

SCEPTICISM AND HUMAN RIGHTS

1. It is usual nowadays when a philosophic defense of human rights or natural rights is undertaken to attempt to treat the right to life, liberty, and the pursuit of happiness, or the right to property, privacy, safety, education and the like as prima facie rights, or at least as rights that are in some way defeasible.

To say these rights are prima facie is to say that such a right is a right that one can always exercise, if one chooses, if no stronger moral consideration supervenes. On such an account it can be maintained that there are certain prima facie rights which are universal and inalienable while denying that any actual right is inalienable and universal. All men always have a prima facie right to liberty, security and life, but such rights are not always their actual rights, though they are their actual rights if no stronger prima facie right or moral consideration supervenes.

This is an attractive claim. On the one hand, it does justice to the claim that human rights must, in a way, be inalienable, morally basic rights, to which all men in any society anywhere and anywhen are entitled and, on the other hand, it also takes into account the evident fact, brought out by Hook, Benn and Peters and a host of others, that all actual rights are alienable—that, as Hook puts it, “the right to liberty, however specified, sometimes threatens the right to property and vice versa, and either or both of them may on occasion conflict with the right to the pursuit of happiness” so that no matter how the conflict is resolved one or more of the actual rights must be alienable.¹ In morality it appears to be very questionable whether there is any specific right or value which is actually unconditionally or absolutely valid in all conceivable circumstances. But an acceptance of this does not entail or contextually imply that there is not a list of prima facie rights and duties

¹ Sidney Hook, *The Paradoxes of Freedom* (Berkeley and Los Angeles, 1962), p. 14. Hereinafter cited as PM.

that always holds, as *prima facie* rights and duties, for all men everywhere.

Such a claim does relieve us of both the intellectual temerity and the moral hubris of claiming of some actual right, that we have a right to exercise it no matter what the consequences—no matter what the situation.² But such an account has its own problems. When we look at the various declarations of rights we find that the lists vary. Just which, if any, of these putative *prima facie* human rights are genuine *prima facie* human rights? In short we have the old problem of determining which rights are to be included in the list of *prima facie* rights. Moreover when there is a conflict of *prima facie* rights, as there typically is in actual moral situations, how are we to decide which *prima facie* right is our actual right? Must we simply 'see' or 'note' in such a definite context what is suitable to the situation or (perhaps only using another metaethical idiom) make a decision of principle or commit ourselves to acting in a certain way?

Theories of human and natural rights seem initially attractive for they appear to give us secure and objective criteria beyond the whims of mortal will or the contingencies of one's historical or cultural situation, in virtue of which we can know what we ought to do. But, if in deciding what our actual rights are, we must simply decide or 'note' in this way what it is that we should do, we certainly do not seem to have an objective foundation for such judgments about what are or are not human rights. But such an objective foundation is exactly what we are seeking. Perhaps this is the best we can get: half a loaf is better than none. Yet it is certainly understandable that we should look for more.

It is tempting to take a utilitarian turn here in spite of the fact that Bentham referred to natural rights as nonsense on stilts. Ralph Blake does just this in his essay "On Natural Rights." "A right," he tells us, "is a claim which ought to be allowed to an individual in view of the general welfare."³ Where our *prima facie* rights conflict, we should decide which rights are our actual rights by deciding which rights are in the general welfare and thus have a claim to the

² PM, pp. 16-7.

³Ralph M. Blake, "On Natural Rights," *Ethics*, 36 (1925), 96.

support and forbearance of everyone involved. Those rights are genuine human rights which, more than any alternative claim, will, if acknowledged, increase the total happiness or well-being.

In other words, the truly natural rights must be those claims, liberties, and privileges the possession of which by the person or persons in question will continue, so long at least as human nature and the laws of the physical universe remain substantially what they now are, to constitute permanent and general conditions of human happiness.⁴

Such a utilitarian account has a host of difficulties. Frankena has well brought to the fore some of the most acute of these difficulties when he remarks that when we reason morally we not only want to produce "the maximum balance of good over evil on the whole" but justice requires that besides maximising human welfare that we distribute the available goods and ills in certain distinctive ways.⁵ The concept of justice is analytically tied to the concept of morality. We could indeed have forms of social control that gave no heed to considerations of justice, but we could not, logically could not, have a morality (a moral code) which ignored all considerations of justice. Indeed we can and do speak of an 'unjust moral code' but we also speak of certain moral codes—the Nazi's or Dobuan's—as being 'immoral moral codes'. But we must not forget what we mean when we make such remarks. When we speak of an unjust moral code, we are giving someone to understand that in *our judgment* a given moral code is in certain very fundamental respects immoral or at least deserving of moral criticism. There is nothing at all paradoxical about that when we keep in mind that 'moral' sometimes contrasts with 'immoral' e.g., 'That wasn't a very moral thing to do' and sometimes it contrasts with 'nonmoral' e.g., 'Such a moral conception is gruesome and absurd'. When we say of some moral code that it is an unjust moral code, we are saying that it is in a certain respect (s) wrong or immoral. But even when we think the code immoral, the contrast 'moral' makes in 'unjust moral code' is

⁴ *Ibid.*, p. 94.

⁵ W. K. Frankena, "The Concept of Social Justice," in *Social Justice*, ed. Richard Brandt (Englewood Cliffs, New Jersey, 1962), pp. 1-29.

with 'nonmoral.' Since 'moral' makes this contrast here, we can still be quite consistently asserting that it is a moral code. But we cannot conceive of something that would count as a moral code at all that did not have *some conception* of justice. Viewed *internally*, a moral agent *committed* to any *given moral code* could not conceive of it as unjust; only someone who had rejected the code and stood outside it could call the code as a whole unjust. In doing this, he would be rejecting the conception or application of justice in that moral code on the grounds that it was in some considerable degree inadequate, i.e., morally criticizable.

Whether or not we can identify justice with equality, the equal treatment of all human beings is one of the basic principles of justice. It is indeed true that in certain circumstances people should not be treated in the same manner; there are morally justified inequalities. But in *our* morality at any rate we must start, in reasoning morally, from an initial assumption of equality and all departures from this initial assumption of equality—that is, equal treatment in certain fundamental respects—must be justified morally. We must have, as a general policy in reasoning morally, not simply the policy of seeking to maximize the general welfare (the greatest total beneficence and smallest total misery) but the policy of maximizing it in such a way that there is an equitable distribution of everyone of the benefits and burdens in the society. As Frankena puts it, "equality of treatment" is "a basic prima facie requirement of justice."⁶ But people have different needs and capacities and justice requires that we treat them differently, e.g., the labor conditions for men and women need not always be the same, for women need certain protections that men do not; an artist may require a kind of leisure that an engineer does not. Blake is mistaken in thinking that these justified inequalities, as departures from an initial position of equality, are justified by simply considering what builds up the biggest possible balance of welfare over illfare. We must, from a moral point of view, be concerned with a fair distribution of welfare and illfare; with increasing the quality of life, e.g., with more happiness and less misery and less impoverishment of human aspiration, but also with a fair distribution of

⁶ *Ibid.*, p. 15.

the benefits and necessary burdens as well. Thus in trying to decide which of the conflicting *prima facie* rights to acknowledge as our actual rights in a given situation or, more generally, which putative rights are to count as *prima facie* human rights, we cannot simply appeal, as Blake would have us do, to considerations of general utility.

2. So far I have with slightly new applications covered well-canvassed ground. We seem, if my arguments in Section I are correct, to be in this position: there are no tolerably specific substantive rights, human or otherwise, that are inalienable except as *prima facie* rights. That is, it is neither the case that there is anything that any man anywhere or anywhen always has the right to do or to be protected from having happen to him, nor can we justify the claim that certain rights are our actual human rights simply by an appeal to general utility, for considerations of equality, fairness, justice and equal or equitable distribution also enter into such moral assessments.

In raising these considerations of fairness we have something which bids fair to be very amorphous. 'All men are equal' is typically understood to mean 'All men are to be treated alike' or imply the directive 'Treat all men alike'. But we can't rightly take that literally, for, as Benn and Peters point out, "it is hardly likely that anyone would want to see all men treated alike in every respect. We should not wish rheumatic patients to be treated like diabetics."⁷ Benn and Peters go on to suggest that what we in reality should be demanding, when we claim that all men should be treated alike, is "that none shall be held to have a claim to better treatment than another, in advance of good grounds being produced."⁸ In order to be acting justly and to be reasoning in accordance with a moral point of view, we must, they argue, treat all men alike except where there are relevant differences between them. And here's the rub, for to determine what constitutes a fair or just or equitable distribution of welfare and illfare, we must determine what differences are relevant differences. But we seem to

⁷ S. I. Benn and R. S. Peters, *Social Principles and the Democratic State* (London, 1959), p. 108. Hereinafter cited as SPDS.

⁸ *Ibid.*, p. 110.

be wanting a general criterion for that. Without such a criterion 'Presume equality until there is reason to presume otherwise' or 'Treat similar cases similarly' are purely formal or empty principles which yield no substantive rights, *prima facie* or otherwise. They are readily susceptible to the kind of rationalization which Marx so brilliantly ridiculed.

So in trying to determine whether there are any universal human rights and what, if there are any, they are, we seem to be running up against a stone wall. There are indeed rights which are said to be human rights—there are declarations of human rights—but the lists of rights vary and there seems to be no agreed-on criterion for what constitutes a human right. We found no agreed-on criterion for which candidates unquestionably belong on the lists. There are even moral iconoclasts who think that while most people believe that there are such rights, there are in reality no grounds for believing in human rights.

Traditional defenses of human rights have tended to be embedded in some very disputable theological or metaphysical doctrines, but in recent years Hart, Brown, Vlastos, Frankena and Wasserstrom among others have, without entangling themselves in metaphysics of theology, made distinguished efforts to overcome such difficulties and to give an objective rationale for a doctrine of universal human rights. Their arguments are indeed clear advances over the old natural law and utilitarian efforts to give such a rationale, but they still seem to me defective, not only in detail of execution, but at some very central points. They give us some very general moral principles and they try in various ways to justify a doctrine of natural or human rights by explicating, defending and drawing out the implications of these principles. But it is just here where I am sceptical. That is to say, I am sceptical about the justifiability of these principles and I am sceptical about the overall rationale of their arguments.

Without embedding them in the setting of their particular arguments, I shall first state principles of the type they state. Taking them in their nakedness, I shall bring to the fore a general kind of difficulty I feel concerning such claims and then in later sections I will examine the particular arguments for human rights given by Vlastos and Wasserstrom with an eye to seeing if they can

in any way overcome or dispel such difficulties and provide an objective rationale for a doctrine of universal human rights. I chose their arguments, (1) because they are careful and in a way powerful arguments and (2) because they directly bear on my problem.

1. All men have an equal right to be free. (This is typically taken to be compatible with a limitation on a person's freedom in certain circumstances. But such an interference always requires moral justification.)
2. All human beings have a right to the protection of their moral interests, persons and estates.
3. All men are to be treated as equals, not because they are equal in any respect but simply because they are human.
4. The human worth of all persons is equal, however unequal may be their merit.
5. Every man has the right to be treated as a person of intrinsic worth, as an end in himself.

At least some of these claims most certainly seem to be at the heart of any viable doctrine of human rights. Yet do we know that any of these claims are justified or justifiable? Or, if we take them as statements of some sort (and they surely look like statements), *how* do we know, or *do* we know, or *can* we ever know whether they are true or false? If it is said that we must simply take them as an integral part of the form of life of anything that is recognizable as 'a morality', again I ask: why is this so, or is this so?

It is certainly not obvious that any of these fundamental statements of human rights are self-evidently true. They are not analytic or in any way logically necessary. (Moreover, how, if they were, could they be action-guiding?) People have denied all of them and if it is said that they are mistaken in denying them, then it would be very helpful to know precisely or even imprecisely what mistake they made in denying them. (If it is replied that they made a *moral* mistake because all human beings are of equal moral worth simply in virtue of being human, then it should be pointed out that this argument begs the question because it assumes one of the very things that we are trying to establish.)

It is natural to respond that if we are to take the moral point of view or even a moral point of view (where 'moral' contrasts with 'nonmoral'), we must so reason. But is this so? Consider how

Nietzsche argued in *Beyond Good and Evil*. A morality in which all men are treated as equal, as persons of equal worth however different, however unequal in merit, is a Slave Morality anathema to the "good and healthy aristocratic consciousness" which "accepts with a good conscience the sacrifice of untold human beings who, for its sake, must be reduced and lowered to incomplete human beings, to slaves, to instruments."⁹ Society, Nietzsche goes on to tell us, "must not exist for society's sake" or for some ideal of the equality of man in which the ideal is to give as many men as possible as much as possible of whatever it is that they want, but society should exist only "as the foundation and scaffolding on which a choice type of being is able to raise itself to its higher task and to a higher state of being. . . ."¹⁰ This Master Morality aims at *Übermenschen*: men whose predominance does not lie mainly in physical strength but in strength of the soul, men "who will rule and create their own values" and who feel "contempt for the cowardly, the anxious, the petty, those intent on narrow utility. . . ."¹¹ Such men will feel disdain for "the doglike people who allow themselves to be maltreated . . ."¹² Noble, clearly superior types, realize that the masses lie and are full of slavish attitudes and a hypocritical selflessness. The herd does not know what it is to create values, to determine "the order of rank," and to be severe with themselves and "respect all severity and hardness."¹³ Rather egalitarian morality is a Slave Morality while a Master Morality, severe and demanding, is a morality in which "one has duties only to one's peers" but "against beings of a lower rank . . . one may behave as one pleases or as the heart desires. . . ."¹⁴

Walter Kaufmann is quick to point out that Nietzsche is not saying that one *should* be cruel or indifferent to such beings of

⁹ Friedrich Nietzsche, *Jenseits von Gut und Böse* (Leipzig, 1886). Page references are to the English translation by Walter Kaufmann, *Beyond Good and Evil* (New York, 1966), p. 202. Hereinafter cited as BGE.

¹⁰ BGE, p. 202.

¹¹ BGE, pp. 204-5.

¹² BGE, p. 205.

¹³ *Ibid.*

¹⁴ BGE, p. 206.

lower rank or capacity. Indeed, if Nietzsche is correct, one will not be concerned about them, if one has a genuinely noble spirit, but even such a man of nobility may, and even characteristically will, have feelings of pity and the like for such *Pöbel*. But Nietzsche stresses, one has no obligations to them, no moral commitment to help them. One has duties and moral obligations only to one's peers, i.e., the community of *Übermenschen*, but not to all men. Moreover, it is childish and downright ignoble and degrading to regard or treat all men as equal. They are not in reality all of equal worth, and above all they are not all of equal worth simply because they are human beings.

Quite apart from whether or not we accept this Master Morality as a sound normative ethic, quite apart from whether Nietzsche was himself trying to defend it as a higher morality, it plainly is a moral as distinct from a nonmoral code. Call it an immoral morality if you like, but you can still recognize it as a morality. As I laid it out in some little detail, you recognized it as a specimen moral code, even if a very atypical code. And it is manifestly incompatible with a belief in universal human rights—with a belief that morally speaking all human beings are of equal worth simply because they are human beings and that all human beings have a right to the protection of their moral interests and to a respect for their persons.

In politics I am a socialist and in normative ethics I am an egalitarian. But it is far from evident to me that there is anything by way of an argument, or by way of evidence or the like, that could show that such a Nietzschean conception of morality, with its implicit denial of universal human rights, is wrong (mistaken, untrue) and that the kind of normative ethic defended by Brown, Vlastos and Frankena is right (correct, true). Consequently I don't see how we can justifiably say that we know that there are universal human rights or that we have good grounds for believing any of the abstract normative ethical statements I listed are true or are rationally justified.

We might try to argue that such a denial of human rights is not in accordance with the moral point of view. But it surely looks as if I adumbrated the kernel of a moral code in my above statement of 'Master Morality'. Moreover, we need to be very careful not to give an ethnocentric account of the moral point of view.

In this connection consider some accounts Frankena has recently given concerning when a code will count as "a moral code."¹⁵ I agree with him in what he says about the superiority of a nonformalistic account of morality, but the point I wish to stress here is that 'Master Morality' would count as a morality on any of the descriptive-elucidatory accounts of the concept of morality given by Frankena. (If we give a normative account involving a proposal about what *should* count as 'a morality', we could, of course, rule out such a 'Master Morality' by definitional fiat, but nothing would be gained by such a maneuver for a very similar argument would simply break out about accepting such a normative proposal concerning the concept of a morality.)

Consider a formalist characterization of morality first. A code or action-guide (A.G.) is a morality for an individual *X* if and only if it satisfies the following three criteria. (1) *X* takes it as prescriptive, (2) *X* can universalize it and (3) *X* regards it as a definitive, final, overriding or supremely authoritative action-guide. Now if *X* is a proponent of Master Morality, he is, given our above characterization of it and Nietzsche's characterization of it, taking it as prescriptive and supremely authoritative and the like. The only thing that is at all questionable is whether what is called 'Master Morality' satisfies condition (2) i.e., is *universalizable*. But on a characterization of *universalizability* like Hare's or my own it is plainly *universalizable*. If *X* is an *Übermensch* he has duties and obligations to his peers; if *A* is what *X* ought to do then, for anyone relevantly like *X*, it in similar circumstances is also what he ought to do. All of mankind do not come under the moral net and they are not all said to have rights. But anyone with *des Übermenschen* characteristics has the rights and duties of an *Übermensch* and anyone with the characteristics of a slave may be rightly treated like a slave. So our Master Morality counts as a morality on what Frankena calls a formalist conception of morality. We will call this View I.

Frankena believes, and I agree with him here, that View I is too broad and that we need a narrower conception of morality that

¹⁵ W. K. Frankena, "The Concept of Morality," *The Journal of Philosophy*, 63 No. 21 (November 10, 1966), 688-96. Hereinafter cited as "Con. Moral."

adds material and social conditions such as the following (let us call it (4)):

It includes or consists of judgements (rules, principles, ideals, etc.) that pronounce actions and agents to be right, wrong, good, bad, etc., simply because of the effect they have on the feelings, interests, ideals, etc., of *other* persons or centers of sentient experience, actual or hypothetical (or perhaps simply because of their effects on humanity, whether in his own person or in that of another). Here "other" may mean "some other" or "all other".¹⁶

This makes "a morality," by definition, something that "must embody some kind of social concern or consideration. . . ." This view, let us call it View II, does not regard conditions (1), (2), and (3) as jointly sufficient to constitute a morality. In addition criterion (4) must be satisfied. Moreover most defenders of View II would regard condition (3) and some even condition (2) as not even necessary for an action-guide's being a moral action-guide. But the crucial thing here for me to point out is that a Master Morality does embody some kind of social concern. Men have strict duties to their peers and it serves as a guide for the development of the *Übermensch*—a new kind of man with a new conception of how men are to live together.

Frankena mentions two further conceptions of morality (he calls them "View III and View IV") but since they simply involve different arrangements of the above four conditions it is evident that Master Morality is also compatible with these conceptions of what constitutes a morality.¹⁷

These conceptions of morality seem to me to reasonably well canvass what are taken to be "moralities" or "a morality." To take the moral point of view or even to take a moral point of view involves reasoning in accordance with one or more of these conceptions, but since Master Morality is compatible with any of these conceptions of morality, it cannot correctly be said *not* to be in accordance with the moral point of view. Perhaps some nonethnocentric conception of morality can be given in virtue of which such

¹⁶ "Con. Moral," p. 689.

¹⁷ "Con. Moral," pp. 689-90.

a Master Morality is not a morality at all. But no such a conception of morality has been offered and none is in the offing, so we are not justified in utilizing that tack in blocking such a Nietzschean onslaught on the claim that we have good grounds for believing there are human rights.

3. To show that there are universal human rights, grounds must be found for claiming that we know that some such propositions or claims as those stated on page 578 are true or rationally justified, and the conflicting Nietzschean claims about Master Morality are false or irrational or rationally unjustified. I want to comb the acute arguments of Vlastos and Wasserstrom to see if they give us good grounds for believing such statements to be true or such claims justified and consequently for believing that there are universal human rights.¹⁸

Gregory Vlastos's "Justice and Equality" is a most determined attempt to meet the problem I have raised and to provide a coherent account of human rights. I shall now examine his account and show why it, after all, fails to meet my sceptical challenge. All men, it is claimed, have the right to institutions which protect their moral interests because all human beings, no matter what their abilities or moral conceptions and actions, are of the same intrinsic worth. Vlastos attempts to clarify and defend this claim.

To see how he does this let us see how he develops his theory. Vlastos gives us a revised theory of human rights.¹⁹ He denies that there are any absolute substantive human rights. For Vlastos human rights are all prima facie rights and this means "that the claims of any of them may be over-ruled in special circumstances." Human rights are rights one only need to be a man to have; and to say they are inalienable is to give one to understand that no one, neither king, dictator, Pope nor what you will, can take such claims away

¹⁸ Gregory Vlastos, "Justice and Equality," in *Social Justice*, ed., Richard Brandt (Englewood Cliffs, New Jersey, 1962), pp. 31-72 and Richard Wasserstrom, "Rights, Human Rights, and Racial Discrimination," *The Journal of Philosophy*, 61, No. 20 (October 29, 1964), 628-41. Vlastos cited hereinafter as "Just. and Equal."; Wasserstrom cited hereinafter as "Rights . . . and Discrim."

¹⁹ Vlastos, "Just. and Equal., p. 36.

from any man in any circumstance as long as they are held as prima facie rights. In *that* way they are inalienable.

All human beings, Vlastos argues, have "equal *prima facie* rights to life, liberty, welfare and the like."²⁰ These prima facie rights are actual rights unless in a specific situation or type of situation there are good moral reasons not to allow an individual or individuals to exercise that right. Specifically, as Vlastos puts it, "[it is] considerations of justice which allow us to make exceptions to a natural right in special circumstances. . . ." but "the same considerations . . . require us to uphold it in general."²¹ A belief in justice commits us to a prima facie commitment to equality. What should be required of a good society is equality and a prima facie freedom for everyone. We should recognize inequalities only where we have very good reason to believe that granting them would enhance as much as possible the well-being and freedom of everyone.

Now if my Nietzschean or Vlastos' man from Mars should ask why are you committed to such an egalitarianism, why do you want such an equality, the answer would have to be, Vlastos argues, "Because the human worth of all persons is equal, however unequal may be their merit."²² It is because of this that all human beings have the right to personal and political freedom. It is this fundamental moral principle that gives one a ground for one's commitment to egalitarian justice. A conception of equal human worth i.e., "the equal worth of the happiness and freedom of all persons" is the "moral foundation of all rights."²³

In talking about human worth we are *not* talking about human merit. The concept of merit on Vlastos' view cannot even be applied to an individual viewed simply as a human being or a person. There "can be strictly and literally superior or inferior poets, teachers, bankers, garage-mechanics, actresses, statesmen; but there can strictly and literally be no superior or inferior persons, individuals, men."²⁴ We commit, Vlastos would have us believe, a

²⁰ "Just. and Equal.," p. 38.

²¹ "Just. and Equal.," p. 39.

²² "Just. and Equal.," p. 45.

²³ "Just. and Equal.," p. 36 and p. 71.

²⁴ "Just. and Equal.," p. 70.

category mistake if we praise a man as a man. "His humanity is not a fit subject for praise."²⁵

No very good criteria have ever been given for what counts as a category mistake, but accepting such a notion on a kind of intuitive level, it is still not the case that there is *conceptual* impropriety in praising a man as a man. When Horatio said of Hamlet "Now cracks a noble heart" or when we read "There went a man—we shall not see his like again," or when Brecht wrote such *Lehrstueck* as *The Exception and the Rule* or *The Measures Taken*, men are being praised as men. There are good men and evil men and men—that is almost all of us—who are a little of both. The concept of a morally good man has application: here we are praising a man as a man and not for some special skill or skills, though no doubt if he did not have some of the following qualities: good father, good husband, good friend, loyalty, courage, understanding, impartiality and the like, we would not praise him as a good man. In fine, there are plainly superior persons—superior in understanding, and in aesthetic and human sensitivity. Hamlet is superior to Richard III, Macbeth to Iago, Cordelia to Goneril or Regan, the Egg of Head to MacBird, Dag Hammerskjold to Maurice Tshombe, U Thant to Lyndon Johnson. That we can apply such paradigms with ease and that we can dispute about some of them does show that we have a working concept here. 'A real *Mensch*' is not a conceptual impropriety. When Vlastos will not allow us to grade men as men, it is not because there is any conceptual impropriety in doing so or any category mistake involved. Rather what Nietzsche would regard as the stench of Christian moralism is overpowering Vlastos' judgment here. Put more neutrally, and so as not to show the other side of the normative coin: it is Vlastos' own distinctive Christian moral commitments and not anything in the logic of moral discourse or any kind of conceptual necessity that leads him to this conclusion and that gives it whatever 'justification' it has. There are perfectly intelligible, and *perhaps* even superior moral conceptions, that would instead be committed to the idea that there are superior and inferior human beings. Certainly a Master Morality would be one of these. There is indeed a sense in which we

²⁵ *Ibid.*

cannot grade a man or anything else as an *individual*, because we always grade something as being something or someone of a certain sort. But we can and do grade a man as a human being, as a *Mensch*. Man does not have a function, but we still regard some human beings as better human beings than others.

It is indeed true that on the conception of morality which most of us accept—a conception of morality that I, as a moral agent, certainly accept

I owe assistance to any man in such circumstances, not merely to good men. Nor is it only in rare and exceptional cases, as this example might suggest, that my obligations to others are independent of their moral merit. To be sincere, reliable, fair, kind, tolerant, unintrusive, modest in my relations with my fellows is not due them because they have made brilliant or even passing moral grades, but simply because they happen to be fellow-members of the moral community. It is not necessary to add, "members in good standing." The moral community is not a club from which members may be dropped for delinquency. Our morality does not provide for moral outcasts or half-castes.²⁶

But I see nothing necessary in *this* morality; there are moral alternatives i.e. alternative moral codes. That it is *our* morality does not prove that it is a *superior* morality but only that *we* with or without grounds *believe* it to be superior. Moreover, commitment to Vlastos' above claim is perfectly compatible with giving out grades to persons as persons. We are only saying here, that even the Hitlers, Kys and Johnsons deserve to be treated with human consideration.

In Vlastos' defense of universal human rights, equalitarian justice—the belief that all humans have the right to personal and political freedom—is central. But it, in turn, finally rests on a conception of the equal human worth of all men. Can Vlastos give us sufficiently good reasons for thinking this is so? I do not think that he can. Let us turn to his argumentation.

In saying that human beings, as human beings, all have equal worth, we are not asserting, or in any sense implying, that there is some special "quality named by 'human worth' that all human

²⁶ "Just. and Equal.," pp. 47-8.

beings and only human beings possess."²⁷ Rather we are saying that, as individual human beings, all human beings have intrinsic value, their individuality as such has "infinite value" or "sacredness." They are in Kant's phrase all "ends in themselves."

However, as Vlastos is well aware, suggestive as these remarks are, they remain very opaque; in an attempt to rectify this, Vlastos tries to give such remarks a more perspicuous representation; and this is surely an essential prolegomena to any defense of such conceptions. First we must realize that "everything other than a person can only have value for a person." Physical objects and artifacts, lyrics, scientific theories, and moral dispositions have value only because they can be (a) experienced or felt to be valuable by human beings and (b) chosen by them from competing alternatives.²⁸ If x has value and is not a person, x must have value for some individual other than itself. Even liberty or pleasure has value only if it is valued by some person. But valuers though they may be valued by someone, if they are loved or respected as persons, need not be valued by someone else to have value. Indeed, as Vlastos points out, "to speak of another person as my end is bad logical grammar."²⁹ It is in just this sense that persons, and only persons, are "ends in themselves."

In terms of the above explication, 'human worth' and 'equal human worth' can be given a still more demythologized statement. People have equal human worth because, in the sense characterized above, they all are ends in themselves and, as persons, they cannot but be ends. They are valuers having intrinsic human worth because things only have value because they are felt or experienced to be valuable by human beings, but a human being, a valuer, has value independently of how people regard him.

Let us see if we can say a little more exactly what we are talking about when we assert that this happens. For this to happen is for the things taken to be valuable to be enjoyed in such a way that a human being's welfare or well-being is furthered. Moreover, if things other than persons have value only because in addition they

²⁷ "Just. and Equal.," p. 50.

²⁸ "Just. and Equal.," p. 49.

²⁹ *Ibid.*

are chosen from competing alternatives then in a sense, Vlastos contends, we are really talking about freedom. 'A's human worth', to make it somewhat clearer, is to be translated into 'the worth of A's well-being and freedom', and 'equal human worth' is to be translated into 'equal worth of human well-being and freedom', though, Vlastos is careful to remark that this isn't all that is meant by 'human worth' or 'equal human worth'. But this component of human worth is enough, according to Vlastos, to enable us to establish the equal human worth of all human beings.

There is much that seems to me both unclear and disputable here, but I do not wish to challenge it, for even if it is acceptable Vlastos has still not shown that human beings are all of equal worth or are equally precious. He has only specified a little more carefully what he intends by speaking of 'human worth' and 'equal human worth'.

In this context I should like to consider a key passage where he tries, and in my estimate fails, to establish "the equality of human worth." Vlastos points out that his account differs from a Master Morality or the morality of a "strictly meritarian community" in its "estimate of the relative worth of the welfare and freedom of different individuals." Indeed all people are not capable of experiencing the same values but there is a whole set of important situations where they all do "experience the same values" e.g., "no matter how A and B might differ in taste and style of life, they would both crave relief from acute physical pain."³⁰ The *instrumental* value of relieving A's pain might indeed vastly outweigh B's pain, but the *intrinsic* value would remain the same. After all, A might be a talented scientist on the verge of discovering a foolproof cure for cancer, and his acute headaches might keep him from his work, while B might be "a mere nobody." But A and B both still equally crave a relief from acute physical pain. Vlastos generalizes this: "in all cases where human beings are capable of enjoying the same goods . . . the intrinsic value of their enjoyment is the same."³¹ Because of this he

³⁰ "Just. and Equal," p. 51.

³¹ *Ibid.*

holds that "one man's well-being is as valuable as any other's."³² He then makes a parallel argument to show that "one man's freedom is as valuable as any other's"³³ In showing the equal *intrinsic* worth of human well-being and freedom, he has to his own satisfaction given a sense and a ground to his claim that all human beings are of equal human worth. And the equality of human worth is the justification or ground for equal human rights.

But Vlastos does not establish what he sets out to establish. (1) From the fact that A and B both want or desire or enjoy the same thing, and from the fact (if it ever is a fact) that any x, if a human being, would want, desire or enjoy the same kind of thing, it doesn't follow that the intrinsic value of their wanting, desiring or enjoying is the same. Vlastos would say that the ground for his claim is that their wanting, desiring, enjoying here simply results from their being human and not from any special skills or capacities they may have. But this does not even begin to show that their wanting, desiring or enjoying is the same. A's enjoyment, for example, could very well be much more intense than B's. Moreover if, as Vlastos alleges, "the consciousness of A and B respectively are absolutely unique" then there is no way of intelligibly asserting that their enjoyments or desires either have or fail to have the same intrinsic worth.³⁴ (2) No sense has been given to the claim that their enjoyments or pains either have or fail to have the same intrinsic value. Suppose it were the case that all human beings enjoy orgasms, or music or both. How could we possibly tell whether their enjoyments were or were not of the same intrinsic value? Vlastos has not given us the slightest hint of how to answer this, or even what would count as an answer. Until this has been done, we cannot know that it is either true or false, or probably true or false, that where human beings are capable of enjoying the same goods the intrinsic value of their enjoyment is the same. (3) Even assuming that it is the same, this would at most show that one man's well-being has as much *intrinsic* value as that of anyone else, that their freedom and enjoyment have the same worth. However, as men, as

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

moral agents, we are judged not simply in terms of intrinsic value, but in terms of our total value—the worth of all we do and are, including our attitudes toward others. Perhaps Hamlet's enjoyments and Richard III's enjoyments have the same *intrinsic* worth and their choices, as choices, also have the same intrinsic worth, but it doesn't follow from this that their well-being or freedom are equally valuable. It is quite arguable that a world of Hamlets, though hardly the best possible world, is preferable to a world of Richard III's. It is most surely true that a world peopled by Dag Hammarskjolds (*sans* invariable bachelorhood) is preferable to a world peopled by L.B.J.s. Moreover, notice that even if someone were sufficiently befuddled morally to violently disagree with this moral remark, he, by his very moral disagreement, still in effect attests to the fact that there is nothing conceptually improper in this statement. (A similar point could be made about the earlier example.) So, even given the fact (in itself very disputable) that the enjoyments and choices of human beings have the same intrinsic value, it does not follow that all human worth is equal or that all human well-being is equally valuable. For all these reasons, Vlastos has, I believe, failed to establish or give us adequate reasons for believing in the equal worth of all human beings and thus, on his own grounds, he has failed to give us a justification for a doctrine of universal human rights.

4. Wasserstrom tries to develop Vlastos' argument.⁸⁵ Many of my criticisms of Vlastos would also apply to him; but he has some new and distinct arguments that need to be considered. Wasserstrom wants to ascertain whether the rights to well-being and freedom satisfy the conditions necessary to make them human rights, i.e., rights possessed by all and only human beings, rights possessed equally by all human beings independently of their particular roles in society, and rights that can always be asserted and must always be recognized as *prima facie* rights. He realizes that there is a crucial difficulty in ascribing intrinsic value to each person's well-being and freedom but he thinks that all the same something can be done to establish the truth of this claim. He first argues that if it is true that

⁸⁵ Richard Wasserstrom, "Rights . . . and Discrim.," pp. 628-641.

all human beings are capable of equally enjoying the same goods, then anyone has a right to this enjoyment "just because there is no rational ground for preferring one man's enjoyment to another's."³⁶ But, as we have already seen, there is a rational ground for preferring one man's enjoyment to another's, namely that considerations of total value (good-on-the-whole) as well as intrinsic value arise in any very extensive consideration about what ought to be the case. A human being's enjoyment needs to be figured in, in making such judgments. That a man has certain enjoyments may make all the difference in the world in his relations with other people. Surely this needs to be carefully figured in, in making a rational judgment concerning whether one man's enjoyment is to be preferred to another's.

As Wasserstrom makes clear himself, he is asking whether any "human rights ought to be both acknowledged and respected."³⁷ Asking whether any man, irrespective of his merit and irrespective of his relation to society, has a right, even a *prima facie* right, to his enjoyment raises questions of total value as well as questions of intrinsic value. I could understand (comprehend) a morality (a moral code) in which some people were simply read out of the moral community because of their bestiality or utter unconcern for others or even because of their stupidity. Like Wasserstrom, I am against such a moral community; I would not want to be part of it; I agree with Wasserstrom that "to read certain persons out of the human race . . ." (i.e., the moral community) is "surely among the greatest of all moral wrongs."³⁸ But it seems to me that here he and I are only giving voice to our particular and historically contingent moral commitments. We do not have good grounds for claiming that we know that we are right or have good grounds for believing that we are right and that the believer in a Master Morality is wrong when he uses the above considerations for denying to some the right to their enjoyment.

It is natural to reply "But in those circumstances, where everyone can have it without a decrease of total value (good-on-the-

³⁶ "Rights . . . and Discrim.," p. 637.

³⁷ "Rights . . . and Discrim.," p. 633.

³⁸ "Rights . . . and Discrim.," p. 641.

whole), why shouldn't everyone have this right?" Yet an austere defender of a Master Morality could reply "Such doglike people are no more worth extending rights to than are animals." Now I don't say or believe that such a Nietzschean has adequate reasons for his claim either. I only pointed out (1) a respect in which men do differ, and (2) that no ground has been given, that doesn't presuppose a particular and contestable morality, why this respect isn't a relevant respect. Moreover, we still have all of our old difficulties about what it would be like to establish or disestablish that it is either true or false or probably true or false that men are equally capable of enjoying the same goods.

Wasserstrom is well aware of the extraordinary difficulty of showing that all people are equally capable of enjoying the same goods and he tries to develop an argument to justify giving equal intrinsic value to each person's well-being and freedom that doesn't turn on that assumption. Wasserstrom points out that we do know that the denial of an opportunity to experience the enjoyment of these goods makes it impossible to live either a full or satisfying life. He then goes on to point out that *if* we can't compare or weigh the value of these enjoyments, then, since we know that all men need them for a satisfactory life, we should allow all people to have them. They should all in that circumstance at least have an equal right to well-being and freedom. But why should we do this, unless we can know or have good reason to believe that all human beings are of equal intrinsic worth? Moreover why ascribe equal intrinsic value to everyone's well-being and freedom? That we can't (if we can't) discover whether these intrinsic values are equal for all people, does not give us grounds for ascribing an equal intrinsic value to each person's well-being and freedom, or for asserting that they have an equal right to them. This would only be so if we had good reasons for thinking all human beings are of equal worth. But no sufficiently good reasons have been given for this belief.

Wasserstrom envisages this possibility and remarks that an ascription of equal intrinsic value to each person's well-being and freedom may not rest on any grounds at all; it might simply constitute "another feature of our morality." We may simply be reduced to saying that "this is an assumption we do make" and to asking people "whether they would not prefer to live in a society in

which such an assumption is made."³⁹ This indeed may be all that we can do. But then we should be perfectly aware that if this is all we can do, that we do not know or have grounds for believing that such rights ought to be both acknowledged and respected. As much as I value a respect for human beings, all human beings great and small, good and bad, stupid and reflective, as much as I would like to see The United Nations Declaration on Human Rights become a reality, i.e., be implemented and respected by all nations, it seems to me quite evident that we do not know that there are any universal human rights.⁴⁰

KAI NIELSEN

NEW YORK UNIVERSITY

³⁹ "Rights . . . and Discrim.," p. 637.

⁴⁰ This paper is substantially the same paper as the one presented at the conference at Tuskegee Institute. Since discussing it there and elsewhere, I have come to entertain grave reservations about the correctness of its central counters to the arguments developed by Vlastos and Wasserstrom concerning the equal intrinsic worth of all human beings. All human beings seem to find certain types of suffering undesirable. They seem quite literally to be equal in this respect. If *x* recognizes that pain is intrinsically undesirable and that all people find it intrinsically undesirable—that they are equal in this respect—how can he rationally avoid the conclusion that *everyone* should be protected from having pain gratuitously inflicted on them? In fine, simply in virtue of being the kind of animals we are, we have a prima facie right to a life in which such suffering is not inflicted on us. I do not know how much weight should be given to this or how far it would go toward establishing and demythologizing the ancient claim that all human beings are of equal human worth. But it should serve as a basis to query whether we need to be quite as sceptical as I have been about the rationale for a belief in human rights.

I publish this essay as it stands for two reasons. (1) Amid the current complacency of talk about human rights such fundamental scepticism has not been adequately considered. The kind of sceptical challenge I have made needs to be clearly aired and squarely met, if indeed it can be met. Hence the heuristic value of its restatement. (2) I am still sometimes inclined (though I wish it were otherwise) to think my argument in this essay is substantially right, but I am also sometimes very inclined to think it is wrong and I am not sure which inclination is the stronger. (That this is virtually a steal from a well known passage of G. E. Moore only illustrates that he caught there something of what it is to be in a philosophical bog.) I am most indebted to David Rosenthal for making me feel the inadequacies of my present argument.