

Human Autonomy and the Natural Right to Be Free

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An argument for the natural right to be free may be made from the premise of human autonomy.¹ I shall try to set forward and to defend such an argument. Natural rights theories are undergoing a revival, and it would be helpful for a proper evaluation of such theories were we to have some fully developed versions. Robert Nozick presents a natural rights theory in his *Anarchy, State, and Utopia*,² but, as he notes, he does not have a complete moral theory. Much of what follows is however inspired by his book.

Before setting out and defending an argument for natural rights, I ought to say something about the general story that underlines such theories. My remarks will, however, be very general and will not persuade anyone who is not already sympathetic to natural rights theories.

The basic moral principle of natural rights theory, as I understand it, is a simple prohibition of the treatment of persons as mere means to the ends of others. This principle generates moral boundaries between persons or constraints on their interactions. These constraints determine obligations to refrain from actions which violate the moral space of others, and these obligations are correlated with claim-rights on the part of others. Thus a violation of someone's moral space will be understood as a violation of his natural or moral rights.

Certain basic features of humans underlie the prohibition of the treatment of persons as mere means and the moral rights this principle generates. Persons are separate, and human consciousness is that of a single, distinct self. And humans possess distinctive capacities for free and autonomous choice and action. The separateness of persons and the distinctiveness of human capacities to choose give rise, according to the theory, to the principle forbidding the treatment of persons as mere means. We suppose that language is a distinctive attribute of humans, and that human self-consciousness is a by-product of the acquisition of language. Further, it may be argued that human self-consciousness is a sufficient condition for the separateness of persons, and that human autonomy presupposes both self-consciousness and separateness. These conjectures suggest a possible rationale for natural rights theory. A more convincing story requires a complete theory of mind.

The prohibition of the treatment of persons as mere means is intended to reflect the fact of our separateness or distinctness.³ Human experience is the experience of individual centers of consciousness. To deny the principle prohibiting the treatment of others as mere means is to deny the importance of the distinctness of human consciousness. Without a well-developed theory of mind, this point can perhaps be best illustrated by an example. To take from Jones to give to Smith is to benefit Smith at Jones' expense. When Jones, an elderly man, is deprived of his kidneys (and dies) so that Smith, a young fellow, may be saved, Jones is *used* for the welfare of Smith. Some utilitarians defend using persons as mere means in this manner, and their arguments are illuminating. J. J. C. Smart, for instance, argues:

If it is rational for me to choose the pain of a visit to the dentist in order to prevent the pain of toothache, why is it not rational of me to choose a pain for Jones, similar to that of my visit to the dentist, if that is the only way in which I can prevent a pain, equal to that of my toothache, for Robinson? Such situations continually occur in war, in mining, and in the fight against disease.⁴

John Rawls and Derek Parfit suggest assumptions which are required for the possible effectiveness of such arguments. Rawls notes that the line of argument given by utilitarians such as Smart views separate individuals

as so many different lines along which rights and duties are to be assigned and scarce means of satisfaction allocated. . . so as to give the greatest fulfillment of wants.⁵

But, Rawls suggests:

This view of social cooperation is the consequence of extending to society the principle of choice for one man, and then, to make this extension work, conflating all persons into one through the imaginative acts of the impartial sympathetic spectator. Utilitarianism does not take seriously the distinction between persons.

It is rational, Rawls suggests, to use Jones as a mere means to the ends of Smith, if it is appropriate to apply to society as a whole the principle of choice for an individual—namely, the principle that would have one maximize one's satisfactions.

Parfit attempts to justify Smart's line of argument and the procedure Rawls criticizes by constructing an account of the self where the "separateness of persons" is understood to be merely a matter of degree.⁶ If the connections between the individual selves (past, present, and future) of persons may be understood as analogous in kind to the connections between persons, then the rationality of distributing benefits among the former so as to maximize long-term satisfactions suggests the rationality of so distributing benefits among different persons.

Parfit's line of argument and Rawls' criticism presuppose that the appro-

priateness of distribution procedures is determined by the nature of persons. The question both sides take as crucial to a resolution of the debate is "what is the nature of the 'separateness' of persons?" Were human consciousness collective, in some sense, or were the distinctness of this consciousness (its content or its form?) merely a matter of degree, then it is granted by all that using persons as mere means would be analogous to choosing a present pain for the sake of a future pleasure, and therefore not inappropriate.

A satisfactory defense of the separateness of persons thesis requires a developed theory of mind. When I present my argument for natural rights, I shall give some defense of this thesis. For the time being I shall note that while individual persons constitute unities of the relevant sort for the application of the maximizing principle of choice, groups of distinct persons do *not*. For an individual to choose a pain for one of her present selves so that one of her future selves may be spared a worse pain, all that she need be able to say is that these selves are hers, that these possible and actual pains are ones that *she* experiences. While close lovers may satisfy this condition in some metaphorical way, groups of distinct persons do not. They do not thus constitute unities of the relevant sort to allow application of the maximization principle. Even when a group of individuals is united in desiring the same object or state of affairs, we say that the "group desires *x*" only in the sense that "persons A, B, C, and so on each want *x*." It is important here not to confuse content with form. Two distinct persons may seek the same thing, think the same thought, "feel the same pain," but they do not thereby become a single subject with one set of capacities. Rather, they remain two separate individuals who both desire the same object, of whom it may be correct to say "each is thinking of *y*," or who are so sensitive to each other that they are very conscious of the other's pains. Humans are separate, and to sacrifice one for the sake of another is simply to disregard their separateness.

Humans have distinctive capacities for free and autonomous choice and action. We possess the capacity to formulate and to follow a conception of the good, to live our lives in accordance with a plan which we determine. That this is the case, that we do have these capacities (at a certain stage of human development), seems to be granted by most moral theorists; only its relevance is disputed. Utilitarianism and contractarianism conceive of these features of humans as of secondary importance. Freedom is mainly instrumental to human welfare, according to these theories.⁷ Natural rights theories view human capacities for free and autonomous choice as distinctive, and freedom as an intrinsic good. I shall argue shortly that this view of freedom is reflected in the moral constraints structure of natural rights theories.

If human freedom is of intrinsic value to persons, then to treat Jones as a mere means to the ends of Smith is not merely to use *Jones*, but to

disregard his distinctive capacities. Even to take from Jones to give to Smith, while adequately compensating the former (in terms of his standards), would still be wrong insofar as Jones does not agree to the transaction. Without obtaining his consent, taking from Jones violates his autonomy. Taking from some, while adequately compensating them, is not disrespectful of the essential nature of creatures for whom freedom is not of intrinsic value, or who lack the necessary capacities for autonomous choice. Coercive but mutually advantageous transactions between such beings do not constitute using them as mere means.

According to my understanding of natural rights theory, the separateness of persons generates a prohibition of the treatment of persons as mere means. Thus, according to this theory, there exist moral constraints which oblige us to refrain from using others. Further, the distinctive capacities for free and autonomous choice possessed by mature humans, and the intrinsic value of freedom for them, generates moral constraints on our interference with the liberty of persons. Humans capable of free choice thus are understood as possessing the right to be free from coercion and other interference with their liberty.

Insofar, then, as persons are separate in the relevant sense, it will be wrong to treat them as mere means to the ends of others. And insofar as they possess the capacities necessary for autonomous choice, it will be wrong to coerce them or otherwise interfere with their liberty (to be specified below).

Natural rights theory, as I understand it, views the separateness and the distinctiveness of persons as free and autonomous beings as the ground for the prohibition of the treatment of persons as mere means. Mature humans who possess the capacities necessary for free choice are understood as having the right to be free, a claim-right⁸ which entails a correlative obligation on the part of all others (capable of having obligations) to refrain from interfering with their liberty. That is,

any adult human being capable of free choice (1) has the right to forbearance on the part of all others save to hinder coercion or restraint and (2) is at liberty to do any action which is not one coercing or restraining or designed to injure other persons.⁹

This right is possessed by all persons capable of free choice, regardless of nationality or social origin, and prior to social conventions and agreements. It is, in traditional language, a "natural" right, and I shall refer to it as the right to be free.¹⁰

I turn now to an argument for the natural right to be free. My development and defense of this argument will supplement the very general sketch of the substance and rationale of natural rights theory that I have just given. The basic argument for the natural right to be free is long and complicated, and my defense of some of the premises will be time-consuming. Still, the presentation of an ethical theory here can only be considered a sketch.

The basic argument for the right to be free, then, is as follows. I shall explicate and defend each premise in turn, trying to be as brief as possible.

The right to be free

- A. Persons are separate.
 - B. Human capacities for free and autonomous choice and action are distinctive, and freedom is of intrinsic value to persons.
 - C. If A, then it is wrong to treat persons as mere means to the ends of others.
 - D. If it is wrong to treat persons as mere means, then morality has a moral constraints structure.
 - E. If morality has a moral constraints structure, then there are moral rights.
 - F. If there are moral rights, and if B, then there is the moral right to be free.
 - G. If morality is not conventional in the manner understood by contractarianism, and if there is a moral right to be free, then this right is possessed by all persons capable of free and autonomous choice.
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- H. All persons capable of free and autonomous choice possess the moral right to be free.

The basic idea behind this argument is that a certain conception of persons leads to an understanding of morality as having a certain structure and then to attributing the right to be free to such persons. I shall explicate and defend each premise in turn.

A. *Persons are separate.* As I noted earlier, a satisfactory explication and defense of this premise requires a philosophy of mind and a theory of the self. I have already made some general remarks in defense of this assumption. I shall offer some further comments by way of a criticism of Derek Parfit's conception of the self.¹¹ Parfit contrasts two general views of the self. There is the Complex View: personhood and self-identity consist just in psychological and physical continuity and "connectedness," relations which are a matter of degree. And there is the Simple View: personhood and self-identity are something one either has or does not, something in addition to psychological and physical continuity.

If one accepts the Complex View, or some variant thereof, the differences between persons will be a matter of degree, and relations will be similar to relations between the successive selves (past, present, and future) of the same person. Thus the "separateness" of persons will be apprehended as of no greater importance than the analogous separateness of the successive selves of the same person. Parfit argues that such a conception of the self favors aggregative moral theories over distributive ones,¹² for distributive considerations between persons become less significant as "separateness" is thought to be a matter of degree. "Utilitarianism does not take seriously the

distinctness between persons,"¹³ because it does not conceive of the self as being distinct from others in any greater sense than it is distinct from its own later selves.

It is not obvious that one need adopt a Parfitian Simple View of the self *in order to avoid the consequences of favoring aggregative over distributive theories*. For it is the analogy of similarity, on the Complex View of the self, between the relations of the successive selves of a single person to one another *and* the relations of different persons to one another which favors aggregative theories. Only if the relations between the different temporal selves of a single person are similar to the relations between different persons will the "separateness" of persons be shown to be less morally decisive than on distributive views. For if these relations are disanalogous in important ways, Parfit's argument will not succeed—even if one accepts a Complex View of the self.

Let us adopt a terminology for expressing the distinction between two conceptions of the analogy between the relations of successive selves and the relations of different persons. In its conception of these relations, a social (or moral) theory may be:

- (1) *Collectivist*: if the relations between constituent parts of a single self are relevantly analogous to the relations between different persons, or
- (2) *Individualist*: if the relations between constituent parts of a single self are relevantly disanalogous to the relations between different persons.

In terms of this distinction, utilitarianism is collectivist, Rawlsian contractarianism and Nozickian natural rights theory individualist.

How plausible is a Parfitian collectivist account of the self? I noted earlier that for an individual rationally to choose a present pain so that a future self may be spared a worse pain, all that is necessary is that she be able to claim both of these selves as *hers*. A group of different individuals cannot claim this in an analogous manner when it comes to inflicting a pain on Jones so that Smith may be spared greater suffering. There is no group mind that can claim both Jones' and Smith's selves as its own. Nor are the connections between one's present and future selves so loose that either their unity is illusory or there is greater unity in the present selves of different persons. Groups of different persons just do not constitute unities of the relevant sort to allow application of the maximization principle. Parfit may be confusing content with form. The later selves of persons may be very distant and alien from their present ones—i.e., their content may be very different—but these selves remain *theirs*. The different selves of the same person are *hers*, for they all belong to the same center of consciousness.¹⁴ In this sense it is unclear how even a Complex View of the self can lead to a collectivist conception of the self and social relations. The unity of a person, and of her successive selves, is derived from the unity of consciousness as a

center of thought and action. And it is this unity which is relevant for the application of the maximization principle. Groups of different persons, however much they share the same traditions and forms of life, do *not* possess a unity of this sort.

B. Human capacities for free and autonomous choice and action are distinctive, and freedom is of intrinsic value to persons. Language, we noted earlier, is a distinctive attribute of humans, and it may be argued that human self-consciousness is a by-product of the acquisition of language. Human consciousness is that of single, distinct selves. That is, human experience is the experience of individual and separate centers of consciousness. We may suppose that human self-consciousness and the separateness of persons are a condition for autonomy. For only a being who possesses a conception of her self as a self that is distinct from other selves can achieve mastery over the "external" determinants of consciousness and action. Thus human autonomy is related to the separateness of persons and to their distinctiveness as possessors of language.

Human autonomy acquires an intrinsic value, I claim, because it represents the highest or most complete expression of the distinctive human capacities to be self-determining (within the framework acquired through human socialization) and of the distinctiveness of the human mode of reproduction. Autonomy is self-conscious self-determination. The distinctive human capacities for language, we have assumed, make such autonomy possible. Autonomy is thus the expression of the distinctiveness of certain central human attributes—language, self-consciousness, the distinctness of the self. And human reproduction is social. Humans are self-creating in the sense that they are largely constituted by human culture and in the sense that, once socialized to possess certain capacities, they may contribute to their own development and determination of themselves. Autonomous activity, or self-conscious self-determination, thus represents the most complete expression of the distinctiveness of human reproduction. Self-consciously to determine oneself is to express one's nature as a being who reproduces socially and who is distinguished by the possession of the capacity for autonomous choice. Human autonomy thus acquires intrinsic value for self-conscious social persons.

C. If persons are separate, then it is wrong to treat them as mere means to the ends of others. The prohibition of the treatment of persons as mere means, as I noted earlier, is intended to reflect the fact of the separateness of persons. To deny this prohibition is to deny the moral significance of our distinctness as separate centers of consciousness. Our separateness is derived from our distinctiveness as self-conscious users of language. The importance of welfare is surely, within this framework, secondary to that of our separateness. The maximization of well-being is important to all sentient beings. But human morality is also concerned with what is distinctive of humans, and treating them as mere means disregards charac-

teristics which distinguish humans from other animals. Moralities which permit or enjoin the use of persons as mere means do not do justice to a central feature of human experience.

D. If it is wrong to treat persons as mere means, then morality has a moral constraints structure. Nozick distinguishes between moral theories with "moral goals" structures and ones with "moral constraints" structures.¹⁵ The former sort of theory "assumes that a moral concern can function only as a moral goal, as an end state for some activity to achieve as their result."¹⁶ A moral constraints theory places constraints on actions, limiting permissible acts to those which do not violate the constraints. These constraints are understood as prior to any moral, or other, goal one might want to pursue, in the sense that they must be respected even if this frustrates the attainment of that goal.

I shall assume, though I cannot show, that these two sorts of moral theories are exclusive.¹⁷ By showing that the prohibition of the treatment of persons as mere means cannot be accommodated within a goals theory, I shall show that it requires a moral constraints theory of morality. Assume such a goals theory. The only manner in which it could express such a prohibition is by embedding it in the goal to be achieved. Such a theory would have the structure:

Maximize G, where G is the goal of not treating persons as mere means.

The theory would entail the single imperative, "Act so as to minimize the treatment of persons as mere means." But such a theory would enjoin us to treat persons as mere means when such is conducive or necessary to attainment of goal G. On many occasions it will be thought that only by treating certain individuals as means can the desired goal, or the necessary conditions for that goal, be attained. At a deep level, moral goals theories enjoin the use of persons as mere means and thus do not adequately express the prohibition of the treatment of persons as mere means.

Further, if a moral goals theory obligates persons to seek the desired goal, then the *theory* itself treats persons as mere means insofar as they are obligated to engage in redistributive activity which benefits others at their expense. Utilitarianism obligates others to maximize everyone's welfare, which in itself uses persons as mere means to the well-being of others.¹⁸

The prohibition of the treatment of persons as mere means, then, cannot be satisfied by a moral goals theory. It therefore requires that morality be understood to have a moral constraints structure.

E. If morality has a moral constraints structure, then there are moral rights. This premise merely explicates what is understood by a "moral constraint". We may analyze "it is morally wrong to do *x* to A," in the sense of "there exist moral constraints on our doing *x* to A," in a variety of ways. We could say that, although we are not morally obligated to refrain from doing *x*, our doing so is morally bad (in some definable sense). But constraints indicate obligation, so this analysis will not do. We could say that doing *x* to

A is wrong if it contributes to not-G, where G is a moral goal we are obligated to seek. This is the analysis of the wrongness of an act that teleologists (and closet-utilitarians) give and that I have criticized in the preceding section (on premise *D*). But such an account, I have just argued, cannot account for the existence of the constraint not to treat others as mere means, on *all* of our actions; the most it could do would be to justify the constraint as a general rule of thumb.

We could analyze the wrongness of doing *x* to A as a violation of some duty we have to some other person, B. Thus A would be a "third party beneficiary," to use legal terminology, of our relations with some others. While some wrong acts could be so analyzed, not all wrong acts could be. For such analyses are derivative from an analysis of moral relations between other persons, and the wrongness of violating these could not be given the same analysis.

If there exist moral constraints on our doing *x* to A, and if A is not thus the third party beneficiary of a moral relation between some others, then it will be understood that we are obligated to A not to do *x*, and correlatively that she has claim-right against us that we refrain from doing *x*.

F. If there are moral rights, and if human capacities for free and autonomous choice are distinctive, and freedom is of intrinsic value, then there is the moral right to be free. I must now argue that, given a certain characterization of humans and an understanding of morality as having a constraints structure, there exists a moral right to be free. That is, granting that morality has such a structure suffices to generate this moral right when one assumes a certain conception of persons.

Imagine a world populated by self-conscious social humans (that is, by persons as we have been characterizing them). They develop the capacity for autonomous choice and value freedom for its own sake. Assume that in this world morality has a constraints structure, *but* that there do not exist moral constraints against coercion; there is no right to be free.

In such a world if B forces A to work for him by coercing her, we would not be able to say B's act, in itself, violates an obligation he has to A, or that A has some claim against B which is violated, or that B acts wrongly or unjustly. If B's act is wrong at all in this world, it must be because of the injury he causes A—loss of time, hard work, anxiety, or, in general, loss of utility. But suppose that B adequately compensates A for her loss of utility, such compensation being determined by A's own standards or utility function. Then, even if we assume that loss of freedom represents a large loss of utility for A, there will be nothing wrong with B's act provided he adequately compensates A. In this world if a person may make another better off by forcing her to do some task, then there is no wrong in doing so. In a world where morality has a constraints structure but lacks constraints against coercion, adequately compensated forced labor would not be wrong.

If we think of humans as essentially rational maximizers of subjective

utility—that is, as creatures solely interested in (their) welfare—then this imaginary world does not seem inappropriate to humans. A morality which is primarily or solely concerned with welfare is appropriate for beings who are primarily or solely concerned with (their) welfare. In our imaginary world, morality imposes the condition that all coercion must make the victims better off (or at least no worse off) than they are prior to having their liberty violated. This condition guarantees that their main or sole interest—subjective utility—is not overlooked. Such a morality (or utilitarianism) seems appropriate to such beings.

If we think of humans as creatures for whom freedom has greater than mere instrumental value, as possessors of distinctive capacities which allow them to be free and autonomous, then this morality appears entirely inappropriate to them. For the value of freedom to them is not determined by the contribution it makes to increasing their satisfactions, but is independent of their subjective well-being. In our imaginary world human capacities to choose freely and autonomously are ignored except as they contribute to an individual's utility. The coercion of individuals is regarded as a mere damage or injury, and the violation of their liberty carries no independent value. It would seem, however, that we are no longer talking of humans as we characterized them earlier. As self-conscious autonomous beings, the value of freedom to humans is greater than its contribution to the increase of their satisfactions. A morality with a constraints structure but no rights against coercion cannot reflect the value of freedom or the distinctive characteristics of persons.

Could there be property rights in this imaginary world without constraints against coercion? That is, does the right to control x , where x is some object other than oneself (in order to exclude, for the time being, the question of property rights to one's body), presuppose rights against coercion? Imagine someone forcing another to "give" him her copy of Abbie Hoffman's *Steal This Book*. In our imaginary world it would be wrong for someone to steal another's book, for there exist property rights—indeed the very title of Hoffman's book presupposes a conception of property and hence of property rights. As long as B compensated A for her loss of utility, there would be nothing wrong with his forcing A to give him the book. But would property rights have much purpose in such a world?

Further, given that there are no rights against coercion in such a world, we may assume that the use of force does not require any further justification than the increase of the victim's utility level. B's use of force, in itself, is morally equivalent to A's forcibly repelling B's attack; as far as coercion goes, humans are in a pre-moral state of nature. Thus A's right to his book will not entail a right to, or a justification of, the use of force to defend his property, for coercion, *in itself*, requires no justification. But then what is the point of property rights? They merely carve up the world into "owned" parts without much consequence, since property owners may be coerced (or

just killed¹⁹) to give up "their" property as long as their utility is not diminished. A constraints morality without rights against coercion does not seem to have much point.

If "a claim-right to x " is analyzed as entailing a justification for enforcing the right,²⁰ then property rights in our imaginary world would be conceptually odd. For they would entail a justification where none is needed. The interference with another's liberty, in itself, requires no justification since there are no constraints against coercion. At the very least, the entailment of such a justification by a property right to x would be superfluous.

I conclude, therefore, that a constraints morality that lacked rights against coercion would be inappropriate for humans as we have characterized them. A constraints morality for self-conscious free persons entails rights against coercion.

It is not yet clear who has these rights or who falls within the scope of morality. Thus we need the last premise.

G. If morality is not conventional in the manner understood by contractarianism, and if there is a moral right to be free, then this right is possessed by all persons capable of free and autonomous choice. Traditional contractarianism understands morality to be conventional in the sense of being a sort of social agreement between members of a society, or between all those who stand to benefit mutually from cooperation.²¹ Moral rights will not be held universally on the contractarian account, given that many people will not be in the conditions of justice which give rise to moral agreements. If I wish to argue that all persons capable of free choice possess the right to be free, I must reject the contractarian's conventionalism, at least with regard to the basic constraints or the substructure of morality.

The natural condition of humans, according to contractarianism, makes morality advantageous, but benefit is a necessary condition for reconciling moral obligation with rationality. But if my argument (premise C) that the separateness of persons generates a basic prohibition of the treatment of persons as mere means is correct, or persuasive, then the conventionalism of basic moral constraints is blocked.

Further, contractarian theories do not argue that morality is the product of a literal agreement or convention. The social contract is a reconstruction of morality as the terms of a mutually beneficial bargain or agreement. But contractarian theories regard moral obligations and their enforcement as justified if individuals benefit from morality in accordance with the terms of the hypothetical agreement. That is, benefit from the system of rules of morality, in accordance with the derived principles, is a sufficient condition for the imposition and enforcement of these rules, even if individuals do not *actually* consent to them. Benefit rather than consent is the source of moral obligation for contractarianism; consent is introduced in its hypothetical form only to ensure that the terms of the original agreement are mutually

advantageous, on the assumption that the individuals are the best judges of their wants and ends. Contractarianism is in agreement with utilitarianism (only) insofar as they both place welfare (or benefit) prior to freedom or actual consent.

If my arguments for premises *B* and *F*, that is, for the distinctiveness of human capacities for autonomy and the intrinsic value of freedom, have been persuasive, then we may assume that contractarian conventionalism is unacceptable for the foundations of morality insofar as it gives priority to welfare over freedom.

This completes my argument for the core of a natural rights theory of morality. All persons capable of free and autonomous choice possess the moral right to be free.

NOTES

1. This paper is an excerpt from a longer piece written in 1977. I am grateful to Lorene M. G. Clark, Peter Danielson, and David P. Gauthier for comments. I no longer believe that the argument presented is correct—premises *G* and *C* do not seem to me to be true. Also, Wayne Summer has pointed out to me that the discussion of Parfit is not an effective rebuttal of his views. But I hope that someone may nonetheless find enough value in the argument to be able to develop it further, for we need to have before us a more complete, better developed natural rights theory than we now have.
2. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).
3. *Ibid.*, pp. 32–34.
4. J. J. C. Smart, "An Outline of a System of Utilitarian Ethics," in Smart and B. Williams, *Utilitarianism For and Against* (Cambridge: Cambridge University Press, 1975), p. 37.
5. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. 27.
6. Concerning the Complex View of the self, Parfit writes: "We regard the unity of each life as in its nature less deep, and as a matter of degree. We may therefore think of the boundaries between lives to be less like those between, say, the spaces on a chessboard, and to be more like those between different countries. They may then seem less morally decisive." Derek Parfit, "Later Selves and Moral Principles," in *Philosophy and Personal Relations*, ed. A. Montefiore (New Haven, Conn.: Yale University Press, 1973), p. 156.
Parfit's basic argument may be found in Sidgwick: "I do not see why the axiom of Prudence should not be questioned, when it conflicts with present inclination, on a ground similar to that on which Egoists refuse to admit the axiom of Rational Benevolence. If the Utilitarian has to answer the question, 'Why should I sacrifice my own happiness for the greater happiness of another?' it must surely be admissible to ask the Egoist, 'Why should I sacrifice a present pleasure for a greater one in the future? Why should I concern myself about my own future feelings any more than about the feelings of other persons?' . . . Grant that the Ego is merely a system of coherent phenomena, that the permanent identical 'I' is not a fact but a fiction, as Hume and his followers maintain; why, then, should one part of the series of feelings into which the Ego is resolved be concerned with another part of the same series, any more than with any other series?" Henry Sidgwick, *The Methods of Ethics*, 7th ed. (New York: Dover, 1966), bk. 4, chap. 1, pp. 418–19. But see also Parfit's note 32 in "Later Selves and Moral Principles," p. 164.
7. For utilitarianism, freedom, autonomy, self-development, or whatever, are to be maximized only as they contribute to overall happiness. As is well known, this creates problems for J. S. Mill's argument in *On Liberty*. But see Gerald Dworkin, "Paternalism," *Monist* 56 (June 1977): 64–84; and Rolf Sartorius, *Individual Conduct and Social Norms* (Encino, Calif.: Dickenson, 1975), pp. 144–61.

The claim that contractarianism also understands freedom as only of instrumental value may be more controversial. Contractarian theories of *morality* and *justice*, as opposed to contractarian theories of *government*, I understand to be those which seek to reconstruct morality as the outcome of a hypothetical convention, agreement, or bargain between pre-moral or non-moral agents. See David Gauthier, "The Social Contract: Individual Decision or Collective Bargain?" in *Foundations and Applications of Decision Theory*, ed. C. A. Hooker, et al. (Dordrecht: D. Reidel, 1978), 2:47-67; and David Lewis, *Convention: A Philosophical Study* (Cambridge, Mass.: Harvard University Press, 1969), chaps. 1 and 3, for accounts of the nature of such contracts. By this definition Hobbes, Hume, Rousseau (on some readings), Harsanyi, and Rawls are contractarians. On Hume, I am in agreement with Gauthier, "David Hume, Contractarian," *Philosophical Review* 88 (January 1979): 3-38. Rawls, of course, is not consistent in his contractarianism. The notion of the original position, he says in places, "already includes moral features and must do so. . ." (Rawls, *A Theory of Justice*, p. 85). But Locke and Nozick are not contractarians, for they assume that morality exists in the state of nature and is not conventional.

Contractarianism, in general, starts from a recognition of the freedom or autonomy of humans, namely, the want of a right reason provided by nature. It is because we are free that morality must be understood as derived from rationality. But this is not to claim that freedom assumes priority to welfare or utility. Contractarianism is in agreement with utilitarianism in placing welfare above freedom. Given that the foundation of morality is merely a *hypothetical* agreement, contractarian theories take being benefited by a social practice, in accordance with the terms of the original agreement, as sufficient, independent of *actual* agreement or consent, to oblige one to contribute one's share. I shall return to this point later. For the time being it is sufficient to note that for contractarianism, benefits alone may generate obligations, independent of actual consent. The hypothetical agreement has the main function of ensuring that the terms of morality are mutually advantageous, on the assumption that individuals are the best or only judges of their own interests. Were freedom to be prior to welfare in importance, then *actual* consent to the original contract would be required. (Rawls may seem to be an exception to this account. But look at his "general," as opposed to his "special," conception of justice.)

8. I basically follow Wesley Newcomb Hohfeld's analysis of a claim-right in *Fundamental Legal Conceptions*, ed. W. W. Cook (New Haven, Conn.: Yale University Press, 1923), though I modify his account of a "privilege." See also H. L. A. Hart, "Are There Any Natural Rights?" in *Political Philosophy*, ed. A. Quinton (Oxford: Oxford University Press, 1971), pp. 53-66, for the distinction between "a right" and "a liberty". My formal definitions are:
 - (1) *a right*: A has a right (claim-right) to *x* if and only if some person(s) B has an obligation to A in respect to *x*;
 - (2) *a liberty*: A has a liberty (privilege) to *x* if and only if he does not have an obligation to others to refrain from *x* or to do *x* (i.e., others have no rights against A in respect to *x*).
9. I am indebted to Hart, "Are There Any Natural Rights?," for this statement of this right, as well as for the inspiration for parts of the argument to follow.
10. Traditionally, "natural" rights have been distinguished from "conventional" ones in terms of some or all of the following characteristics:
 - (1) natural rights are those rights (if any) a person has in the state of nature (suitably defined);
 - (2) they are held prior to and independently of institutional arrangements (e.g., legal systems), conventions, or agreements;
 - (3) they derive from or have their basis in human nature or activity, they flow from some attribute(s) of the person rather than of the situation;
 - (4) they are basic and indefeasible, and they provide the framework within which teleological moral considerations (if any) may operate;
 - (5) they are self-evident; and
 - (6) they include rights against coercion.

The right to be free I shall defend has these characteristics, with the exception of (5) depending on the meaning of "self-evident." It is interesting to note, though perhaps this is

commonplace now, that Hobbes is not a natural rights theorist in the classical sense. For the "right of nature" is but a mere liberty, as he notes in chapter 14 of the *Leviathan*.

11. Parfit, "Later Selves and Moral Principles."
12. See Brian Barry, *Political Argument* (London: Routledge and Kegan Paul, 1965), pp. 43-44, for an account of this distinction.
13. Rawls, *A Theory of Justice*, p. 27.
14. We seem to attribute the "multiple personalities" of Eve to a single center of consciousness in "The Three Faces of Eve." Complex questions in the theory of personal identity are at issue here, however.
15. Nozick, *Anarchy, State, and Utopia*, pp. 28-29. See also William K. Frankena's account of "teleological" and "deontological" moral theories in *Ethics*, 2nd ed. (Englewood Cliffs, N. J.: Prentice-Hall, 1973), pp. 14-17.
16. Nozick, *Anarchy, State, and Utopia*, p. 28.
17. *Contra* Nozick: "Unfortunately, too few models of the structure of moral views have been specified heretofore, though there are surely other interesting structures. Hence, an argument for a side-constraints structure that consists largely in arguing an end-state maximization structure is inconclusive, for these alternatives are not exhaustive" (*Anarchy, State, and Utopia*, p. 29n). I am not, however, persuaded the example he later (p. 46n) gives of a structure which fits neither model adequately.
18. Nozick writes: "It may seem to many to be a necessary truth that 'right,' 'ought,' 'should,' and so on, are to be explained in terms of what is, or is intended to be, productive of the greatest good, with all goals built into the good" (*Anarchy, State, and Utopia*, p. 28). Much of twentieth-century moral philosophy has followed G. E. Moore in this assumption: "What I wish first to point out is that 'right' does and can mean nothing but 'cause of a good result,' and is thus identical with 'useful'; whence it follows that the end always will justify the means, and that no action which is not justified by its results can be right." Moore, *Principia Ethica* (Cambridge: Cambridge University Press, 1971), p. 147.
19. Consider the case of a rich old man living in our imaginary world. We give him some mescaline and keep him tripping for a couple of weeks. Once his net satisfactions total more than his expected utility for his remaining years, we give him some mescaline laced with arsenic and take possession of his fortune. (He left no will.) In our imaginary world nothing would be wrong with this.
20. Kant thinks that it "follows by the law of contradiction that right entails the authority to apply coercion to any one who infringed it." Immanuel Kant, *The Metaphysical Elements of Right*, Ak. p. 231. Mill also subscribes to this analysis of a right: "It is part of the notion of duty in every one of its forms, that a person may rightfully be compelled to fulfill it. Duty is a thing which may be *exacted* from a person, as one exacts a debt. . . . duties of perfect obligation are those duties in virtue of which a correlative *right* resides in some person or persons; duties of imperfect obligation are those moral obligations which do not give birth to any right." J. S. Mill, *Utilitarianism*, chap. 5, pp. 14-15.
 Hart argues that it is "a very important feature of a moral right that the possessor of it is conceived as having a moral justification for limiting the freedom of another. . ." ("Are There Any Natural Rights?" p. 56).
 Nozick makes some very puzzling criticisms of Hart's analysis. He (wrongly) claims that Hart believes that "someone's being under a special obligation to you to do A. . . gives you, not only the right that they do A, but also the right to force them to do A," (*Anarchy, State, and Utopia*, p. 91). And then he accuses Hart of unnecessarily shoring up the whole structure of rights and obligations by adding rights of enforcement. "True one has the right to enforce these further obligations, but. . . Perhaps one must merely take the moral realm seriously and think one component amounts to something even without a connection to enforcement." I do not understand Nozick here. For he seems to do precisely what Hart does, namely, assume that "a right to x" entails a justification of enforcement.
21. See Hume, Hart, and Rawls on the "circumstances of Justice."