn't respond. But her memory was suddenly stimulated. She remembered her husband, the village chief, banishing her and her children from their home because she had become *unclean*. Adaon spoke with the authority of a mighty judge. There was only time to pick up a few things and put them in a blanket and be on their way. They had reached the main road by dusk.

"And what is this place like?" asked Gimbaya.

"They will take care of us: give us medical treatment, a new name, and a new life."

"I have a new name. The one I was born with, Uwakweh."

"That's a beautiful name," said Nabutungi.

Gimbaya smiled for the first time since she left her village. She reached out for the hand of Nabutungi. As she did so she saw that Mangeni and Abbo were also showing signs of friendship as they talked and patted the head of the younger Bonyeme.

It was a long walk. They had access to water in the lake and they ate plants (which were bountiful since the long rainy season had just recently ended). After a week, they made it to Goma. This would be a little difficult. Goma was so much bigger than anything they had ever experienced. It was the largest town in North Kivu.

"Excusez-moi, si vous voulez? Où est la maison des femmes?" asked Nabutungi. Gimbaya didn't speak French well. It was not spoken in her village. But she had learned a little when she was young and had visited her aunt for a year in Kindu. She felt fortunate that she had a sojourner who spoke the lingua franca.

The question had been posed to a rather rotund elderly lady who wore fancy blue-patterned clothes and a matching head scarf. The woman had smiled at them when they approached each other on the street, but after the question, her face became blank. All she did was point to the left. Then she hurried away.

After meandering for a while, they saw the ruins of a building. It had been a two-story wood-frame building. As they approached they saw a sign face down on the ground. Gimbaya picked it up. With the help of Nabutungi they discovered that the rubble was what was left of the

women's center. Nabutungi hugged Gimbaya and they broke into tears. The children looked up at their mothers and also hugged each other and began to cry.

Then a very old lady with wrinkled skin, a wide mouth, and very thin lips approached them from across the street. "I seen you and been following you since Mrs. Big-stuff insulted you back there." The woman spoke in the local dialect.

"We have walked a long way, grandmother," began Gimbaya.

"I know you have. I still have eyes in this old skull of mine. And I have seen many other women, like yourselves, come here for help. The trouble started when certain men folk heard about the wonderful good that they were doing here. It was run by a young woman whose father was a retired college teacher. They lived at the end of town." The old woman's wide mouth dripped saliva on the right side as she talked. As the saliva began to drip to the ground she would pause and wipe it away with her left hand. "It wasn't those Hutus who are scourging our villages, but Congolese men themselves: the husbands and fathers of the victims." The old lady was speaking with strong emotion that caused her to cough. "Can you believe it? Their own kin: they despoil them again!" This time the coughing spasm required Gimbaya and Nabutungi to help the woman sit down on some rubble that looked secure. The children found a resting place close by. The women rubbed the old lady's back until she felt balanced. Then the old lady began again, "They came two weeks ago. They had bombs with them and they struck when the sun was high. They bombed the shelter and they also bombed the house. It was lucky that it was at mid-day because that's when all the women go down to the river to do their laundry. It was lucky that they did it in that order, because the sound of the bomb at the vacant shelter caused the college teacher to search after his daughter for their escape. He came and told the women what had happened and the group of them picked up their laundry and started walking."

"Where did they go?" asked Gimbaya.

"To Uganda – where else?"

"Yes – especially in the west near us. So many have traveled there."

The women thanked the old lady and offered to walk her home. Then the two mothers returned to gaze upon the wreckage of the women's shelter. Neither of them spoke. They were deaf to their own children playing. The two women in their long dresses stood tall; around them the children ran as if they were trees in a forest. Not a tear was shed, but the women both knew what they must do.

"We will walk to Kasese. My uncle told me that it sits on a grand lake – not as large as Kivu – but a calming spirit nonetheless. Akiki will take you and your daughter in and find a place for you. He is a good man."

Nabutungi gazed at her newfound sister and smiled. Then she picked up her load, and gathered the children. It was then that the women with wandering step and slow toward Uganda took their solitary way.

1

How Do We Talk about Human Rights?

Open the newspaper: how many times do you see the word "right" or "human right"? I tried this recently and found the word used in many different contexts from talking about politics and policy, to the activities of large corporations, to popular uprisings in the Middle East, to dissidents in China, to welfare economics, to affirmative action, to corporations as people, and even to youth sports uniforms: this in just one daily paper.

1.1 COMMON USAGE

Clearly we use the terms *right*, *rights*, *human rights*, and *natural human rights* in many different ways. One touchstone on English linguistic usage is the Oxford English Dictionary[1] that cites the usage of a word historically. When we look at the word "right" we find the same divergence that we saw in the newspaper:

1. A standard of conduct
2. A duty
3. To which is consonant with justice and goodness or reason – something morally or socially correct, just or honorable
4. Equitable treatment
5. The cause of that which is fair or morally correct
6. A judicial decision
7. Legal entitlement or justifiable claim (on legal or moral grounds)
8. An entitlement considered to arise through natural justice
9. Something that a person may properly claim

[1] *Oxford English Dictionary*, ed. James Murray, et al. (Oxford: Oxford University Press, 1971).

10. Political, civil, or liberties
11. Miscellaneous usages: map making, the Christian Service (rite), shoes, hunting, etc.

For the purposes of this book there will be aspects of 1–10 that will be set out in different ways. This is what it means to offer stipulative definition. However, there must be grounds for the stipulation. Otherwise we enter the realm of fantasy.

What we can see from the *OED* is that contained within *rights language* are the following: (a) a claim to some good; (b) the claim must be justified; (c) the grounds of the justification are either legal or moral; (d) the claim is so strong as to be an entitlement; (e) the entitlement claim is sometimes connected to natural justice; (f) the entitlement claim is fair and equitable; (g) rights are associated with duties.

These seven markers set out the way that 'right' (including but not limited to human rights) has been used in the English language from the earliest Anglo-Saxon documents onward. In the next two chapters this search will be expanded to include various historical usages of *human rights* and *natural human rights* along with allied concepts such as *natural law*. This exploration will also include some analysis of allied ontological tenets (as per the word "natural").

1.2 WESLEY HOHFELD

So what's so special about human rights? Wesley Hohfeld set these in context in Figure 1.1.[2] These fundamental opposites and correlatives set the context of Hohfeld's insightful analysis. When we think of the opposites, we envision different worldview perspectives. People come at life from different vantage points. These drive a conception of the social playing field where people live and carry out their lives. In the second category, correlatives, we have something like a Hegelian dialectic in which the conception of one side logically implies the conception of the other. The correlatives are tied together conceptually in a way that the opposites are not.

To get a handle on this in the context of this book, let's start with the notion of a *claim*. There are at least two senses of a claim: (a) a demand by some agent for some good; and (b) a demand that could be made on behalf of some agent whether that agent asked for it or not. For example,

[2] Wesley Hohfeld, *Fundamental Legal Conceptions* (New Haven, CT: Yale University Press, 1919): 36.

I. *Jural Opposites*

A. Rights v. No-Rights; B. Privilege v. Duty; C. Power v. Disability; D. Immunity v. Liability

II. *Jural Correlatives*

A. Right v. Duty; B. Privilege v. No-Right; C. Power v. Liability; D. Immunity v. Disability.

FIGURE 1.1. Hohfeld's Depiction of Rights in Context

a baby might have the claim right to nourishment in order to stay alive, but because the baby is pre-speech, he or she cannot enunciate the claim to anyone. Sure, the baby can cry. A cry means many things. It isn't specific. At least a crying baby declares to all in earshot that he or she is in need of *something*. If one were to be committed to (a), then he would be forced to say that there is no claim by the agent. And if (a) were the only way a claim right could be obtained, then the child has no claim right to whatever she was crying for: food, milk, change of diaper, or just to be held. However, by bringing (b) into the picture the focus moves away from what this child before me wants from her point of view, but rather what this child can legitimately claim in the context of what children, in general, would reasonably want. From this, it is the duty of the caregiver to ascertain whether the child needs food, milk, change of diaper, or just to be held. The (b) position operates from the generic point of view first and then particularizes the description to the individual at hand via a process that I have called *dialectical subsumption*.[3] In dialectical subsumption one begins with an individual and then goes back and forth between various generic categories in Hegelian fashion to determine just what category best fits the individual at hand. The process is very much like biological taxonomy.[4] In taxonomy, since there are no "perfect" cases, one must go back and forth with the specimen and insert boundary conditions to properly classify it. In the case of the laboratory, this can be time-consuming. Now in the case of a baby, decisions must be made in a very short interval. Nonetheless, this is what I assert happens: one has in his mind what babies need and then checks on whether one of these

[3] Michael Boylan, *A Just Society* (Lanham, MD: Rowman and Littlefield, 2004): 11–12.
[4] For treatments biological and nonbiological, see Kaesuk Yoon, *Naming Nature* (New York: Norton, 2009) and Judith Wilson, *Discovering Species* (New York: Columbia University Press, 1999).

factors is what *this* baby needs. When one hypothesis proves correct, then action is engaged.

This may seem rather artificial and long-winded to those who (like myself) have cared for infants. But I believe this is really the logical structure of how we recognize and respond to one sort of claims right.

Then there is the case of someone who is resigned to a sort of life and doesn't think much about it. For example, until 1920 in the United States women couldn't vote. I would conjecture that most women from the founding of the republic to the turn of the twentieth century were so engaged in their social roles that they didn't really think too much about whether they should vote.[5] Thus, these women didn't offer a claim in the sense of (a) listed previously. If a claim right is only to be understood as a claim in sense (a), then these women were not claiming a right to vote. Now, of course, after the turn of the century as the alliance with the temperance movement became popular, more and more women began *claiming* the right to vote.[6] This culminated in the Nineteenth Amendment to the United States Constitution in August 18, 1920. If a claims right is to be understood only via (a), then women in the United States had a right to vote only on August 18, 1920.

However, under the (b) interpretation of a claims right, the situation is rather different. Under the (b) position, a right may be claimed on behalf of some agent whether that agent asked for it or not. Thus, from the beginning of the republic onward someone who examined the question, "who should be allowed to vote in a democracy?" could examine relevant criteria (such as minimum cognitive ability to support voluntary action) and form a judgment via dialectical subsumption that women are properly subsumed into the category of those persons within a society who should have a right to vote. This conclusion does not depend upon any actual person crying out (as the baby did) for something. Even if everyone is silent, women still have a moral claims right to vote in a democracy from day one of the republic.

If the right is not recognized, then that says something against the republic. But how could women possess a right that they have not asserted?

[5] Two accounts that focus on particular figures show the split among women (and men) on suffrage. See N. E. H. Hull, *The Woman Who Dared to Vote: The Trial of Susan B. Anthony* (Topeka: University Press of Kansas, 2012) and Jennifer M. Ross-Nazzal, *Winning the West for Women: The Life of Suffragist Emma Smith DeVoe* (Seattle: University of Washington Press, 2011).

[6] For an account of how the temperance and suffrage movements worked together, see Holly Berkeley Fletcher, *Gender and the American Temperance Movement of the Nineteenth Century* (London: Routledge, 2007).