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A Radical's Critique of Rights

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'The truth', contends Alasdair MacIntyre, is that 'there are no natural or human rights'. Belief in human rights is at 'one with belief in witches and in unicorns', since 'every attempt to give good reasons for believing that there *are* such rights has failed'.¹ His contention owes its renown to its location in *After Virtue: A Study in Moral Theory*, which has been massively influential in the revival both of what others call virtue ethics and of what he calls Aristotelianism. If the contention is to be properly understood and evaluated, it must be contextualized within his wide (and still developing) critique of modern ethics and politics. That is what this paper does.

MacIntyre's contention may be compatible with the expressly 'political' conception of human rights that others, beginning with John Rawls, have been elaborating over the past couple decades. Human rights are not bestowed by nature but they have been effectively posited by liberal states in domestic law, in international law, and amongst their reasons for acting diplomatically and militarily. In this historical, legal, and political sense, there *are* such things as human rights. The continuing significance of MacIntyre's contention for advocates of human rights is that such rights are not self-justifying. If there is to be some general justification of human rights, that justification will be liberal. If non-liberals are to be persuaded that certain rights *should* be enforced, it cannot be enough to simply assert — as liberals have traditionally asserted — that they already *are* human rights.

I thank Alasdair MacIntyre and two anonymous reviewers for corrections and improvements to this text.

¹ Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 3rd edn. (Notre Dame: University of Notre Dame Press, 2007), 69.

Real Rights

MacIntyre's critique of natural rights in *After Virtue*, his second monograph on the history of moral philosophy, is far better known than his defence of rights in his first, *A Short History of Ethics* (hereafter, *Short History*). Nonetheless, if we are to properly understand his critique, it would be instructive to begin with that defence. The defence was against what he described as the normal form of 'attack upon the concept of natural rights'. This normal, positivist attack maintains that 'the claim to natural rights is nonsensical' because, first, 'a right can only be claimed or exercised in virtue of a rule which entitles a certain class of people to claim or exercise the right' and, also, that such a rule can only be posited by a sovereign law-giver. His defence was that this attack missed the point that claims of natural right 'always' imply some further 'reason for holding' that people ought to have those rights.²

MacIntyre has always advocated 'securing the rights of deprived and oppressed individuals and groups' against injustice,³ whilst agreeing with positivists that in reality a right can only be exercised under some rule that entitles a certain class of people to such a right. Where he has always disagreed with legal positivists is in denying that such rules, and therefore rights, can only be posited by the power of a sovereign state. By the time of *Short History*, he was well familiar with work of sociologists and anthropologists on customary rules and with the work of Ludwig Wittgenstein, who had pointed beyond the Enlightenment's critique of reason to the analysis of language and, in his late *Philosophical Investigations*, advanced that analysis in terms of shared rule-following, usage, and meaning. As MacIntyre said in beginning his own book, 'to understand a concept, to grasp the meaning of the words which express it, is always at least to learn what the rules are which govern the use of such words and so to grasp the role of the concept in language and social life'.⁴ What vivified his attempt at such understanding was his appreciation of the lesson of the history of Kantianism: that the social, human, or moral sciences differ from the methodology of physics most

² Alasdair MacIntyre, *A Short History of Ethics: A History of Moral Philosophy from the Homeric Age to the Twentieth Century*, 2nd edn. (London: Routledge Classics, 2002), 149.

³ Alasdair MacIntyre, *Ethics in the Conflicts of Modernity: An Essay on Desire, Practical Reasoning, and Narrative* (Cambridge: Cambridge University Press, 2016), 78.

⁴ MacIntyre, *Short History*, 2.

basically in requiring an understanding of how and why their subjects change historically, and that this requires an understanding of people's changing ideas and reasons for acting.

It was therefore no simple task that MacIntyre set himself in *Short History's* tracing of the use of protean moral concepts through history, within the acquitting of which he defended past usage of the language of natural rights. More precisely, he defended its use during the English Civil War by the Levellers. That usage was part of their shared practice of fighting for what they claimed as their rights, rather as his theorizing had accompanied his participation in workers' struggles to organize and in the Northern Irish struggle for civil rights. As he said (adapting the last of Marx's theses on Feuerbach), 'understanding the world of morality and changing it are far from incompatible tasks'.⁵ In thinking about the history of ethics it is therefore unsurprising that his interest was aroused by the work of such Marxist intellectual historians as Christopher Hill and C.B. Macpherson on the way in which the idea of rights had been deployed by revolutionaries, especially in the famous Putney Debates of 1647. This was the rediscovery of a revolutionary heritage that had been hidden by other intellectual historians' preoccupation with canonic texts, and he followed Macpherson in inserting between his own accounts of Hobbes and Locke a eulogy to the Levellers' invocation of rights in justifying their revolt against monarchical despotism.

According to Macpherson, the Levellers held that 'man's essence [is] freedom', that freedom comprises 'proprietaryship of one's own person and capacities' and that freedom's expression consists in 'asserting human rights rather than property rights', even if, in making 'freedom a function of proprietaryship', they 'paved the way, unwittingly, for Locke and the Whig tradition' of 'full possessive individualism'.⁶ The Marxist logic of this account is that the Levellers played a progressive role by facilitating

⁵ MacIntyre, *Short History*, 3.

⁶ C.B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, 1962), 142, 150, 158. This was long considered a crucial issue in the history of the idea of rights, with James Tully arguing for greater continuity in Locke's reception of Leveller arguments in his *A Discourse on Property: John Locke and his Adversaries* (Cambridge: Cambridge University Press, 1980). For a Marxist critique of both Macpherson, for being overly philosophical and insufficiently Marxist, and Tully, for his Cambridge School historical attention to textual but not to socio-economic context, see Neal Wood, *John Locke and Agrarian Capitalism* (Oakland, University of California Press, 1984). Following what may be called the victory of human rights over Marxism in the 1980s, the fashion changed to that of inventing a longer and less disruptive history for natural and human rights.

the crucial capitalist idea of individuals' inalienable rights to alienable property and that they did so through the idea of a contract, between a state and its property-owning subjects, that they drew by analogy with contracts of sale, loan, and employment. As MacIntyre observed in charging Hobbes' idea of 'an *original* contract' with 'self-contradiction', the rules of any formal contract presuppose shared rules of promise-keeping⁷ and promising confers rights and duties. What he added about the Levellers is that by presenting 'the doctrine of natural rights in its revolutionary form' they 'mark a turning point in the history of morality', preparing the way for Locke and others to develop 'the argument that natural rights derive from a moral law which we apprehend by reason'.⁸ The Levellers' revolutionary doctrine was 'that no one has a right against me unless he can cite some contract [and] my consent to it', 'and "anyone" here includes the state'. As MacIntyre noted, it follows that 'most claims of most states to exercise legitimate authority over us are and must be unfounded'.⁹ He himself thereby used the argument to indicate that such states lack the legitimacy they claim for their sovereign, coercive power. On his account, if contractarianism was intended by Hobbes and Locke as a theoretical solution to a practical problem of political obligation, then it fails.

Notwithstanding this earlier defence of claims to natural rights, it was the positivist proposition that MacIntyre was to advance in *After Virtue* 'claims to the possession of rights ... presuppose ... the existence of a socially established set of rules'. The meaningfulness, intelligibility, and effectivity of such claims presuppose 'the existence of particular types of social institution' which 'are in no way universal features of the human condition'. In the absence of such institutions, 'the making of a claim to a right would be like presenting a check for payment in a social order that lacked the institution of money'. it would not be 'an intelligible type of human performance'. The 'sets of rules' that confer rights 'always have a highly specific and socially local character' and the lack of universality of any particular set of rights, and indeed of the very idea and practice of rights, is revealed by studying the history of the theory and practice of ethics. 'As a matter of historical fact such types of social institution' that are necessary for the claiming of rights 'have not existed universally in human societies', and the 'sets of rules' constitutive of such institutions

⁷ MacIntyre, *Short History*, 131-32.

⁸ MacIntyre, *Short History*. 148, 147, 155; MacIntyre's emphasis. In making his own point, MacIntyre refers also to the communist (and no less Protestant) Diggers.

⁹ MacIntyre, *Short History*, 151.

'only come into existence at particular historical periods under particular social circumstances'.¹⁰ The institutions of alienable land ownership, free wage labour, the free market, and of the sovereign state with the rule of its universalizing and individualizing law were coming into full existence by the time of the Levellers, and the claims they made were therefore fully intelligible and debatable.

MacIntyre had taken the concept of natural rights to be more than 'just ... a way of expressing a moral principle that all men ought to have certain rights recognized and protected by positive law', and this is why he averred that the concept always implies a *reason* for holding that people ought to have those rights recognized.¹¹ However, to imply a reason is not tantamount to setting it out. In *Short History*, he refrained from subjecting the logical commitment of those making claims to natural rights to full scrutiny. The practical and historically progressive *use* to which the concept was put by the Levellers and their revolutionary successors seemed ample justification for him to refrain from philosophical interrogation. This was to change. Now, MacIntyre asserts that there are *no* 'sound arguments for asserting the existence of such rights', admitting that 'to show this we would have of course to proceed argument by argument ... identifying in each case the particular argumentative failure whilst maintaining that "this can be done"'.¹² Although this exhaustive task of refutation is one that MacIntyre has often undertaken in his teaching, it is not one that he has allowed to submerge his own standpoint.

What has not changed is MacIntyre's sympathy for those deprived and oppressed individuals and groups who claim and fight for rights, both past and present. As a mark of such sympathy, and as a continuing reminder of Britain's revolutionary heritage, he has continued to refer to the Levellers. However, the context has changed. In each of his most important books he has opposed the Levellers to David Hume or Edmund Burke, Britain's greatest philosophers of conservatism. In *After Virtue* he noted Hume's opposition to their criminal 'enthusiasm', fanaticism or, as it would now be called, extremism.¹³ In his third and final history of ethics, *Whose Justice? Which Rationality?*, he opposed

¹⁰ MacIntyre, *After Virtue*, 67.

¹¹ MacIntyre, *Short History*, 149.

¹² MacIntyre, *Conflicts*, 78.

¹³ MacIntyre, *After Virtue*, 48-49, 230.

them in the same way to Burke.¹⁴ In his most recent book, *Ethics in the Conflicts of Modernity*, he again opposes them to Hume and, now, to Hume's identification of 'the standpoint of ... what he takes to be natural and universal morality, with an uncompromising endorsement of the values of the eighteenth century British social and economic order' and, more precisely, of 'established property rights'. Against these values and rights MacIntyre pits not only the Levellers but also those of their successors whose actions were — in the words of the great Marxist historian, E.P. Thompson — similarly “informed by the belief that they were defending traditional rights and customs”.¹⁵ In England and elsewhere, capitalism superseded both shared rights to common land and the feudal hierarchy of reciprocal rights and duties. Those dispossessed of their land and of their traditional protections were forced to contract into waged work for others, so that 'customary rights' were replaced by “the rights of private proprietors”.¹⁶ With Marx, MacIntyre explains the idea of natural rights as an attempt to make theoretical sense of historical fact.

It is now all too tempting to ignore history and politics and to portray all moral claims to rights as universalist justifications. All is not so, as has been noted by non-Marxist as well as Marxist historians. The justice of claims to rights has often been grounded in 'immemorial, sacred custom'. Customary rights are socially recognized but not posited by states. Indeed, even insurgent rights can be grounded in history. Levellers justified their attack upon the rights of extant common law by looking 'backwards to Anglo-Saxon liberty', before imposition of a Norman yoke, in a 'historicist' that warranted 'radical criticism of existing society' and an innovative but unstable appeal to natural but usurped rights¹⁷ that would not have withstood philosophical interrogation.

The history within which MacIntyre now locates the Levellers is no simple narrative of moral philosophy and corresponding social forms but, rather, one of conflicting practices of justice, rationality, and rights. On this account, they were less precursors of a Lockean theory and capitalist

¹⁴ Alasdair MacIntyre, *Whose Justice? Which Rationality?*, University of Notre Dame Press, 1988, 218.

¹⁵ MacIntyre, *Conflicts*, 83-84, quoting E.P. Thompson, *Customs in Common*.

¹⁶ MacIntyre, *Conflicts*, 97, quoting the first volume of Marx's *Capital*.

¹⁷ J.G.A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century*, 2nd edn. (Cambridge: Cambridge University Press, 1987), 16, 125-126; cf. 319-321 for revision of the original argument of 1957.

practice of 'possessive' or 'acquisitive' individualism than the intellectual forebears of all of those who have resisted the depredations of capitalism and liberalism in making and defending their own shared ways of life. In celebrating such rebels, Thompson, MacIntyre, and others have promoted a 'history from below' that differs from Marx's materialist reconception of Kant and Hegel's teleological history in focusing on ordinary actors' intentional 'agency' and 'education of desire'.¹⁸ This radical reconfiguring of Marx's conception of history has been accompanied by a deconstruction of the Marxist idea of ideology into that of rival traditions, each making its own claims to truth. When he notes that the kind of 'rights and customs' defended by those celebrated by himself and Thompson were 'excluded from recognition by Hume's moral scheme'¹⁹ he develops the Marxist idea that theory can function (whether, on the part of its authors, meaningfully but unwittingly *or* deliberately and instrumentally) to conceal practical and conflicting interests. MacIntyre's difference from Marx is that he refuses to reduce morality and practicality to materiality, and this is because he refuses their earlier separation by Kant.

Long ago MacIntyre tried to dissociate Hume from the argument that one cannot infer evaluative from factual propositions, which logical positivists then called the naturalistic fallacy or Hume's Law. Against this, he argued that such a philosophical proposition of 'the autonomy of ethics' originated only with Kant.²⁰ Nonetheless, he has come to identify Hume as the originator of a tradition that has issued in an emotivist or expressivist account of ethics, wherein moral claims are understood as expressions of the speaker's emotions, passions, preferences, or desires, and such impulses are thought unsusceptible to a reason that is merely instrumental and therefore unable to educate desire. This tradition he has always rejected, as he has always rejected another tradition in the origins of which Hume may also be implicated: the utilitarianism that takes pleasures as given and poses morality as the impersonal pursuit of their

¹⁸ See especially E.P. Thompson, *The Making of the English Working Class*, 2nd edn. (Harmondsworth: Penguin, 1968) and *Customs in Common* (Harmondsworth: Penguin, 1991), and, for commentary, Harvey J. Kaye, *The Education of Desire: Marxists and the Writing of History* (London: Routledge, 1992), ch. 4, Paul Blackledge, *Reflections on the Marxist Theory of History* (Manchester: Manchester University Press, 2006) ch. 5, and Kelvin Knight, 'Agency and Ethics, Past and Present', *Historical Materialism* 19:1 (2011), 145–174.

¹⁹ MacIntyre, *Conflicts*, 84.

²⁰ Alasdair MacIntyre, 'Hume on "Is" and "Ought"', *Philosophical Review* 68:4 (1959), 451–468 at 468.

sum. Against such empirical premises for ethics Kant argued for the autonomy of practical reason from natural motives and causes, so that propositions about what is categorically imperative should be appraised regardless of how the world is and ought to be acted upon regardless of one's own desires. Such abstraction of morality from human nature and its inclinations MacIntyre has always rejected as psychologically unrealistic. He has therefore always opposed the two main moral theories facing one another across the modern world: those of utilitarians and of Kant, pleasure and duty, aggregation and individualism, consequentialism and universalism, welfare and rights. His deepest charge against Marxism has long been that it failed to sustain any alternative, so that Marxist ethics always succumbed to ideas of either utility or rights. Therefore, whereas Thompson narrated the history of heroic but abortive resistance to capitalism, MacIntyre resolved to devote himself to tracing the ethical road that Marx failed to take. For this reason, in 1970 he abandoned the British and left for the American academy.

Political Mistakes

In saying in *Short History* that the claims of *most* states to exercise legitimate authority are unfounded on contractarian grounds, MacIntyre appears to have entertained the possibility that the USA was constituted as a legitimate political authority. He presented Locke's *Two Treatises of Government* as expressing the principles of England's own constitutional revolution of 1688 and those same general principles as having been invoked 'by the Americans in 1776'.²¹ In 1976, in America, he contested contractarian claims of legitimacy indirectly by denying the idea of natural rights. 'The United States', he argued, 'has the great disadvantage of being the only political society so far which is founded upon a philosophical mistake'.²²

The basic philosophical mistake upon which MacIntyre considers the American republic to have been founded was that of according a 'fictitious philosophical status' to citizens' rights.²³ This philosophical mistake would seem to have been made by politicians, for political reasons. It was made by Jefferson in justifying America's Declaration of Independence, soon after it had been made by his compatriot George

²¹ MacIntyre, *Short History*, 152, 219.

²² Alasdair MacIntyre, 'Power and Virtue in the American Republic', in Robert Hannaford et al., *The Case For and Against Power for the Federal Government* (Ripon: Ripon College Press, 1976), 18.

²³ MacIntyre, 'Power', 18.

Mason in justifying the independence of Virginia. By implication it was then also made by Jefferson's friend James Madison in composing America's Bill of Rights, insofar as the rights thereby written into the federal constitution presupposed it to be the responsibility of the newly federated states to protect rights that were more natural and no less unconditional on the performance of duties to a political community. The inevitable result of the mistake was that a plethora of rules and regulations would substitute for morality,²⁴ and that a plethora of lawyers would be required to interpret those rules and to contest one another's proposed interpretations and applications. Such has been the fate of America.

A secondary and more practical mistake was the founders' failure to recognize that this liberal idea of natural and unconditional rights is incompatible with the republican idea of virtue. This was perhaps more an error of Mason, and certainly of Jefferson, than of Madison, let alone of such consistent federalists as Alexander Hamilton. For Jefferson, as a convinced republican, freedom required not only citizens' rights but also their good character and their virtuous activity and participation. The idea of a republic is that of a political community of citizens ruling their shared public life collectively (even if in its modern expression, religion is considered more a private than a public, civil matter) rather than allowing themselves to be ruled by some separately sovereign, Leviathan state. In a republic, it is the role of citizens themselves to maintain justice, order and defence; under the rule of a sovereign state, they are relieved of this role. For citizens to perform such a role, MacIntyre proposes, they must have 'a shared and relatively homogeneous morality'.²⁵ Viewing America from across the Atlantic, he had already credited it with such a morality. 'America has been from the first ... a homogeneous society in which the established values of the status quo are egalitarian', even whilst those *same* values are shared by *different* classes,²⁶ and 'American religion', which he viewed as untheological and effectively secularized, successfully imposes 'the norms of American homogeneity upon immigrant variety'.²⁷ Now, though, he switched his attention from American religion to American politics. One reason for this is surely the

²⁴ Alasdair MacIntyre, 'Regulation: A Substitute for Morality', *Hastings Center Report* 10:1 (1980), 31-33.

²⁵ MacIntyre, 'Power', 18.

²⁶ Alasdair MacIntyre, *Secularization and Moral Change* (Oxford: Oxford University Press, 1967), 33.

²⁷ MacIntyre, *Short History*, 106.

publication, the previous year, of J.G.A. Pocock's magisterial *The Machiavellian Moment*, which traced republican ideas, and especially the idea of civic virtue, from Aristotelian and Roman origins through the Italian Renaissance and English Civil War to America's republican founding. Like Pocock, MacIntyre saw republicanism as 'endangered ... by commercialism and individualism'. These dangers are, he continued, products of 'free markets and the capitalist ethos'. Commercialism substitutes interests for virtue, whilst individualism privatizes morality. 'At the level of moral philosophy', republicanism's 'language of virtue' conflicts with their 'language of natural rights. And yet the language of natural rights is the language of the constitutional documents'.²⁸ The practical mistake of Jefferson and his compatriots was to fail to notice this conflict and the consequent danger that promoting individuals' private rights would undermine public virtue.

What MacIntyre would likely have found most suggestive in Pocock's book is the idea of a 'sociology of virtue'.²⁹ The principal exponent of such a sociology in America was none other than Jefferson, the most influential exponent also of the idea of natural rights. For Jefferson, it was 'the mode of life of the independent farmer' which was most conducive to the cultivation of virtue. What such a sociology should have told Jefferson, but did not, was that commercialism, individualism and natural rights conduce to virtue's corruption.³⁰ This was a danger detected by Pocock, following such eighteenth-century sociologists of virtue as Adam Ferguson. For Pocock, the danger represented a change in the 'sociology of liberty'. Previously, the two sociologies had been complementary since liberty's primary source was identified with the widespread 'role of arms in society';³¹ now they conflicted, as the role of arms was replaced by that of private commerce. On this view, the Second Amendment's 'right of the people to keep and bear Arms' is a vestige of ancient republicanism's demand that citizens be prepared to fight and die for their political community, denying to the modern, federal republic that sovereign monopoly of the means of coercion that would allow it to usurp citizens' freedom. Even so, the granting of this as an unconditional right, apart from any corresponding duty to bear and use arms in

²⁸ MacIntyre, 'Power', 18.

²⁹ J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975), 486; MacIntyre, 'Power', 17.

³⁰ MacIntyre, 'Power', 18.

³¹ Pocock, *The Machiavellian Moment*, 211.

defending the republic against external or internal threats, represented the reconceptualization of citizenship as the possession of a set of formal rights and its detachment from any idea of personal character and civic virtue.

MacIntyre was to generalize his accusation of 'practical contradiction embodied in the thought of the founding fathers'³² into an indictment of modern, sovereign states everywhere. Americans' identification of the republican 'cause of America, understood as the object of patriotic regard, and the cause of morality, understood as the liberal moralist understands it', was 'a central conceptual confusion ... required for the survival of a large-scale modern polity which has to exhibit itself as liberal in many institutional settings, but which also has to be able to engage the patriotic regard of enough of its citizens, if it is to continue functioning effectively'. In this, we all 'inhabit a kind of polity whose moral order requires systematic incoherence in the form of public allegiance to mutually inconsistent sets of principles'.³³ What Pocock and others posed as two rival political languages or traditions, and what some American intellectual historians have traced through their history as rival Jeffersonian and Hamiltonian traditions, MacIntyre poses as contradictory values and activities that are nonetheless each functional to the maintenance of a modern, liberal state, which behaves normally 'as if it were no more than a giant, monopolistic utility company', requiring 'us to fill in the appropriate forms in triplicate', but sometimes as if it is 'the sacred guardian of all that is most to be valued, demanding that we be prepared to die for it'.³⁴ In this respect, even liberal states cannot afford to regard rights as always unconditional.

In *After Virtue* MacIntyre still posed 'eighteenth-century republicanism' much as Pocock conceived it, as a 'serious claimant for moral allegiance'. Where American republicans were right and their French, Jacobin followers wrong was in acknowledging that modern states cannot impose the classical republican 'ideal of public virtue'.³⁵ As MacIntyre has said more often and more recently, liberals are right and communists, communitarians and republicans wrong insofar as the latter might wish to use state power for such a purpose. If there is now to be

³² MacIntyre, 'Power', 18.

³³ Alasdair MacIntyre, 'Is Patriotism a Virtue?', in Ronald Beiner ed., *Theorizing Citizenship* (Albany: State University of New York Press, 1995), 228.

³⁴ Alasdair MacIntyre, 'The *Theses on Feuerbach*: A Road Not Taken', in Kelvin Knight ed., *The MacIntyre Reader* (Cambridge: Polity Press, 1998), 227.

³⁵ MacIntyre, *After Virtue*, 238.

built a politics of the common good, it must be created from the level of 'the labor movement, the local community, the church, the school, the household'.³⁶

This conclusion differs from that of the political theory of republicanism that has arisen from the history of ideas practiced by the famed Cambridge School. If this school began with Laslett's contextualist uncovering of the real intentions informing Lockean liberalism, its greatest achievement has been the identification and revivification of a republican rival to liberal tradition. In retrospect, and viewed in its own discursive context, that achievement is questionable. It occurred at the time when Marxism was dying and social democracy failing, when America's Cold War liberalism was discredited by events in the Whitehouse, Chile, and Vietnam, when Rawls was posing a philosophical alternative and the New Right a party-political one, and when, as Samuel Moyn has now told us, human rights were finally and fully breaking through. Such a time of political revelation and innovation was a good time to tell a new story of America, but perhaps also a time when past history could be too readily applied to present concerns. The original identification of a republican tradition in a way that could be assimilated to the School's contextualist methodology was made by Pocock, who identified it as Aristotelian philosophically and concerned with civic virtue politically. This is not how republicanism is now conceived by the likes of Quentin Skinner and Philip Pettit, who characterize it as neo-Roman and as concerned with a concept of liberty, as non-domination. On this view, it might be best considered as just one more version of a liberal theory used to legitimate the modern state. Here, one should remember the full context in which MacIntyre composed his critique of rights. Although he 'learned a good deal ... because of living and working' in America,³⁷ the 'conception of rights and the political use of that conception' which he attacked in *After Virtue* he 'took to be characteristic of Thatcherite conservatism'. 'Margaret Thatcher's brash assertion that there is no such thing as society' was to be, from his perspective, just one more expression of the basic mistake underlying liberalism as a political tradition.³⁸

³⁶ MacIntyre, 'Power', 20.

³⁷ Alasdair MacIntyre, 'An Interview with Giovanna Borradori', in *The MacIntyre Reader*, 266.

³⁸ Alasdair MacIntyre, 'What More Needs to Be Said?: A Beginning, Although Only a Beginning, at Saying It', *Analyse & Kritik* 30:1 (2008), 261–276 at 272–273.

Philosophical Fictions

After Virtue's repetition of the positivist attack on human rights was a part of the book's critique of what it called the Enlightenment project in moral theory. Perhaps the critique should be obvious. Kant's critical theory drew the sharpest of distinctions between the way the world 'is' and what 'ought' to be done, grounding the latter in an utterly unnatural and metaphysical realm of pure reason. As Kant and neo-Kantian and post-Kantian social science all argued, an anthropological ethics is something entirely different from a metaphysics of morals, and facts are entirely different from values. From this, it might be taken to follow quite simply that rights which are not socially recognized or legally enforceable are non-factual, unreal, and fictitious, and that a metaphysical claim to rights just is an expression of a moral fiction. Such expressions have been regarded as ones of will or emotion, from which it has been inferred by post-Kantian logical positivists that all specifically moral claims may be so regarded. This inference MacIntyre regards as false, but also as a historical consequence of the failure of the likes of Kant to clinch their metaphysical and abstract arguments for morality. Alternatively, such expressions may be regarded as political ideals to be actualized. Against this, his objection is that to falsely claim that the ideal of rights is of something already real, by implying that they are attributes which are natural or are universally and atemporally human, can in no way provide a reason for acting to bring that ideal about, and that some more empirically and psychologically plausible justification must therefore be adduced.

Ethical fact and fiction have exercised MacIntyre from the start. His post-war MA thesis took issue with the emotivist moral scepticism of its time, his attempt to withdraw Hume's authority from such scepticism was what first attracted widespread attention to his work, and he devoted essays to the emptiness of the abstract, Kantian ought shortly before his departure for the USA.³⁹ He had by then grappled over the slippery subject of ethical relativism with Peter Winch, the influential Wittgensteinian social philosopher. For such linguistic philosophers, truth is more a matter of propositions' coherence than of their correspondence to brute reality and, therefore, propositions about such intentional objects as unicorns or witches might be thought as sensible as any others. Wittgenstein had suggested that understanding is formed by

³⁹ Alasdair MacIntyre, "Ought" & "Some More About "Ought"", in MacIntyre, *Against the Self-Images of the Age: Essays on Ideology and Philosophy* (London: Duckworth, 1971).

following the rules of a shared language and that these rules equate to a form of life. From this, MacIntyre and Winch each argued that understanding even of human nature is always particular to a culture, to which MacIntyre added that cultural understandings and their philosophical expressions change historically. What MacIntyre argued against Winch was that social science should have an explanatory concern for causes and not simply an interpretative or descriptive concern for actors' rule-following customs. In this concern with real causes, he championed the advances in understanding made by Enlightenment science. This was not to change. What he was to judge mistaken in the Enlightenment was only its over-hasty and soon-dogmatic inference from its successful rejection of an anthropomorphic teleology in physics that teleological explanation should be rejected also in ethics, together with Kant's gratuitous inference that if morality was to be saved from science it was necessary to separate moral reasons entirely from scientific facts and causes. In drawing such a division between values and facts, reasons and causes, Winch remained a neo-Kantian.

Against Winch, MacIntyre initially argued that rules should often be understood and explained in terms of actors' socially particular and functional roles. A problem is that witches were believed to exist not only in seventeenth-century Scotland and Salem but also in such societies as that of the Azande studied by E.E. Evans-Pritchard, in which witches occupied (and likely still do, even if less widely) a crucial role. In asserting that Zande belief was false MacIntyre agreed with Evans-Pritchard and disagreed with Winch, for whom rationality is a matter of rule-following within a culture's conceptual scheme and the criteria that validate belief are therefore relative to that scheme.⁴⁰ If one is to understand action taken

⁴⁰ The earliest three of the main constituents of the debate are reprinted in Bryan R. Wilson ed., *Rationality*, (Oxford: Blackwell, 1970): MacIntyre, 'Is Understanding Religion Compatible With Believing?'; Winch, 'Understanding a Primitive Society'; MacIntyre, 'The Idea of a Social Science'. For its continuation after the first edition of *Short History* see 'Human Nature' in Peter Winch, *Ethics and Action* (London: Routledge & Kegan Paul, 1972), and MacIntyre, *Short History*, xv-xviii. On witchcraft see 'The Idea of a Social Science' (first published in 1967) in MacIntyre, *Against the Self-Images of the Age*, especially 244-246, and E. E. Evans-Pritchard, *Witchcraft, Oracles and Magic Among the Azande* (Oxford: Oxford University Press, 1937), especially 63. Whereas 'The Idea of a Social Science' proposed that people can refer to 'independent criteria of judgment', MacIntyre now says only that they can, under some conditions, judge the superiority of one tradition of reasoning over another. In 'The Form of the Good, Tradition and Enquiry' in Raimond Gaita ed., *Value and Understanding: Essays for Peter Winch* (London: Routledge, 1990), he goes some way toward saying this in response to Winch's review of *After Virtue*, through discussion of

under the rules of that culture, one can only describe and not evaluate its participants' beliefs. In objecting to this that witches nonetheless do not exist, MacIntyre was not denying the existence of the role of witches amongst the Azande but of the physically causal powers attributed by Zande believers to those individuals who occupied that role. We can judge their belief to be false, and we can know our evaluation to be correct because of the achievements of modern science. Zande belief in witchcraft, like belief in unicorns or Ptolemaic belief in geocentrism, is falsifiable empirically. As he denied Kant's proposition of the absolute autonomy of morality from nature, so too MacIntyre denied Winch's proposition of the autonomy of anthropology and sociology from natural science.

Since then MacIntyre has refined his account of empiricism, of belief, and of natural science. In the most famous of his many engagements with the philosophy of science he emphasized that 'phlogiston is one with the witches and the dragons' in that 'the entities in question are *not* really there — whatever *any* theory may say'.⁴¹ He has also explained the practical significance of the fact that "'unicorn"... names or refers to nothing', in that assertions to the contrary 'interpose themselves between the individuals who assert them and the realities of which they speak' so as to disable 'those individuals in their everyday activities as well as in their enquiries'.⁴² It is for this reason that, in *After Virtue*, he insisted on the unfashionable point that 'the use of a conceptual fiction in a good cause does not make it any less of a fiction'.⁴³ In the long run, rigorous adherence to truth, evidence and rational justification will be what is of greatest benefit in defending and advancing good causes. Belief in the desirability of universal and equal rights is most likely to be of practical effect if detached from a belief that they exist anyway. If so detached, it should become clear to believers that they need to present persuasive

Plato's forms. For Winch's partial retreat from his earlier position see the preface to his second edition of *The Idea of a Social Science and Its Relation to Philosophy* (London: Routledge, 1990). For a more recent treatment of the subject, which builds implicitly upon the Winch-MacIntyre debate, see Paul A. Boghossian, *Fear of Knowledge: Against Relativism and Constructivism* (Oxford: Oxford University Press, 2006), 70-80, 105-110.

⁴¹ Alasdair MacIntyre, 'Epistemological Crises, Dramatic Narrative, and the Philosophy of Science', in MacIntyre, *The Tasks of Philosophy: Selected Essays, Volume 1* (Cambridge: Cambridge University Press, 2006), 21; MacIntyre's emphases.

⁴² Alasdair MacIntyre, 'Truth as a Good: A Reflection on *Fides et Ratio*', in MacIntyre, *Tasks*, 202.

⁴³ MacIntyre, *After Virtue*, 64; cf. Boghossian, *Fear of Knowledge*, 130.

practical reasons for rights' actualization and to engage in political action to bring that about.

MacIntyre's 'negative existential'⁴⁴ claim about human rights was, of course, never intended to deny the reality or desirability of 'those rights conferred by positive law or custom on specified classes of person'. He denied only the existence of 'those rights which are alleged to belong to human beings as such and which are cited as a reason for holding that people ought not to be interfered with in their pursuit of life, liberty, and happiness'.⁴⁵ Even so, he may well appear to have simply switched to attacking claims to natural rights from his previous defence of that claim as made by the Levellers. Indeed, in describing rights as moral fictions or, now, 'philosophical' fictions,⁴⁶ he might appear to be both echoing and endorsing the attacks by Bentham, who called them 'fictions',⁴⁷ and by Burke who, he reminds us, regarded them as 'metaphysical fictions'.⁴⁸ Against this, he has always distanced himself both from Burke's conservative advocacy of custom as its own justification and from Bentham's elaboration of utility as a rival to rights.

In *After Virtue* he argued that 'rights and ... utility are a matching pair of incommensurable fictions'.⁴⁹ They are a *matching* pair of fictions because they each represent a fragment of a theoretically coherent and empirically informed scheme that supported belief in the practical benefit of moral rules and virtues, under which rights were justified by their contribution to the common good. They are a matching pair of *incommensurable* fictions, he argued, because they each isolate a part of that pre-Enlightenment whole and try to make of it a premiss for moral reasoning. Some theorists propose rights as such a premiss, and therefore take rights to be universal and unconditional. Others take utility to be such a premiss, and therefore contend that no moral precepts can be exceptionless and all, including rights, must be judged against their perceptible consequences in advancing some aggregative conception of welfare. Such theories are designed to be incompatible with one another, and the inadequacy of each is exposed by criticisms from the other. So long as moral argument is confined to such theories, it is bound to remain

⁴⁴ MacIntyre, *Are There Any Natural Rights?* (Brunswick: Bowdoin College, 1983), 18.

⁴⁵ MacIntyre, *After Virtue*, 68-69.

⁴⁶ MacIntyre, *Conflicts*, 77-78.

⁴⁷ See C.K. Ogden, *Bentham's Theory of Fictions* (London: Kegan Paul, Trench, Trübner, 1932), especially cxxviii-cxxxii & 118-121.

⁴⁸ MacIntyre, *Short History*, 220.

⁴⁹ MacIntyre, *After Virtue*, 71.

interminable, and to undermine belief that there can be any rationally satisfactory justification of morality at all. In this way, the modern moral project unintentionally generates a postmodern culture of radical scepticism in which all claims to moral virtues and rules appear equally fictitious.

Ideological Functions

Theory apart, MacIntyre considers popular belief in rights, utility, and patriotism to be necessary for the functioning of modern societies. Even American federal policy must be able to assume the patriotic regard of its military, must aim at certain consequences, take account of actual consequences and calculate costs as well as benefits. Although MacIntyre regards contemporary disputes employing 'conceptions of utility and of individual human rights' as 'charades', he continues to consider these charades 'socially indispensable'. Before following his reasoning here, we should note what in *After Virtue* he presented as another charade and a third moral fiction.

Utility and rights are concepts that are used to guide and justify the making and enforcement of public policy and law, and thus the exercise of executive, legislative, judicial, and coercive power over states' passive 'citizens' or subjects. As such, they provide 'an insight' into 'the politics of modern societies' and 'the culture of bureaucratic individualism' within which debate is characteristically 'between an individualism which makes its claims in terms of rights and forms of bureaucratic organization which make their claims in terms of utility'. Such debate 'conceals the arbitrariness of the will and power at work' when there is an 'alleged invasion of someone's *rights* in the name of someone else's *utility*'.⁵⁰ To take the most systemically important example, rights to private property, which are normally unconditional in the sense that the owner is free to sell or destroy it, do not exempt the owner from taxation upon it, often taken so that wealth can be redistributed in the cause of welfare. Nonetheless, the concepts of rights and utility provide less of an insight into the operation of power *within* state bureaucracies, or into the operation and legitimation of the authority claimed and power exercised by private corporations and their managers. Such power is instead legitimated, says *After Virtue*, by 'belief in managerial effectiveness'.⁵¹ In the absence of any way of rationally resolving claims couched in the rival

⁵⁰ MacIntyre, *After Virtue*, 71; MacIntyre's emphases.

⁵¹ MacIntyre, *After Virtue*, 76.

terms of rights and utility, order is imposed by the bureaucratic management of state and corporate institutions so that the idea that these institutions can and do effect beneficial outcomes is a crucial third component in the legitimation of contemporary social order.

Belief in managerial effectiveness MacIntyre equates with belief in witches and unicorns. That the role of manager is no less crucial to our 'cultur[e] of liberal or bureaucratic individualism' than was that of witch in the culture of the Azande he does not dispute.⁵² What he does dispute is that our managers are significantly more successful in bringing about the effects they intend than were Zande witches. In both cases, the very fact of belief in their effectiveness is likely to be significant for their social effectivity but, in both cases, popular belief in the role 'presupposes knowledge claims which cannot be made good'.⁵³ In our case, this epistemological fiction is due to the fact that social science simply cannot produce the same kind of law-like and predictive knowledge as natural science, even though it is in the interest of both social scientists and those who fund them to pretend that it can. One consequence of this is that bureaucracies lack the knowledge of social reality that would be necessary for them to be able to actualize the ideals to which they are directed by politicians. The claim that managers exercise a special cognitive power of 'bureaucratic managerial expertise'⁵⁴ lacking in those they manage has always been contested by MacIntyre, against claims made alike for capitalism and Stalinism. What he has never disputed is that managers are nonetheless normally effective in commanding and manipulating those they employ.

Moral fictions are then so-called for two reasons. One is that they rest upon *false* claims to knowledge. The other is that modern 'human rights', 'utility', and 'managerial effectiveness' are all presented by their theorists as if they express a moral *meaning*, in that they are presented as evincing a similar kind of impersonally obligatory reason for action as do 'good', 'right', and the names of the virtues. *After Virtue's* historical argument is that until the Enlightenment, the latter expressions, unlike the more recent ones, all took their meaning from a shared and coherent scheme of thought and action. What we might call his anti-Wittgensteinian and sociological argument is that the usage of moral terms has now become expressive of personal emotion and manipulative desire rather than of any shared meaning. On this account, the use of moral terminology implies

⁵² MacIntyre, *After Virtue*, 225.

⁵³ MacIntyre, *After Virtue*, 76.

⁵⁴ MacIntyre, *After Virtue*, 106.

that the hearer has an impersonal reason and obligation to accede to whatever is being proposed even though the proposition is now normally motivated not by a belief in its truth but by the speaker's desire that the hearer act as the speaker wants.⁵⁵

This then is where MacIntyre breaks most decisively from Winch's Wittgensteinian and ahistorical equation of language's meaning with its shared and impersonal use. Language can always be misused by an individual, as when one lies to others, but such semantic dysfunctionality can also become cultural. Such, MacIntyre contended, is the case with our modern use of many moral terms. So, for example, the proposition that one *has* a *right* to something is now customarily used to assert that one *ought* to have a right to it, or even just to express a subjective want of and claim to it, rather being intended as a reference to a shared and impersonal truth. Such manipulative usage is not only used by managers or politicians — as, for example, when in 1984 Thatcher asserted 'a manager's right to manage' against the National Union of Mineworkers — but by everyone who believes, in the face of incommensurable moral theories and a plurality of religious and moral traditions, that moral terms can have no true impersonal meaning. Emotivists claim this to be a truth about moral language as such. MacIntyre, looking at other cultures and at the genealogy of our own, argues that in this emotivism is wrong even though its account is correct as a description of contemporary usage. The emotivist claim that moral terms express only subjective desires and not truths about social realities itself represents a truth about our modern social reality.

To call the concept of human rights a moral fiction is not therefore tantamount to denying that all human beings *ought* to have certain rights or to asserting that such rights ought not to be created through positive law. What such an observation of rights talk *does* draw attention to is simply the lack of adequate rational justification that we have come to accept and expect of such assertions, so that their success or failure is determined not by enlightened reason but by the power and interest of their assertors. In this way, the rights accepted in our culture are all too often only the rights wanted by the rich and powerful.

This, on MacIntyre's account was the case 'with the oligarchical revolution of property of 1688', the tradition of which was celebrated as

⁵⁵ For a particular use and development of MacIntyre's idea of moral fictions, see Mark Eli Kalderon's *Moral Fictionalism* (Oxford: Oxford University Press, 2005), and subsequent work. MacIntyre argues that non-manipulative usage persists in those areas of social life he calls practices.

much by Burke as the event had been by Locke.⁵⁶ In observing this, he followed Marx's gaze upon those 'French revolutionaries of 1789' who 'conceived of themselves as possessing the same modes of moral and political existence as did ancient republicans [and] by doing so ... disguised from themselves their social roles as spokesmen for the bourgeoisie'. Despite resisting the Marxist generalization of such insights into yet another pseudo-scientific law-like theory, he acknowledges that 'the conception of ideology' developed by Karl Marx and applied by Karl Mannheim underlies his 'central thesis about morality'.⁵⁷

As MacIntyre now says, the social indispensability of moral fictions is ideological in that the concepts involved have 'the social function of misleading and distorting'. In *Ethics in the Conflicts of Modernity* he offers an account of how philosophizing with such fictive concepts 'function[s] so as to disguise and conceal key aspects of social realities, of practice'.⁵⁸ This concealment is not intentional; the realities of owners' alienation of property from society and of workers' alienation from their own activity, of capitalist exploitation and even of gross inequalities of wealth and power would seem to be beyond the view of most theorists of utility and of human rights themselves, as well as from many others who try to make sense of their own conditions and actions, and of politicians' policies, in the terms of such theories. The terms, concepts and theories inform moral philosophizing's cultural 'counterpart'⁵⁹: 'the moral system' characteristic of 'capitalist modernity' that MacIntyre calls (with a capital M and a nod to Bernard Williams) 'Morality'.⁶⁰

His charge is that Morality 'function[s] so as to sustain the workings' of the institutions of capitalist modernity, in that if 'those false beliefs were not held ... the workings of those social or economic institutions would be to some significant extent frustrated'.⁶¹ Such institutions include capitalist corporations, of course, but he explores the ideological functioning of Morality most incisively in dealing with America's Supreme Court. It is, he allows, possible to become a Justice of the Supreme Court whilst being a moral exemplar, and not only by the

⁵⁶ MacIntyre, *After Virtue*, 222.

⁵⁷ MacIntyre, *After Virtue*, 109-110. The principal text of Marx that MacIntyre has in mind is *The Eighteenth Brumaire of Louis Bonaparte*.

⁵⁸ MacIntyre, *Conflicts*, 78.

⁵⁹ MacIntyre, *Conflicts*, 98.

⁶⁰ MacIntyre, *Conflicts*, 114-115; see Bernard Williams, *Ethics and Limits of Philosophy*, Fontana Press, 1985, ch. 10.

⁶¹ MacIntyre, *Conflicts*, 85.

standards of Morality. What he questions is whether one could become a Justice without believing in the rightfulness of what he regards as the highly particular kind of practical and theoretical constraints imposed by Morality. In discussing Justice Sandra Day O'Connor, he suggests that she could not entertain such thoughts as 'that the United States is in fact governed by economic, financial, political, and media elites who determine the peculiarly limited set of alternatives between which voters are allowed to choose in state and federal elections, that money functions in American political life, so that the United States is in some respects not a democracy, but a plutocracy, and that the United States in recent decades has been a too often destructive force in world affairs', rather than that, as she conservatively assumes, that 'the United States is both a role model and an agent for the realization of' ideals of 'democracy, liberty, and equality'.⁶² As a Justice she was committed to maintaining America's system of institutions, of rights and of Morality. Were she to have perceived what MacIntyre considers to have been concealed from her she could not have maintained both that commitment and her moral integrity.

A practical manifestation of the theoretical incoherence that MacIntyre perceives in modernity, and not least in American modernity, is between the different norms governing the behaviour of individuals as actors within different social roles. We have already referred to capitalism's differentiation of productive work from its management, a consequence of which is that one's promotion up the corporate hierarchy requires abandoning standards of excellence in production for managerial norms of effectiveness. Additionally, though, one has to move between unconnected roles and norms every day, since capitalism divorces work not only from polity but also from home and family. As individuals move between radically different roles, the lack of normative coherence may engender a lack of moral coherence and integrity within themselves. MacIntyre calls this 'the compartmentalization of our social life'. Each compartment has 'its own norms governing who speaks to whom, what conversational style is appropriate, what jokes may be told, to whom deference should be shown, from whom information should be withheld, when it is permissible or obligatory to lie, and so on'.⁶³ Since such differentiation structures capitalism, such differentiation of norms must itself be systematically normalized. On MacIntyre's account, 'the

⁶² MacIntyre, *Conflicts*, 266.

⁶³ MacIntyre, *Conflicts*, 203.

dominant economic, political, and moral order' would be threatened if it were unable to conceal the incoherence between the different goods pursued by it and its inhabitants.⁶⁴ For example, O'Connor's 'conception of what it would be for her to excel in any of her roles, whether as lawyer, or as wife and mother, or as politician, or as judge, was always by and large an established and conventional conception',⁶⁵ and the American system could not function if people such as her were to cease acting in one way as wife and mother and in accordance with an absolutely different set of norms as employee.

One way in which individuals are able to relate to one another as the system requires is through the medium of money. It is to analysis of this kind of social relation that Marx devoted himself but, whilst Marxism succeeds in explaining the workings of capitalism as an economic system, it fails to adequately explain the workings of what MacIntyre calls the system of Morality. More particularly, it fails to adequately explain the social function of the idea of human rights. Marx succeeded in explaining why capital accumulation and technological development requires the freedom of all to buy, sell, and contract, not only for capitalists but also for workers as free wage labourers with the right to work for whoever can afford to pay the most. It is also obvious enough that capitalist progress requires the freedom of inventors, scientists, and theorists. What might still remain concealed is how contemporary society and its state requires normative incoherence, and that what we have already called negative liberty disguises as freedom the requirement to act in one way in one role and in another way elsewhere. Freedom under rules, whether they be enforced through threat of sanction by the state or of dismissal by one's employer, is supposedly justifiable by reference to contract, whether a contract imagined by theorists or one enacted in the labour market. Freedom under Morality, as imagined by its theorists and as enacted throughout modernity, is justified by reference to rights. This is Kant's external freedom, which he theorized in the Doctrine of Right and in contradistinction to his Doctrine of Virtue. It is, as imagined by Kant, the freedom to be virtuous or vicious, autonomous or heteronomous. MacIntyre's charge is that in our social reality such freedom is, for most, inconsistent with any adequate opportunity to become a truly autonomous, independent practical reasoner, able to understand and enact one's life as a coherent quest in pursuit of one's own good in

⁶⁴ MacIntyre, *Conflicts*, 204.

⁶⁵ MacIntyre, *Conflicts*, 266. O'Connor had cofounded a law firm and served as leader of the Republican majority in the Arizona State Senate.

common with others. It may be consistent with the juridical norms of America's impersonal policing of rights but it is inconsistent with the no less ethical norms of families' provision of personal care. This is one reason why rights and external freedom can never be the whole of morality and must, under modern conditions, be complemented by states' utilitarian regard for the provision of welfare. Ultimately, then, Morality's systematic lack of theoretical coherence is reflected in its inhabitants' characteristic inability to integrate various goods into some single conception of their own good, let alone of the common good. For MacIntyre, then, Morality should not be allowed to override other moralities and modernity's rights should not be abstractly universalized as human rights.

What MacIntyre now understands to be the dominant function of human rights differs from that of what he once called the the doctrine of natural rights in its revolutionary form. No less than Marx or Nietzsche, from whom 'we should have learned ... a sociology and a psychology of philosophical error',⁶⁶ he perceives their usage as disguising a deeper reality of exploitation and domination.

⁶⁶ MacIntyre, *Conflicts*, 114.