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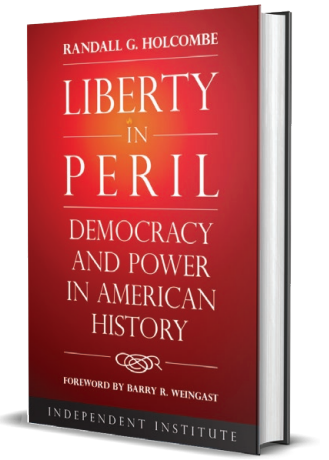


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# Rights
## *Rhetoric versus Reality*

MAX HOCUTT

When John Locke conceived the idea of natural because God-given rights, he limited it to a very short list—namely, rights to protections for life, liberty, and property.[1] Not incidentally, he regarded these rights as purely *negative*. That one had a right to *life* meant that one had a right not to be killed, not also that one had a right to be provided with a living. That one had a right to *liberty* meant that one had a right not to be enslaved, not also that one had a right to the services of others. That one had a right to *property* meant that one had a right not to be robbed or cheated of what one had earned, not also that one had a right to a share of what others had earned.

Since then, talk of rights has gotten completely out of hand. If we may judge from popular speech, there is now a widespread belief that one has a right to whatever one wants, needs, or takes a fancy to. If it is desirable, somebody has proclaimed a right to it. Thus, the Universal Declaration of Human Rights (United Nations 1948) superimposes on Locke's brief list of negative rights a long list of such positive economic goods as paid vacations, self-chosen occupations, free education, publicly supplied medical care, and so forth.[2] Rights lists have become wish lists.[3]

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1. Locke did not create this doctrine ex nihilo. It was a descendent of the Stoic doctrine of Natural Law, which Thomas Aquinas made central to Christian legal and moral thought in the high Middle Ages. However, where the Stoics and Aquinas had emphasized duties, Locke ([1689] 1997) made their correlative rights his focus.

2. FDR's "second bill of rights," which contained many of the same items, was apparently the model for the Universal Declaration of Human Rights (Sunstein 2004; Hocutt 2005).

3. The phrase *human rights* is ambiguous between (1) rights that are presumed to belong to human beings naturally as against rights belonging to them as members of various societies and (2) rights that human beings are presumed to have as against rights supposedly belonging to animals, plants, or inanimate objects.

*The Independent Review, v. 17, n. 1, Summer 2012, ISSN 1086–1653, Copyright © 2012, pp. 51–64.*

In accordance with this usage, pubescent daughters now announce that they have a *right* to go where they please with whom they please and when they please; people who have destroyed their health and wasted their substance proclaim that they have a "right" to a comfortable retirement and unlimited medical care at the expense of those who have been more prudent; the chiropractor touting his services on TV declares in the spirit of the age, "You have a right to feel good"; and a court in Britain has reportedly awarded a handicapped man the "human right" to be transported to Holland to have intercourse with a prostitute at public expense. "I have a right" has come to mean "I want it; give it to me!"

In workaday speech, this sort of talk is called "wishful thinking," but in the argot of rhetoricians it is *prolepsis*—anticipatory speech. Whatever it is named, it amounts to claiming rights in order to create them, and it has become so common that few people any longer recognize it as such. On the contrary, most people now regard rights prolepsis as perfectly normal, even paradigmatic, discourse. Demands for what are now deemed "human rights" have become the unchallengeable justification for a metastasis of entitlements and for the government power to provide them.

As an illustration, consider the desire for medical care at public expense. The standard case for it is that because everybody needs it, everybody already has a right to it. Never mind that at present only the elderly and indigent have standing to submit their medical bills to the government with an expectation that the bills will be paid. According to true believers, that fact does nothing to prove the unreality of the desired right; instead, it proves that the law has a moral deficiency. The right exists; it merely wants recognition. Hence, that is what is demanded, as language slides insensibly from "I want *x*" to "I ought to have *x*" to "I have a right to *x*!" to "Let government provide *x*."

The popularity of this manner of speech and thought is easy to explain. Claims to rights are demands, which are not so readily ignored as requests. Deny my requests, and you might lose my patronage or my friendship but nothing more. Refuse my demands and you may expect to face my wrath, perhaps also that of my friends and allies as well as that of the courts and police in legal cases. Hence, claiming—that is, demanding—rights is usually more effective than requesting them. Therefore, it has become habitual.

Perhaps, however, it is time to notice that rights prolepsis is as misleading as it is common. Seen from a logical point of view, it conflates the proposition that one *ought* to have a right as a matter of morality or need with the proposition that one *does* have it as a matter of actual fact. Against those who see naturalistic fallacy everywhere, it must be acknowledged that there are valid inferential connections between what *ought to be* and what *is,* but the two things are not identical: "X ought to have right *R*" is not the same as "X has right *R*." Thus, that the people of Communist China ought to have the right to criticize their government does not mean that they do in fact have it; that Muslim men have the right to beat disobedient wives does not mean that they ought to have it.[4]

4. The claim that a right ought to exist has all the ambiguity of other claims about what ought to be the case. In particular, it is not always clear whether saying that something ought to be done means that it would be a good thing to do or that it is a duty to do (Hocutt 2000).

Grant that to have a right is to have *standing* to claim it.[5] The fact remains, claiming a right simply because it is needed, wanted, or counted as good will not suffice to create it. That you need my kidney to keep you alive does not mean that you have a right to it, and claiming it will not establish that right. That Sam needs George's wife to make him happy does not mean he has a right to her, and claiming her will not prove that right. That a poor man needs a rich man's money to pay off his debts does not mean he has a right to it, and claiming it will not create that right.

In short, rights are not always possessed where needed, much less where merely wanted and claimed. That is why human nature, the source of our needs, is no reliable guide to rights, nor, for that matter, is human reason, the guide to what will serve our needs.

## Apologists for Prolepsis

Despite this plain but frequently obscured truth, rights prolepsis is not peculiar to the vulgar; it has also received the imprimatur of the learned, who should know better.

In *Reason and Morality* (1978), Chicago political philosopher Alan Gewirth boldly affirms that people have "generic rights" to what would satisfy their "generic needs," presumably meaning such basic needs as food, water, shelter, friendship, sex, respect, esteem, and so forth. Do all of us need *x*? Then, according to Gewirth, we have a right to it. But notice one thing: although Gewirth uses the present tense, he is not telling us what rights he thinks are already possessed, but what rights he wants instituted. He is speaking proleptically, not literally.

Gewirth at least limits himself to "generic" needs. In *Taking Rights Seriously,* philosopher of law Ronald Dworkin shows no such restraint. In his view, "[i]ndividual rights are political trumps held by individuals. Individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or not a sufficient justification for imposing some loss or injury on them" (1977, xi). Here Dworkin unblinkingly attributes to individuals rights to whatever they *wish.* He allows for an individual's wish to be denied, but he puts the burden of justifying that denial on the rest of us; we must show that the right in question is not in the collective interest. Later in his book, Dworkin argues that, absent such a showing, the wish in question imposes on judges a moral duty to regard it as binding law, even if that duty has not yet been written into the books. In short, he says that individual wishes should have binding legal force.

Does not this moralizing line cross bridges before getting to them? It does, but Joel Feinberg, another distinguished philosopher of law, views crossing future bridges as not only possible, but unobjectionable. Acknowledging that it is misleading to

5. One also needs the *ability* to claim it. Children, animals, plants, Mother Nature, comatose patients, and inanimate objects cannot have rights because they cannot claim rights, although somebody else might have standing to make claims for them.

claim rights you do not yet possess, Feinberg nevertheless endorses what he dubs "manifesto speech." "Still all in all I have a certain sympathy with the manifesto writers, and I am even willing to speak of a special 'manifesto sense' of 'right,' in which a right need not be correlated with another's duty. Natural needs are real claims if only upon hypothetical future beings not yet in existence. I accept the moral principle that to have an unfulfilled need is to have a kind of claim against the world, even if against no one in particular" (1980, 153). In thus equating *needs* with *claims* and claims with *rights,* Feinberg overlooks the fact that a claim on an indeterminate world of hypothetical persons in the future is merely a *wish*. Forgetting the adage "If wishes were ponies, we could all ride," he presumes that ponies are available for the asking at no cost.

In sum, Franklin D. Roosevelt, the United Nations, Gewirth, Dworkin, and Feinberg have stretched the concept of rights so far that it has lost identifiable shape. Needs and wishes are limitless, and claims are easy to make. So, if every need, wish, or claim constitutes a right, the concept no longer has definable meaning. Prolepsis deprives rights talk of determinate sense.

To restore definite sense to talk of rights, we need to set aside the question "What rights *should* be possessed?" in order to consider the questions "What rights *are* possessed?" and "How do we know?"

## Rights Entail Duties

The beginning of wisdom in regard to rights is recognition that they are the correlatives of duties, as follows.

**A:** X has right R with respect to Y = Y has duty D with respect to X[6]

As this definition indicates, rights do not exist without duties, but, despite popular opinion, this correspondence does *not* mean that person X has rights if and only if he *also* has duties.[7] Rather, it means that person X has rights if and only if *some other* person Y has duties. Thus, that my children have a right to my support and my wife has a right to my fidelity means that I have duties to support my children and be faithful to my wife.

In apparent contradiction of this truism, Thomas Hobbes ([1651] 1997) notoriously said that people in a state of nature have rights but no duties. Thus, men have rights to enslave each other if they can, but no duty to submit to each other. By this

6. Definitions in this article are meant only to pick out the entities described and denoted by the definienda, not also to say what descriptions people have in mind when they use these definienda or think of the corresponding *denotata*. In philosophical jargon, we seek only extensions or denotations, not also intensions or connotations.

7. It may, of course, usually be true that one *should* have a corresponding right if one must bear a particular duty, but we are trying to understand the claim that one *does* possess a right, a proposition with different truth conditions.

provocative declaration, Hobbes meant that because everybody in a state of nature is *at liberty* to do whatever he can get away with, nobody has a duty to restrain himself from anything. Given Hobbes's definition of a state of nature, this tautology is indisputable, but it is merely a paradoxical way of saying that talk of rights or duties is meaningless in the absence of rules, which is precisely what we have affirmed here.

Another dissident from our truism about rights was the pious but muddled Immanuel Kant. As Loren Lomasky has pointed out (personal correspondence with the author, February 2, 2011), Kant claimed that such "imperfect duties" as charity do not confer rights on their beneficiaries. But the reason is that so-called imperfect duties are not *duties* properly so called; that is why they count as "imperfect." When charity becomes a *duty,* it ceases to be *charity.* Charity properly so called is done out of love, not in fear of censure or desire for praise. That one *ought* to be charitable means only that charity would be a good thing, not also that it is a binding duty.

So what are duties? Were we to define duties in terms of rights, having just defined rights in terms of duties, we would go in circles. To get further ahead, we must define duties in independent terms. Furthermore, because the aim is not to advocate but to analyze, we must avoid equating duties with subjective *sentiments,* as is the usual practice.[8] Instead, if we are to know what is being talked about, we must relate duties to objective—that is, empirically determinate—*realities.*

The following formula is an attempt to satisfy this requirement:

**B:** Y has duty D = Under the regulations in force, Y is subject to a requirement to do D.

Thus, to use the same illustration again, suppose I am required by law to be faithful to my wife and support my children. Then it is my legal duty to do so. Of course, a decent human being who loves his family will want to do these things anyhow, but wanting to do them is not what makes them duties. What makes them duties are *regulations*—routinely enforced requirements.[9]

Regulations are high-order abstractions, so they, too, need explaining in empirically determinate terms, as in the following formula:

**C:** Regulation R is in force in society S = There is in *S* a well-established practice of enforcing compliance with R.

Compliance with regulations is enforced by means of praise or censure and reward or punishment. So, as behavioral psychologist B. F. Skinner liked to say, regulations exist

8. Moral sentiments are sometimes called moral *intuitions,* as if they were revelations of self-evident truth on a par with 2 + 2 = 4. However, this question-begging epithet cannot give moral feelings the transcendent authority that many philosophers attribute to them (Hocutt 2000).

9. As discussed later in more detail, all regulations are conventions, but not all regulations are laws.

in "the contingencies of reinforcement." In plain English, the essence of a regulation is the measures to secure compliance with it. Without such measures, there is no regulation, no duty, and no corresponding right.

It is presumably this fact that some philosophers have in mind when they talk of the *inescapability* of duty. As etymology indicates, a duty is a (metaphorical) *debt,* so whether you must repay it is up to your creditor, not to you. In a different diction, a duty is an *obligation;* you are (metaphorically) bound to fulfill it until released from it. Being subject to penalty is what "binds" you. If you can expect to avoid penalty, you have at most a nominal duty. Literal duty is *liability to coercion*.

As an illustration, imagine a society in which errant husbands and negligent fathers are routinely put in stocks for public abuse and humiliation. Then marital fidelity and parental support are duties in that society. Now, contrast this case with a society in which nothing untoward happens to faithless husbands and feckless fathers. Then it is not clear what in this second society would be meant by calling marital fidelity and paternal support "duties." Maybe they should be, but they are not.

That point made, let us take stock. According to formula **C**, a regular practice of enforcing compliance is necessary and sufficient for the existence of a regulation. According to formula **B**, the existence of a regulation is necessary and sufficient for the existence of a duty.[10] According to formula **A**, the existence of a duty is necessary and sufficient for the existence of a right.

Put all three formulas together and you get the bottom-line truth: *enforcement of a regulation is necessary and sufficient for the existence of a right.* But enforcement requires *coercion,* a threat to punish or withhold reward. So we get the corollary:

**D:** X has right R with respect to Y = Under the applicable regulations, Y is liable to coercion to do D.

In plain English, rights entail coercion. They are wanted because they have benefits for their recipients, but these benefits always impose costs on somebody else, who, if he is unwilling to bear those costs, must often be made to do so against his will.

## Protecting Rights Equals Enforcing Duties

Lawyers often describe the connection between legal rights and coercion by saying, "Where there is a right, there is a remedy."

This formulation is elliptical language. It means that there is a remedy for breach or infringement of the right. That remedy is designed to *protect* the right by enforcing respect for it. Thus, to take a different example, suppose that someone mines my land

10. The coercion must be governed by an established regulation of law, morality, or etiquette. Without regulation of some kind, talk of rights and duties is off its tracks; in that case, there is only naked force in the service of whim. You might be obliged to obey, but you will not be legally or morally obligated to do so.

without permission. Because I have title to the minerals on that land, he has infringed on my rights. I therefore have standing under the law to go before a magistrate and demand that the offender be made to desist from his mining operation and compensate me for damages. Where such remedies are available, a right has *legal protection*.

Of course, *legal rights are not the only kind of rights,* only the prototype. Suppose the law is indifferent to marital infidelity and parental neglect. That indifference need not be the end of the story. Maybe my wife's burly brothers will beat me up. Maybe my parents will ban me from their home. Maybe my friends and associates will shun me. Maybe my boss will fire me. Then my wife and children have moral rights to my fidelity and support even if these rights are not protected by *law.* These rights are *moral* in the clear sense that they are protected by prevailing *mores*—popular practices and attitudes.[11]

What is not clear is what can be meant by saying that there are rights where there are *no* discernible protections of *either* positive law *or* positive morality. Consider Communist China. Its rulers do not protect political speech; they punish it. So we are entitled to say that in China there is no *legal* right to criticize the government. If, nevertheless, the mores of China were sufficient to protect criticism, we might have cause to say that the Chinese have a *moral* right to criticism. Unfortunately, there has never been in China acceptance of the peculiarly Anglophonic right to criticize one's rulers. The operative assumption has always been that the subjects have a duty to obey their rulers.

Despite this plain fact, many people will insist that the Chinese *do* nevertheless have a right to criticize their government. In the usual story, it is a right that God gave them and that the Chinese possess merely because they are human beings—never mind that the government of China refuses to protect this right and in fact routinely violates it. But if this putative right lacks visible protection, what can be the meaning of saying that it exists? That question cries out for an answer.

Locke's answer was that natural rights are protected in two complementary ways. First, they are protected by God, who gave them to us; God will punish in the hereafter those who abridge or infringe our rights now. Second, they are protected by our disposition to revolt against governments that do not respect them; stalwart men of England had been known to actualize that disposition. The trouble is, the atheist rulers of the People's Republic have no fear of Locke's deity and no trouble putting down such feeble threats of revolution as might arise. So although Locke's two protections had force in Locke's England, they are ineffective in modern China; and as J. L. Austin (1975) would have reminded us, an ineffective protection is no protection at all.

In fact, talk of unprotected rights is as solecistic as talk of married bachelors. Although natural-rights rhetoric is intelligible when regarded as prolepsis, it cannot

11. Rights under a God-given Moral Law or transcendent principle of Moral Reason have no definable meaning and hence are merely topics for interminable dispute.

be taken literally without logical absurdity. Absent the protections of positive law, there is no legal right; absent the protections of positive morality, there is no moral right. Logic requires that the parallel hold true of natural rights, too. If they are rights, they have positive, identifiable protections. Otherwise, they are not real, but merely desired.

That "natural rights" often have no protections is the most serious and difficult philosophical problem for the doctrine of natural rights. Awareness of this problem is one thing that caused Jeremy Bentham (1843) to condemn talk of natural rights as "nonsense on stilts." The trouble is that this "nonsense" has long been the philosophical mainstay of those who love liberty. So one hesitates to endorse Bentham's harsh assessment. But if Bentham cannot be answered, we will need another justification for liberty. What can it be?

Fortunately, this problem has a solution: We can give up Locke's Thomist metaphysics without abandoning his libertarian political preferences, for which there is a firmer foundation. I lay this foundation later, but first let us look at a different idea.

## Empirical Natural Rights

John Hasnas (2005) has recently ventured an ingenious reading of Locke that gives empirical meaning to Locke's talk of natural rights. According to Hasnas, what Locke had in mind when he spoke of natural rights were the *moral* rights that Englishmen enjoyed in what Locke called the "state of nature," meaning the condition of society in which the English protected their rights themselves before they had government to do it for them. A man of his time, Locke said that these rights were divinely instituted facts of nature, but in fact they were man-made social conventions.

When did these conventions exist? Hasnas does not say, but here is a plausible story. After the Romans left Britain, the warring tribes that constituted Britain's population eventually tired of the mutually destructive killing, pillaging, raping, and enslaving, so they settled down to a more or less stable policy of "live and let live." In the resulting condition of comparative tranquility, each community farmed its lands and raised its children while allowing neighboring communities to do the same. Bloody conflict still occurred occasionally, but fighting on a large scale normally occurred only when repelling raiders.

Within these various communities, order would have been a norm enforced *not* by the armies of a distant and impersonal government, *but* by local and personal sanction. Without government to make laws, there would have been no legal protections for life, liberty, or property. Nor would there have been anything to keep the peace except long-established practice. Yet plots of land and the buildings erected on them would have been recognized as having settled owners. These owners would have stood ready to defend themselves, their property, and their families from the depredations of local thugs and from assaults by outsiders, and they would have

enjoyed wide approval when doing so. In that sense, *rights* to life, liberty, and property would have existed.

Because these rights had not been created by government and would not have had government protection, Locke called them "natural" and said they were instituted by God, the creator of nature. A disciple of Aquinas, Locke also thought these rights were recognizable by use of our God-given faculty of reason. As Hasnas acknowledges, however, these rights were in fact social conventions, which are known empirically. Such conventions differed from the rights of law in having been created and maintained by ordinary members of society rather than by government officials. In Friedrich Hayek's felicitous terminology, these rights were aspects of a *spontaneous order,* and they were moral rather than legal rights.

Locke's "state of nature" was, of course, not the parlous state Hobbes had in mind. Whereas Locke meant to describe society as it had existed *before* government was instituted, Hobbes was evidently thinking of the breakdown that had occurred in Britain *after* the dissolution of government. Hence, the two philosophers drew radically different conclusions. Reasoning that government is essential to order, Hobbes recommended giving it absolute powers. Aware that society had existed and flourished before government was imposed, Locke sought to put restrictions on its powers.

In fact, Locke's well-advertised opinion was that government was needed only because of the "inconvenience" of having to protect oneself in a state of nature. Hence, Locke asked a question that Hobbes never posed: On what terms would government be acceptable? His answer was that government must agree to preserve and protect *already existing* rights to life, liberty, and property. That protection would be the price of submission to government authority. Government failure to fulfill its end of the bargain would be met with civil revolution and divine retribution.

Such reflections have persuaded Hasnas that we can have Lockean liberty and security without Lockean theology. Hasnas acknowledges that this hypothesis makes what Locke called natural rights depend on social (specifically, moral) conventions, but Hasnas believes that if people themselves work out the conventions without the government's guidance, these conventions can legitimately be described as "natural."

It is an ingenious theory that has considerable merit as a reading of Locke. Considered as a defense of natural-rights doctrine, however, it has problems.

## Rights and Human Nature

The main problem with Hasnas's theory is that Lockean conventions appear to be highly provincial, but natural rights are supposed to be universal.

To even superficial students of political history, such as myself, it must surely be noteworthy that the institutions of liberty have rarely taken hold outside Great Britain or its former colonies. This fact suggests that they are products of English political

culture rather than universal features of human nature.[12] So although Hasnas's reading of Locke supports the proposition that rights to life, liberty, and property were at one time "natural" (that is, easy and settled) *for Englishmen*, it does not prove that these rights are in the same way natural *for men everywhere* or even that they are still in force in England.[13]

If we want rights that are rooted in universal human nature, we must go back to a much earlier period. In fact, we have to go all the way back to the way in which, according to archaeologists, mankind lived before the establishment of settled agriculture and the creation of politically ordered societies. In that distant but formative era, there were almost certainly no individual rights of the kind that Locke sought to promote. On the contrary, such rights as existed were collective welfare rights, and they were moral, not political.

Here, as best we know, is the story. In the prehistoric state of nature in which mankind lived for 99 percent of its existence, human societies were essentially large families—nomadic hunter-gatherer bands of perhaps 25 to 125 people united by blood and what David Hume once called "natural lust." These families lived on the margin of subsistence, from hand to mouth, facing hazards of all kinds. In these perilous circumstances, survival required that all of the band's members help to protect the lives and promote the welfare of all other members of the family. The deer killed by one must be shared with all; an attack by an enemy band must be repelled by all.

The duties in such societies would not have been Lockean duties to leave other members of the band alone to fend for themselves. Rather, all members of the family would have had duties to contribute to the welfare and come to the aid of other band members. Of course, these duties would have extended only to members of one's own tribe. One would have had no obligations to members of nonaligned groups. In fact, competing bands would usually have been legitimate objects of rapine, pillage, and robbery. Peace in the tribe would have been normal, but so would war between tribes. Such, given the scant evidence available, is our best picture of life in what might be called the *original* "state of nature."

This picture has profound political implications. It suggests that an instinct for closely knit tribal communalism is probably built into the human genome and embedded in the human brain; as the saying goes, it's in our DNA. Furthermore, this hypothesis is confirmed by the fact that human beings everywhere yearn for the security of the tribally based communal existence that their ancestors enjoyed for

12. The politics of South Korea and Taiwan, the most obvious exceptions, have been influenced by the United States, a former British colony. Hasnas does give examples of property rights that developed without the guidance of government outside the Anglo sphere, but this evidence shows only that it *can* happen, not that it inevitably will as a consequence of universal human nature.

13. They regrettably are not. One need only read Theodore Dalrymple (2001) to appreciate how, even in contemporary England, dependence on socialist promises of economic security has displaced confidence in personal liberty and individual responsibility.

many millennia. This yearning helps to explain socialist disdain of personal liberty and private property, concepts once regnant in England and its colonies, if now very much in decline there (Hayek 1988).

Personal liberty and private property, however, were the very things that Locke wanted to protect and promote. So it appears that if we base our politics on human nature, as Locke purported to do, we will not choose the sort of free political order that he favored; instead, we will prefer state-managed socialism, a form of society that followers of Locke abhor. The libertarian argument from human nature has turned on itself, yielding the contrary of what was wanted. Where did things go wrong?

## Why Not Communitarian Socialism?

The answer to the question "Why not communitarian socialism?" was ironically provided by Jean-Jacques Rousseau, the father of modern socialism. Although human nature has remained essentially the same, the circumstances of human life have changed.

The biggest change is obvious: we no longer live in small, independent family bands held together by mutual need and led by a family patriarch. Instead, we live in large multicultural and multiracial societies united only by a distant government. Practices that make sense for small, closely knit bands with a common ancestry and culture cannot be replicated in larger societies. Hence, the welfare-state utopia Rousseau envisaged in *The Social Contract* ([1761] 1997) would remain resolutely small and intimate; everybody in it would know everybody else.

Rousseau's followers unfortunately have not listened to his sage warning. In the century just passed, ill-considered attempts to impose "brotherly love" socialism on vast polities of unrelated peoples produced holocausts of a scale never before imagined—150 million dead and counting—and even now too horrible to contemplate with equanimity (Conquest 1990). Furthermore, we know why they did so. Although we human beings are not naturally selfish psychopaths capable of loving only ourselves, we are also not natural Christians filled with indiscriminate charity for all our fellow human beings. We have a capacity for altruism, but it is extremely limited. So forcing us to contribute to the welfare of people we do not know or love goes against the grain.

It is politically incorrect to say so, but the plain fact of the matter is that we human beings are tribal animals whose spontaneous altruism is normally limited to kith and kin. We cannot readily be made to share limited and insecure resources with those we do not know and may not love. Try to make it our duty to do so, and some of us will shirk that duty, and others will exploit it, thereby subverting it. Try to prevent the corruption of personal character and social order that dependency on state largesse creates, and you will merely foster resentment while promoting increasingly oppressive and corrupt government (Murray 1984). The once putatively

benevolent and providential state either will eventually become insolvent as rapidly growing entitlement costs exceed diminishing assets or will turn into an intolerable tyranny helpless to prevent the dissolution of society and the moral degradation of its members.

Does this problem have a solution? Yes, but as the tragic failure of attempts to turn unwilling and resentful subjects of coerced redistribution into willing altruists has made painfully obvious, socialism is not up to the job. Communitarian socialism *might* be made to work, given a radical change in the human genome sufficient to make humans into self-sacrificial drones or given a return to a division of mankind into small, closely knit clans. Although collective welfarism worked very well in the extended families that roamed some parts of the earth as recently as a few hundred years ago,[14] we may safely say, given the evidence, that it cannot be made to work in the societies that now contain the bulk of our species (Hayek 1988).[15]

What *can* be made to work in these societies are Lockean negative rights. These rights work where welfare states cannot because they impose on their citizenry only minimal duties that are acceptable to all alike and so create less resistance. To live in Lockean regimes is to be left alone as far as is practicable to pursue your life as you see fit, assured that you will not be wantonly killed, enslaved, robbed, or cheated. Because these assurances benefit all, they are also welcome to all. In contrast, positive duties to share one's substance with unloved and often unworthy strangers benefit only some at the expense of others. These duties are welcome to their beneficiaries, but not usually to those who must bear their costs.

Because negative Lockean rights benefit all, protection of them requires only a minimal state employing minimal coercion; so this state promotes liberty and the many good things that go with it, including general prosperity and individual responsibility. In such a state, people still have positive duties to provide welfare assistance to family, friends, and neighbors, but because such duties already accord with natural human dispositions, they need no enforcement by an incompetent but oppressive state. Charity, which begins at home, can stay there. It can remain a matter for local group morality rooted in the bonds of consanguinity.

## Conclusion

In the proleptic mode of speech that has become all too common, rights are claimed merely because they are wanted or needed. Needs and wishes, however, do not suffice

14. The bands of primitive people that populated North America before Europeans arrived are good examples (Ewers 1939).

15. Both experience and theory support this conclusion. Take experience first. So far all socialist regimes have not only failed but failed spectacularly, producing enormous and widespread human misery in the process (Williamson 2011). Now consider theory. Ludwig von Mises, Friedrich Hayek, and other Austrian economists have shown that rational socialist planning is impossible because only the market can set prices or manage production in such a way as to satisfy ever-changing needs.

to constitute rights, nor do claims. So if we want to avoid the ruinous costs of ever-expanding rights and the morally debilitating effects of a general entitlement mentality, we must learn to think and speak about rights more clearly and precisely than has become customary.

Rights—moral as well as legal—are constituted by social conventions. Moral rights are constituted by moral conventions, legal rights by legal conventions. Under both kinds of conventions, some people have rights because other people have duties, and others have duties because the members of their society make a practice of enforcing them. Therefore, that a right exists means that it has protection in the form of regular enforcement of the duties associated with it.

This explanation holds whether the topic is official rights of law or unofficial rights of morality and etiquette. Legal rights exist under rules of law, so they enjoy the protections of government. Moral rights (and rights of etiquette) exist under informal customs and enjoy the protection of ordinary members of society. Without official protections, no legal rights exist; and without unofficial protections, no moral rights exist.

It follows that all rights, legal or moral, are man made. If calling a right "natural" means only that it was made and is protected by God, no empirical meaning can be assigned to the claim. Preference for Lockean rights fortunately does not depend on the belief that they are *natural*. It can rest firmly on the fact that they are *negative* and so require less coercion for their protection. A desire for positive welfare rights may be more importunate because it is more deeply rooted in human nature, but it cannot be made the guiding principle of large, complex, multiethnic societies. Only the negative rights of liberty can fill that role.

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**Acknowledgments:** An ancestor of this essay was presented in 2009 at the University of Virginia to Professor Loren Lomasky's political philosophy group. Joe Willingham and James Otteson made helpful suggestions.