THE SOCIALIST CONCEPT OF RIGHTS

by

T. D. Campbell

One of the major unresolved disputes within socialism is whether to reform or to jettison the idea of rights.[1] Will members of a genuinely socialist society have rights? And, in the meantime, what view should be taken of the rights of persons in pre-socialist societies? Those socialists who are revolutionaries on this issue argue that the whole notion of rights is incurably bourgeios and that right-claims, which may have played an important role in the emergence of capitalism from the constraints of feudalism, will have no place in a socialist society, for in such a community of social beings people will be united by bonds deeper than those of rights and sanctioned obligations; under socialism all will work together spontaneously in a willing spirit of co-operation unencumbered by restrictive regulations and in the absence of the self-interested competitivism in which the language of rights is rooted. Reformists, on the other hand, while admitting the relative and inadequate nature of bourgeois rights, seek to salvage something of lasting value from the traditional concept of rights. By making a judicious selection from the list of liberal rights, dropping some, such as the right to own the means of production, introducing the economic and social rights associated with a full-employment welfare-oriented society, and relating the idea of rights to human needs rather than a priori conceptions of individual liberty, they hope to develop a distinctively socialist scheme of rights. Such rights will not serve to regulate the "free" competition of self-centered individuals in the pursuit of scarce resources, but will govern the communal arrangements of socially motivated persons committed to the co-operative satisfaction of human needs. On the reformist view, therefore, rights will not wither away along with the antagonisms of class-dominated societies, rather they will be transformed to serve the

true interests of humanity. In some cases this will involve the actual satisfaction of interests to which bourgeois societies paid only lip service, in other cases old rights will be superceded by new ones, and in general the whole approach to rights will change from a situation in which rights mark the boundaries of legitimate self-regarding behaviour to one in which they provide the rule-governed framework within which the individual can fulfill his potential as a social being within a scheme which provides for the needs of all.

In this paper, I will argue that there is no conceptual incoherence in the idea of socialist rights and that the view that there is something inherently anti-socialist in the notion of individual rights is based on the inadequate - because ideologically parochial - analyses of the nature of rights which many socialists unthinkingly take over from liberal theorists. At the same time I will identify some elements within existing liberal theories of rights which could serve as the foundation for a socialist conception of individual rights, thus bringing out the continuity between socialist and liberal political philosophies. In order to highlight the alleged tensions inherent in the idea of socialist rights I will throughout presuppose a relatively extreme and utopian version of socialism as involving the belief in the possibility and desirability of the successful pursuit of a form of society characterised by the self-conscious deployment of all human and natural resources, including the communally owned means of production, to satisfy the needs of 'social' man whose behaviour will be marked by unsullied sociability, developed social responsibility, willing cooperation and the absence of aggression, hostility and the desire to dominate others. If it can be established that even in such an ideal society there would be occasion to maintain and protect individual rights then the revolutionary critique of the significance of rights will have been adequately answered.

I

Much of the debate about the place of rights within socialism has been conducted in terms of the updating of the traditional concept of natural rights into the modern idea of human rights.[2] This has tended to divert attention from the more general question of whether rights of any sort are compatible with socialism, and the particular difficulties which some socialists see in the alleged universality and inalienability of human rights have helped to bias them against the whole notion of rights. Nearly all socialists agree with John Lewis that "the conception of absolute, inherent and imprescriptible rights based on man's origin and nature antecedent to society" is a myth and that the alleged natural right to property, for instance, is an historically conditioned expression of bourgeois interests.[3] Some, like Lewis himself, have contended that by dropping those liberal rights which are used by sectional interests to block government action for the common good, by ceasing to regard any rights as literally absolute or indefeasible and by drawing up a new list of "human" rights "based upon human needs and possibilities and the recognition by members of a society of the conditions necessary in order that they may fulfill their common ends", it is possible to establish a set of socialist human rights, including the right to various forms of economic and welfare benefits as well as the traditional rights to free speech, freedom of the person, freedom of association and political activity which, in a socialist society could only be "set aside temporarily...in the gravest emergency and after the most critical scrutiny of the reasons".[4] But others - like, recently, Ruth Anna Putnam - insist that all rights are context-dependent in that the interpretation, for instance, of what counts as "liberty" will vary with circumstances and because the relevance of any list of rights will depend on the particular forms of oppression in a given society; she argues that "recognition of this double context-dependency involves a denial of an essential element of the original doctrine-independence of social context",[5] hence the inherent theoretical weakness of the idea of the rights of persons. Putnam goes on to assert, in a manner reminiscent of liberal

critics of the new social and economic rights, that elaborations of the sort suggested by Lewis have serious limitations since multiplying rights reduces liberty and therefore inevitably dilutes the force of existing rights. Thus she would presumably agree with Maurice Cranston[6] that to add the new economic rights to the old civil liberties results in a weakening of the effectiveness of the latter. There is, therefore, something like an unholy alliance between left and right on the practical and conceptual difficulties inherent in the reformist position.

Without denying that much of interest and importance has emerged from the debate about the incorporation of social and economic rights into the conception of human rights it is unfortunate from our point of view that so much of the theoretical discussion about socialism and rights has centered on the notion of *human* rights for there are logically more fundamental issues at stake concerning socialism and rights in general. Tangled up in the objections laid by socialists against universal human rights are reservations about rights as such. Thus many of Putnam's points are not directed solely at the fallacies of the natural rights' tradition, but are relevant to all attempts to express the socialist ideal in terms of rights of any sort. Appeals to rights, she notes, involve the demand that these rights be embodied in legal codes, but laws involve a state and "the socialist regards the state as an instrument of class oppression".[5] In a socialist society there would be no state, hence no laws and no role for the language of rights. In an example designed to show up the inadequacy of a doctrine of rights to cover genuinely communal activity, she cites the case of a passer-by stopping to help her push her stalled car and remarks that "for that short span of time there are two persons with a common purpose. The relationship is not one of trading advantages, or competitors, or adversaries. There is for that span of time an unspoken trust. Note by the way how inappropriate it would be here to speak of rights. I do not claim that you have a right to help me push and you do not claim a right to help me."[7] Rights in such cooperative situations which are, it is implied, paradigmatic of

human relations in a socialist society, are otiose, for where there are no conflicts of self-interest between competitively minded beings there is no need for the regulation provided by a system of rights and duties. "Rights" we are told "are the prized possessions of alienated persons".

Is there then a conceptual tie between the notion of rights and the model of a society composed of self-interested competitive individuals of the sort who, on the socialist view, characterise man in a capitalist society but not in a communist one? Some support for this view can be found in a recent attempt by Richard Flathman to provide a systematic analysis of the concept, or in the author's terminology, "practice" of rights, which has, on the surface, no ideological axe to grind. Flathman argues that "a right provides the agent who holds it iwth a warrant for taking or refusing to take an action or range of actions that he conceives to be in his interest or otherwise to advantage him...The actions or warrants are commonly viewed by other persons as contrary to their interests, or limiting their freedom, or as in other ways disadvantaging them personally or as members of the society in which the right is held".[8] And he goes on to argue that "there cannot be a right to an X unless having or doing X is in general, and in A's (the right-holder's) judgment, advantageous for A" and in some way disadvantageous to B (the person with the correlative obligation) so that B will typically wish to avoid fulfilling his obligation to A, for "to say that X is a right is to say that some A is warranted in doing X despite the fact that doing it will be thought to have adverse effects on the interests of some B".[9] Thus Flathman sees it as an analytic truth that the practice of rights involves a conflict between the interests of the right-holder and the interests of other members of the society, particularly those who may have obligations to act or refrain from acting in certain ways which are to their disadvantage but for the benefit of the right-holder.

Flathman's analysis of rights as warrants for the assertion of the legitimate self-interest of the right-holder against and in conflict with the interests of others is typical of those liberal

theories on which socialists draw to point to the alleged unsocialist nature of all rights. As Flathman himself admits his analysis, presupposing as it does a conflict between individual interests, is at variance with the ideal of community, for "rights involve a certain holding back, a reserve...a competitive as well as a cooperative attitude...limits to sharing" and that there is "a whole range of concepts at odds with the practice: gratitude, generosity, charitableness". Hence "asserting and respecting rights against one another is surely not, as such, a feature of relationships among or between friends",[10] and thus, it may be inferred, between members of a completely socialist society. For if there is anything at all in the image of a socialist society as a society of abundance in which individuals will willingly contribute what they can to the productive processes and everyone will be provided with what they require to fulfill their human potentialities, all without the intervention of laws backed by coercive sanctions, then surely the conflict of interests presupposed in the practice of rights could not arise and so socialism, in the end, must involve not the revision but the abandonment of the notion of rights along with the institution of the state and its laws. Once again a patently old-style liberal analysis of rights fits neatly into the socialist critique.

II

Although there is a degree of theoretical accord between some liberal and some socialist interpretations of rights the actual inspiration for the revolutionary socialist's attack on rights can be traced to Marx, and in particular to his attacks on the ineffectualness of "utopian" socialists such as Proudhon, Saint-Simon, Fourier, Owen and Lassalle who criticised capitalism for not giving the worker the full rights to what he produces and called for the establishment of a new society based on an ideal of social justice.[11] Following this line, many Marxian socialists reject the language of rights, except perhaps for short-term tactical purposes in the organisation of political parties around legislative programmes, on the

grounds that such moral stances are futile since social change does not come about through exhortation and moralising but by timely political action in line with changes taking place in the economic base of society. They therefore reject appeals to rights as an irrelevant and ineffective tactic which exhibits a misunderstanding of political realities, a characteristic failure of utopian socialists.

This criticism of rights language as a form of moralising is most applicable to what Feinberg calls the "manifesto" uses of "rights"[12] whereby social and economic reforms are proposed and justified on the grounds that people already possess certain rights which are, it is argued, being violated or ignored. If taken literally such "moral" rights presuppose, as in the natural law tradition, the existence of a moral "law" in terms of which individuals have certain rights and duties independently of any actual or positive rules. This is an idea which most secular philosophers reject and which is certainly incompatible with a Marxist epistemology, so that there are philosophical as well as tactical reasons for not using the concept of moral rights to seek an accommodation between socialism and rights. And, in fact, manifesto uses of "rights" need not be taken literally for it is always possible to interpret demands that people be given their (moral) rights as demands that legal or other steps be taken to see that they have the (positive) rights which they ought to have, that is a moral demand that rights be created or, if already formally recognised, actually implemented. I will, therefore, assume that rights are to be analysed in positivistic terms as entitlements or warrants possessed by individuals under existing rules and that, although moral justifications may be offered for such rules these need not be couched in terms of pre-existing moral or "natural" rights unless these terms are used merely to refer to what, according to the values of the speaker, ought to be rights. I shall, therefore, assume that in normative political discourse rights should feature as conclusions not as premisses.[13]

To confine the literal use of the language of rights to those capable of positivistic constructions has the advantage that we can

raise the question of whether or not socialist societies would have rights without directly engaging moral questions about the justification of such systems, and it also enables us to bypass those socialist objections to rights which are based on the assumption that rights language must be moralising language. But the rejection of "moral" in favour of positive rights raises in a particularly acute form a second source of socialist unease about rights, namely their legalistic connotations. If, in order to avoid the "moralising" objection, we have recourse to a definition of rights in terms of positive law, then this comes straight up against the difficulty that laws are instruments of the state and the state, at least on a left wing socialist view is a vehicle of class domination and as such will not feature in a socialist society.

The positivistic analysis of rights does not require, however that the rules which express and embody rights must be laws, especially if law is defined by reference to the use of coercive sanctions. Rules which are accepted as authoritative within a group are sufficient to give us a system of rights and duties. Thus all that is required for there to be rights is for there to be a set of rules according to which the individual members of that society regulate their interactions. True if these are to establish rights, that is warrants to which appeal can be made to legitimate the actions and inactions of individuals, then these rules must be accepted as binding by those on whom the relevant obligations or liabilities fall. But there is no contradiction in the idea of willing acceptance of obligations or of free acquiescence in a body of shared rules, and it is part of the attraction of pictures of socialist societies that the rules which obtain in such societies will not require to be enforced by threats and punishments, hence the idea of the withering away of the state.

For our purposes it would be sufficient to show that the right-conferring rules under socialism would be like the "societal" rules of conventional moralities in existing societies, such as the rule that promises ought to be kept, whose reality and effectiveness

depends on social recognition and on no sanctions other than public opinion and the prudence or conscience of those who might be tempted to contravene them. But there is in fact no need to follow Marx here and take over command theories of law according to which a law is a universal imperative backed by coercive sanctions. Even this tradition has been modified to distinguish between the legally fundamental normative position of being under an obligation and the idea of being "obliged", that is required to act or refrain from acting under the threat of physical sanctions.[14] Once it is accepted that the existence of a legal rule is in itself sufficient to establish a legal obligation then the remaining arguments for making force an essential part of law depend on the sociological truism which, ex hypothesi, does not apply to socialist societies, that general conformity to legal rules cannot be expected in a society unless a degree of force is used against law-breakers. And so, despite Austin, Marx and Kelsen[15] we can conceive of non-coercive law, the advantage of doing so being that this more readily enables us to think of the rules of a socialist society being part of an institutional set-up with various jural agencies, such as legislatures, courts and officials (perhaps it would be misleading to call them police) whose job it is to detect, report and rectify deviations, all, we may assume, with the willing cooperation of the citizens (it is not necessary to assume that the deviations are intentional). On this analysis a law is a rule accepted as binding within a given geographical area which is part of a system of rules concerning which there are established and accepted institutional means for recognising, changing and applying them. If there are jural agencies to legislate, adjudicate and administer rules generally accepted as authoritative by those living in a specified territory, then there is no difficulty in thinking of the existence of rights within a socialist society without allowing the implication that force must be used to support them. This is an implication that socialists can avoid by rejecting not law, but a particular pervasive bourgeois concept of law.

It is, however, true that some visions of a socialist or communist society are so anarchistic as to omit reference to any

shared rules and such social cooperation as obtains in them is so spontaneous and instinctive as to enable men to dispense with the acceptance of organisational rules and hence with obligations and rights. Such ideals lack all plausibility when applied to complex highly populated societies with developed economic systems, for, unless some as yet latent and wholly novel detailed instinctive patterns of interaction specific to particular productive processes were to emerge without the intermediacy of a system of education and social learning, it is difficult to imagine how any society involving frequent interpersonal contact and complex cooperative enterprises could operate without recourse to a system of organisational rules, consciously and generally acknowledge, shaped and transmitted for the purpose of enabling the cooperation without which, it is always insisted by socialists, the fulfillment of human need is not possible. The behaviour which Ruth Anna Putnam describes in her car-pushing example may possibly fall outside the range of rule-governed cooperation, but such examples inevitably depend on the small scale and transient nature of the situation, for where there is involvement of large numbers of people over considerable periods of time so that it is not obvious what each person should do to help the cooperative effort, it is impossible to imagine communal activities without rule-following, unless we presage a wholly new instinctual basis for human behaviour.

What little Marx and Engels themselves have to say on the form of social organisation under communism is ambiguous. Sometimes they appear to reject the possibility of laws of any sort in the final stage of communism, at other times they can be interpreted as assuming non-ideological, non-exploitative organisational rules.[16] Thus, in expounding Marx's ideal of communism, Eugene Kamenka argues that, in Marx's view, rising above the very conception of property "Truly free men will thus need no 'authorities' laying down what is to be done. Art cannot be created by plans imposed from the outside; it knows no authorities, no discipline except the authority and discipline of art itself".[17] But this leaves open the possibility that there will be unimposed rules emerging from "inside" and duties which

men follow of their own free will. In general the idea that coercive sanctions will diminish to vanishing point leaves it open that reasoning and education will take their place, leaving the structure of rights and obligations intact.

Yet, from the existence of rules regulating social cooperation it cannot be inferred that there must be rights, for although such rules must, if they are to regulate behavior, specify obligations (however willingly these obligations are accepted by those on whom they fall) these obligations may not correlate with anyone's rights. Indeed it is often said to be a feature of an ideal socialist society that it would be marked by duty but not by rights. Everyone will devote themselves to the common good but no-one will be able to require that others behave towards them in particular ways.

III

The relationship between rights and duties is not so straightforward as has sometimes been suggested. While in the case of rights in what has been called "the strict sense", A's right to X always implies that some other person or persons have a correlative obligation to permit A to X or to enable A to X, other rights, commonly called powers enable the right holder to alter the legal status or rights of others to whom is attributed correlative liabilities rather than correlative duties. In other cases the term "right" is used where the right holder is said to be under no obligation and hence "at liberty" to act or refrain from acting in some manner, in which case there are no correlative obligations.[18] But if we take as central to our discussion those rights which do correlate in a straightforward manner with obligations, what is it that distinguishes these obligations from obligations which do not correlate with rights? This is the most fundamental question regarding the nature of rights and on our answer to it hangs the coherence of the idea of socialist rights.

I shall discuss three competing views on what it is that marks

off those obligations which are owed to other people and therefore correlate with rights from those which are not. The first, the contract theory, is that only those obligations which can be construed as arising from promises or contracts create rights; the second, the will theory, is that right-correlating obligations are those which subordinate the will of the obliged person to the will or legal power of another, and the third, the interest theory, is that a right exists when an obligation is directed towards and grounded in the satisfaction or protection of the interests of another person, the right-holder. I shall argue that the first two theories are inadequate even within the assumptions of liberal theory and that the third is both in itself a more satisfactory theory and also the only one of the three congruent with the moral and sociological assumptions of the socialist ideal.

A paradigm example of a right is one arising from a promise and by extension from the notion of promising there have been erected contractual theories or rights which explicate what it is for an obligation to be owed to A by saying that a right arises from an agreement or contract in which another person B binds himself by giving his word to A, often in exchange for some reciprocal commitment; A as the promisee or contractee is the person to whom the obligation is owed, the person who has the right that B do or refrain from doing something in relation to the object of the right. The obligation is owed to A because B has made his promise to A in consequence of which A has the right that B fulfill his commitment.[19]

Although the notion of promising is itself problematic, it would be foolish to deny the attraction of the contractual approach to the understanding of rights, particularly when discussing justificatory theories about what rights people ought to have, or to underestimate the subtle developments of the crude theory outlined above to take in tacit and hypothetical promises. But simply as an attempt to say what we mean by an obligation being owed to A, the right-holder, it is clearly inadequate if only because we can readily understand and make clear what it is for A to have a right without invoking the concept of promising or contracting. The right

of the hungry to be fed, the right of children to be educated, the right of a citizen to a fair trial in respect to any charge brought against him, all these make no essential reference to a prior promise-like commitment on the part of those with the relevant correlative obligations: they may be claimed, asserted, upheld and in general understood without involving the notion of contract in any way, yet they are just as much rights as the rights of any promisee. The notion of promising has to be brought in to explain and justify the nature of some rights and it can be used as part of a normative theory to determine what rights there ought to be, but it does not enter into the very fabric of what it is to have a right but is rather a subsidiary hypothesis often used to justify statements identifying those rights which, it is claimed, ought to be enacted and protected by positive law and societal rules.[20]

Of course the enactment or adoption of a rule or law laying down obligations of B towards A could be regarded as a promise or understanding given to A, but since the authority which establishes the rule is not necessarily the locus of the obligation established it is not clear how the alleged or tacit promise explains the relation between B and A; thus when the state passes a law which obliges B to do X for A, the promise, if there is one, is made by the state and not by B and so, on this theory, A's right is against the state not against B, so that we have not explained what it is for B to owe the obligation to A. Therefore there are at least some cases of A having a right which are not based on any promise or commitment to A made by the person with the correlative obligation. Thus contract theory does not provide a general explanation of the meaning of "owed to" in the relationship between the person with the obligation and the holder of the right, although the ideas of promising and contracting may help us to understand the relation between A and B in some cases, and may be of assistance in reflecting on what rights we ought to have.

To reject the contract theory as explaining the very nature of what it is to have a right is not necessarily to adopt the view that there are "natural" rights which exist prior to the establishment of

"conventional" ones, that is to take the side of Locke against Hobbes, but only to reject the view that all positive laws which confer rights must arise from explicit or tacit contracts of some sort or another. In fact the notion that this is the case can be cited as an example of the sort of individualism to which socialist theorists object for the notion that all rights are founded on contract has been one of the central ideological foundations of liberal capitalism. The idea that we can have no obligations to our fellow creatures except those that we have voluntarily agreed to take upon ourselves, presupposing as it does that the individual is an independent being who has an existence and self-sufficiency abstracted from his social relationships, is totally opposed to the socialist concept of men as a social creature who is not only the product of society but whose being is closely involved in the lives of others at a level of integration far deeper than that of the relatively superficial institutions of promising and contracting.[21] The socialist is not likely, therefore, to accept that the contract theory can explain either what rights men ought to have or what it is to have a right.

The second standard answer to the problem of explicating what it is for B's obligation to be owed to A, the right-holder, is the "will" or "power" theory according to which for A to have a right there must be a rule that makes A's choice or will preeminent over the actions or will of others in certain specified ways and circumstances. On this theory to have a right is to be able to require others to act or refrain from acting in a certain way or "...to be in a position to determine by his choice how X shall act and in this way limit X's freedom of choice."[22] On this view the obligations correlative to rights are owed to those persons who have the legal or quasi-legal power to require that obligation to be fulfilled. Thus only when there are identifiable persons A who can require B to act in certain ways and have in their discretion whether or not so to require B's action or inaction, can we speak of rights; rights are discretionary powers, powers of a legal or quasi-legal type which the holders may or may not deploy as they wish; to have a

right is to be able to require performance of the correlative obligation or to waive it, hence we speak of B having an obligation *to* A.

The power theory has the advantage of having a straightforward positivist content which enables us to determine who has a right by consulting the relevant laws or rules rather than by enquiring into alleged past events, such as contracts (although such enquiries will be germane to establishing whether particular contractual rights exist) and it is therefore a step forward in that it enables us to distinguish readily between analysing and justifying rights. It has also to its credit the capacity to explain a good deal of the standard language of rights, at least in existing societies, in particular of course the notion or waiving rights but also the vast array of ways in which we speak of claiming rights, insisting upon, demanding, standing on, neglecting, exercising, defending and using rights, all of which fit with the idea of the right-holder having discretion over the use of legal-type powers over others. And, as such, it explains why rights are regarded, as Flathman points out, as valuable possessions, for they can be used to defend ourselves and carry out our wishes in a variety of circumstances, should we choose to do so; they are all gain and no loss.

We can also use this idea of rights as discretionary powers over the actions of others to develop the positivist interpretation of rights by describing the practices characteristically used to enforce rights, the processes of settling disputes about the existence and interpretation of the relevant rules and the use of enforcement agencies to require the fulfillment of such obligations as the right-holders demand. The right-holder is then seen as the person who has the legal standing which enables him to take action in court to compel the conformity of B to the rule in question, or in the case of societal rights, to call on the forces of public opinion in his support. Thus we can see how particular rights are part of a wider institution or practice of rights with recognised ways of claiming, assessing and, if appropriate, requiring the fulfillment of correlative obligations, all initiated by the acts

of the right-holder and directed towards the satisfaction of his claims, if they are established by the relevant authorities.

And yet it is even more obvious in the case of the will or power theory than in the case of the contract theory that such an interpretation of the nature of rights is too narrow to cover the many rights where there is no capacity on the part of the right-holder to claim or waive his rights. Even excluding the rights of animals as too controversial, we must allow the rights of children, of the mentally retarded, of the aged and so on; indeed in general we would not want to exclude the idea of rights of the powerless, including the legally powerless, that is people who cannot activate the legal or public processes on their own behalf, make demands and waive obligations; beings, if you like, who do not have the will to have rights on the power theory.[23]

Now it is, of course, possible for rights to be enforced or waived on the behalf of right-holders, so it might be argued that the idea of a right as a power is thus extendable to all rights, for what is it to say that children have rights other than to say that persons, C, have the legal power to compel persons B to act in a certain way in regard to A , the children. And yet this formulation makes it clear that, on the power theory, we would have to say that these rights concern children but are not owed to them, for the essence of a right is the power of demand and waiver. If we separate the right-holder and the right-waiver (who we may call the administrator of the right) so that to have a right it is not necessary yourself to have the power of claiming and waiving, then it becomes a contingent fact about rights that the right-holder is normally the person who may either insist or not insist on his rights. In this case it is quite clear that when we speak of the correlative obligation being owed to A we are not simply indicating that A has this discretionary power over B, for we still say that the obligations of parents are to their children even when the discretionary power of enforcement is lodged elsewhere, perhaps in the state. Indeed the very thesis that A can choose whether or not to exercise his right presupposes

that his right is something which can be described and analysed in isolation from A's legal capacity to exercise his right. And it makes perfect sense to say that A does not have the right to waive his right, indicating that the power of waiver is additional to and may be separated from the right itself. It would appear that the power theory is still in the shadow of the contract theory for it is in connection with promises and contracts that we normally assume a power of waiver on the part of the promisee or contractee, and, for the socialist, the power theory is equally suspect from the point of view of ideological neutrality, since it has the implication that we should cease to think of the rights of those who have no capacity to make demands on others and limit the distribution of these valuable commodities to beings with rational wills capable of comprehending and involving themselves in quasi-legal procedures: the possessions of the intelligent, informed, autonomous beings of the sort who make good entrepreneurs and lawyers.

So, while I am neither denying that many rights are well characterised as legal powers over the wills of others nor suggesting that the interests of non-right bearers would inevitably suffer if this theory of rights led us to cease talking and legislating for the rights of small children, mentally incapacitated persons and animals, on the grounds that they do not have the capacity to make the necessary choices, the will theory is nevertheless defective in being insufficiently general to provide the defining criteria of rights even in relation to the range of rights commonly operational in existing societies. Further the will theory appears to rest on one of those ostensibly neutral conceptual points with an inherent normative bias for which we are on the look out, for it unnecessarily stacks the cards against a theory of rights suited to the characteristic socialist stress on a broader range of needs than that which can be adequately protected by giving persons with the necessary intellectual and emotional capacities to exercise them, discretionary legal powers over the wills of others.

IV

The inability of the contract and power theories to explain, at least in some cases, what it means to say that B has an obligation to A, leaves as the main contender the 'interest' theory of rights according to which to have a right is to have an interest protected or furthered by the existence or non-existence of a rule, law or understanding normally requiring action or inaction in ways which are designed to have a bearing on the interests of the right-holder; obligations, under these rules are owed to the right-holder because they are obligations to further or protect A's interests, this being of the essence of the right in question rather than a secondary consequence of the fulfillment of the obligation.[24]

The strength of the interest theory is that is can cover all types of rights and explain the limited plausibility of contract and power theories. The protection that is given by rights may sometimes be afforded by giving A legal power over the wills of others (as the power theory contends is always the case) or it may involve practices such as the institution of promising or contracting which A may use to further his interests by getting B to commit himself to do X or Y, but it need not. As long as it is possible to interpret a positive obligation, like the obligation to feed the starving, or to leave adults alone to make their own decisions, as being for the interests of A then they may be said to be owed to A, and A may be said to be the right-holder, his interests being the objective of the obligation. On this theory not only are particular rights to be seen as ways of furthering the interests of right-holders but the whole institution of rights is regarded as having the function of protecting interests of right-holders. Further elucidation of what it is for a right to be for the protection of an interest requires us to distinguish the strictly legal or postivistic content that can be given to this notion from the background assumptions which go along with this understanding and application of rights, legal and non-legal.

The specific legal consequences which flow from ascribing a right to A vary according to the type of right in question but they can be spelled out in terms of the legal processes and assumptions which affect the application and interpretation of the correlative obligations. Where rights are explicitly mentioned in positive laws this has the function of expressing either the legislator's intentions or the traditional understanding of the purpose of the laws in a way which indicated that A's interests are to be considered as relevant in such judicial matters as:

(a) who may raise issues in court about the non-fulfillment of the obligation (normally the right-holder or person authorised to act on his behalf, but perhaps any person in a position to show that A's interests have been detrimentally affected by B's behaviour);

(b) how the content of the obligation is to be interpreted where this is in doubt (namely from the point of view of the interests of A which the legislator was seeking to protect);

(c) how serious the violation is to be regarded when an obligation is not fulfilled (perhaps in proportion to the degree to which A's interests have suffered); and

(d) where questions of compensation or damages arise, who should benefit therefrom (this would depend on the relevant interests of the right-holder).

But quite apart from the specific implications in matters of procedure and application which the identification of whose rights are at stake in a particular situation may have, all of which may be seen as ways of ensuring that A's interests are safeguarded by the legal or quasi-legal process, the use of rights terminology in every day discourse carries with it the connotation of the defence of right-holders legitimate interests and this affects the whole approach to political and legal issues in those cases where the rights of those involved are explicitly stated to be at issue. Not only is the legal meaning of 'rights' cashable in terms of various legal mechanisms for taking A's interests into account in applying and interpreting laws, the assumption that rights are for the protection of the interests of right-holders affects the whole

process in the direction of protecting the interests of those who are shown to have rights relevant to issues before the court and permeates the background political and moral assumptions of the language of rights.

Thus the general orientation which is introduced into the legal process by the concepts of rights is continuous with the assumptions which go along with how we regard right-conferring rules in the course of non-legal social interactions independently of any issues which arise in the judicial process. Where rules employ the notion of rights this is taken to mean that the purpose and hence the correct interpretation and significance of the rule is to assist or protect the right-holders in the pursuit of their interests. It indicates that it is A who has the warrant for action, or entitlement to receive or decline certain benefits or burdens and that it is A's interests which are the raison d'etre of the required correlative obligations. This is not to say that there can be no ulterior purpose for ascribing rights to A, but that to understand what it is to ascribe a right we must see this ulterior purpose as being served by a mechanism which gives precedence or standing in a stated manner to the relevant interests of the right-holder in specified circumstances. My claim is, then, that we can best understand the meaning of B's obligation to A (the right-holder) by saying that B's obligation is to act or refrain from acting so as to further or protect the interests of A in a manner indicated by the content of the right in question, such that in the application and interpretation of the rules requiring B's activity or inactivity it is the interests of A that are to be taken into account. This view of rights is well adapted to feature in accounts of the basic human relations in a socialist society for the obligation-creating rules which, I have argued, would be necessary features in any large-scale socialist community, would be directed towards the communal goal of satisfying the approved needs of individuals. The objective of these rules would be to further the coordinated efforts of all to create the conditions for the full development of persons as social beings, hence the obligations can properly be regarded as correlating

with the rights of those whose interests are served by the social provisions of the socialist system.

And yet the stress on individual interest in this analysis may seem to allow the socialist critic of rights all that he seeks or fears as it appears to go along with Flathman's contentions concerning the benefits of rights and the burdens of obligations; it seems that rights are simply a way of institutionalising the overriding priority given to certain interests of competing individuals in situations of conflict: an institutionalisation of selfishness.

But this is so only if 'interest' is taken as being synonymous with self-interest and self-interest is equated with selfishness, and it is assumed that obligations must be performed unwillingly. Neither of these contentions has to be accepted although both are made naturally enough in a society in which individuals are primarily or even exclusively concerned about their own welfare in contrast to that of others and in which assistance is given to others only grudgingly, under coercion or in order to obtain reciprocal benefits. They are not, however, a necessary part of the conceptual tie between rights and interests. True the history of the development of rights can readily be seen as reflecting successive attempts by one group after another to secure what they felt to be in their interests by imposing obligations on other groups with conflicting interests: historically, rights can thus be seen as devices created for the regulation of conflicting self-interests and the imposition of the interests of the dominant group over those of others. And if we do take 'interest' to mean 'self-interest' and 'self-interest' to imply 'selfishness', then this accounts as well as any other theory for the typical associated terminology of rights: demands, claims, insistance, enforcement, imposition and so forth. This fits also, as we have seen, with the idea that it is proper to waive one's rights but not one's obligations, for morality does not normally require us to look to our own selfish concerns but, e.g., it does require that we do not harm those

of others. Moreover the concept of 'interest' does seem to carry with it the idea of the well-being of the individual in question in contradistinction to that of others. A person's interests are often said to be the sum of *his* goods in contrast to those of others. And yet it is possible to detach 'interest' from 'selfishness' and 'obligation' from 'burden' and so open the way for a socialist concept of rights which retains the individualism inseparable from the idea of obligations being owed to others, but interprets the relevant interests in such a way that they do not amount to self-regarding behavior and the correlative obligations in such a way that they are not typically viewed as burdensome.

While it is tautological to say that a person's interests are *his* interests it is not so to say that his interests are directed towards his own welfare, and while the 'selfish' interpretations of 'interests', in which it is assumed that a person's interests are self-regarding (that is for the attainment of his benefit), rather than other-regarding (that is, directed towards benefiting others) is characteristic of a society in which 'individualism' implies the propriety of each seeking his own benefit excœpt in so far as he is constrained by custom or law from harming others in the process, it would not be so in a society such as the socialist envisages or hopes will emerge. To allow for the possibility of unselfish 'interests' a more neutral and potentially more helpful way to regard 'interest' insofar as it relates to the concept of rights is to concentrate on the idea of a person being 'interested in' something, rather than on the notion of something being in someone's interests. This will enable us to produce an analysis of the concept and institution of rights which is adequate to existing systems and permits the development of a theory of rights which avoids the criticism that they are inherently and inevitably tied to the pursuit of self-interest or selfishness and at the same time maintains the essential connection between rights and the interests of their 'owners'.[25]

For a being to have interests in the sense of being 'interested

in' X or Y it is necessary for that being to be in some sort of conative relationship to that object, that is to have some sort of desire, care or concern about that which he is 'interested in'. This may be relatively passive as when an object attracts or holds the attention of A, or relatively active as when A has hopes, fears, aspirations, cares or concerns which prompt him to action or inaction in relation to the object of his interest. Having interests in this sense, therefore, depends on the arousal of his attention and usually also of some affective or emotional attitude towards features of his environment or of himself which are sufficient to motivate effortful behaviour towards or away from the objects of interest in appropriate circumstances. A person's interests are not simply those things which he considers in an abstract way significant or valuable but those to which he devotes his own concrete attention and activity, the things he wants and cares about as part of his own way of life, they are the things in which he is dispositionally interested in, in that, given particular, usually recurring circumstances of his life, he manifests attentiveness to, concern for and activity towards them, according to the nature of the objects and the opportunities available to him.

It is important to note that the idea of being interested in something does not necessarily carry the implication of self-regarding interests which go with the idea of interests as that which is for the benefit of A. What a person is interested in may often be some condition of himself but in need not be. He may be interested in the development of knowledge, the welfare of others, artistic conceptions, sports, animals, foreign countries and so on, none of which can be seen as tied up with his self-interest in the sense of self-regarding interests. To do things for the sake of such interests may involve no benefit to him except insofar as it accords with his desires and wishes in regard to these things. The conceptual propriety of grounding A's rights on A's other-regarding interests is at least a first step in countering the argument that to allow that the function of rights is to protect interests is necessarily to accept that rights

institutionalise competitive individualism. This disposes of the central point of the socialist's criticism of rights as the embodiment of egoistic individualism and hence the main reason for saying that a socialist society would dispense with the notion of rights. We can now see that the proper target of the socialist's onslaught on individualism is not the institution of rights as such but the prior assumption that all rights must relate to the defence of the interests of essentially egoistic and antagonistic individuals. Such criticism is not well directed at the association of rights and interests but should be aimed at the interpretation of interests as self-regarding interests. This is the individualism which socialism rejects. But from another point of view the socialist ideal is highly individualistic for it looks to the development of a certain type of individual - the social individual - as the telos of socialist society. Thus the Marxian view of unalienated man is of a being of developed physical, intellectual and moral capacities whose activities are directed towards creative social goals through cooperation with others in the process of working to extract from nature what is needed for the fulfillment of human need, including the need for a harmonious and integrated social life. There is therefore nothing unsocialist in making the activities of the individual in his interactions with others the focus of such (no doubt uncoercive) rules as are needed to maintain the requisite level of social organisation, or of saying that the obligations men have under such rules will be directed, in part, towards enabling individuals to carry out their individual part in the total social process and hence be regarded as having rights to those things necessary for them to carry out their approved concerns or interests.

The best illustration of a socialist right is the right to work. Ruth Anna Putnam presents as a *reductio ad absurdum* of the idea of socialist rights the thought of a right not to be alienated.[26] This is indeed an awkward locution, perhaps because of the double negative embodied in it. But there is no such awkwardness in putting the same idea in a positive way and speaking of the rights

to work, where work is taken to be the creative, fulfilling social activity successfully directed towards the satisfaction of human needs, which is the heart of Marx's ideal of the unalienated person. The disasterous consequences for the individual who became unemployed in a capitalist system before the days of the welfare state were primarily economic ones. For most people work was vital as the only means whereby they could legitimately obtain the necessaries to feed, clothe and house himself and his family. And given that, even in a welfare state, the rewards for work are still by and large very much greater that the sums received in welfare payments by those who are unemployed, the right to work can still be seen as essentially an economic demand for the right to earn a living; as such the right to work is firmly based on selfregarding considerations (although not necessarily selfish ones since the worker may not be depriving anyone else of the chance to work). But in a socialist economy in which 'rewards' do not depend on contribution this foundation for the right to work collapses. The individual's material needs will be met whether or not he works, nor will he gain more by making a contribution to the productivity of his society. Hence, it would appear, under socialism there would be no right to work, an example of the sort of withering away of rights which the revolutionaries have in mind, for the economic conditions that produced the system of reward according to contribution will no longer apply; abundance makes work, and hence the right to work, redundant.

This is, however, to assume that there can be only one justification for the right to work, namely one based on contribution. But any socialist who subscribes in any way to the idea of the human importance and dignity of labor will want to argue that there are reasons why work is important to man other than for the extrinsic rewards that it might bring. The socialist idea of man is that he is fundamentally a producing animal whose most basic need is to engage in human work in a social context. By human work is meant effort deployed towards getting from nature the means of human subsistence and development by methods which call into use his

faculties of mind and spirit as well as his body. Work, according to Marx, is one of man's chief needs because it is through work that he expresses himself and fulfills his nature. Work is therefore an individual need because of the activities intrinsic to it rather than for the material benefits that accrue to man as a result, although it would not be work unless it was directed towards the production of useful things. Hence, in a socialist society, the right to work would be based on man's need for self-fulfillment through productive, energetic and creative activity.

This right illustrates many characteristics of what might be regarded as distinctively socialist rights. For instance it would not be a mere negative right, a right to be left alone to find such work as one can, or not to be dismissed from existing employment, but would be a positive right in that the community would have the obligation of seeing to the availability of suitable work opportunities.[27] Secondly it is a right to further the interests of the right-holder but these interests are not properly described as merely self-regarding, for it is the individual's interest in working that is the basis of his right, and this interest is directed towards making a contribution to the satisfaction of needs of others as well as his own, his interest in creating desirable and useful objects. Moreover, the right to work, on a socialist interpretation, could be regarded as a human or universal right within socialist society since it could not be denied without that society ceasing to be socialist. In socialism, the right to work is untouchable because it is part of what constitutes socialism. Finally, it is a right which cannot be respected except in a certain type of society at a certain stage of development, in this case a society which has sufficient control over economic factors to be able to provide satisfying work for all those capable of performing it. While the correlative obligations of the right to work fall on all citizens, they have to be discharged through the organisational structure of society. The right to work is an absurdity in a capitalist economy in which - *ex hypothesi* - no one has the duty to provide work. Hence the ridicule poured by

some liberals on the concept of a right to work which he may see as having the enforceable correlative duties. The socialist may view this as an example of the inadequacy of capitalism rather than as a criticism of the very idea of the right to work.

However, the right to work also illustrates features which appear sufficiently untypical of rights in general to cast doubt on the propriety of speaking of it as a right. Most importantly it is noted that to talk of a right to work in a socialist society is to blur the distinction between a right and obligation, for it is clear that, if a socialist society is to be able to develop an economic system capable of providing the right sort of work for all, then it must be able to call upon at least large numbers of individuals to play a part in the productive system, hence work would be for many an obligation rather than a right, for it seems odd to think of a right to do that which one has an obligation to do. Perhaps after all it is only where there is a divergence between what is required of a person and what he wishes to do that we can properly speak of obligations and correlative rights. Or, to put the matter another way which takes us back to the will theory of rights, it seems wrong to speak of a right to work if that right cannot be waived.

Such coincidence in the contents of rights and obligations is not, however, unknown in non-socialist societies. Australians are obligated to vote but we would still wish to say that they have the right to vote. And the fact that men may be forbidden to commit suicide has not generally been thought of as a barrier to speaking of the right to life. On the interest theory it is easy to see why this should be so, for the fact that there are rules directed towards the satisfaction of interests of some by way of placing obligations on others is not affected by the existence of yet other rules requiring the former to utilise the opportunity created for them by the latter. In fact, the obligation to work is based on the requirement that each contributes what he can to the productive process to further the material satisfactions

of all, whereas the right to work is grounded in the need for creative involvement in productive processes. The duty is to work productively, the right is to have work which is fulfilling. And, it may be added, it is only if we make Flathman's assumption that the fulfillment of an obligation must be regarded as burdensome that the socialist right to work conjures up a picture of people reluctantly doing that which they have a right to do. But even if we retain an element of this assumption and take it that work does always involve a degree of effort and is not purely 'fun' so that men have always some reason to avoid it, this does not make it out of place to think of a right to work provided men are also motivated by a desire to undertake effortful activities both for their inherent satisfactions and for the sake of their end products.

It is, of course, true that men's attitudes towards their rights and obligations in a socialist society would be radically different from what they are at present, for most people in most societies, partly because none would demand their rights while seeking to avoid their obligations, and it is indeed hard to imagine just what such a society would be like or precisely what changes in human nature it would require. But it can, I think, be demonstrated that the point of speaking of rights and duties would remain, for rules would be required to provide a structure for cooperative action and in formulating these rules the objective would be to indicate and call for actions and inactions directed towards the satisfaction of the interests of individuals in ways which could not occur spontaneously, no matter how goodwilled the members of the society, if only because of the complexities of the processes of social production and large-scale communal life in general. No doubt, also, the juridical institutions for implementing rights would be reshaped to take into account changes in human motivation and the mediating role of administrative structures for ensuring that rights are respected. Individuals might not demand their rights and the initiative for correcting deviations from right-conferring rules is unlikely to

be in the hands of the 'wronged' person, but there would have to be processes for monitoring and adjusting rule-governed behaviour so as to take account of the disparity between the rules and actual behaviour which is bound to occur in any society where men remain fallible. That these institutions would be substantially different from those with which we are at present familiar is hardly surprising given the radical nature of the socialist ideal, but provided there are mechanisms for establishing the existence of deviations and taking remedial measures we can say that within socialism there would be rights as long as there was complex communal activity directed towards the fulfillment of the needs of the socially-oriented individual.

One possible advantage of socialist rights is that they are less readily seen as expressing sectional or partial interests opposed to the general welfare, for socialist rights would be part of a consciously organised system.

Some commentators take this to mean that a socialist right is a mere administrative goal rather than an individual enforceable benefit or entitlement.[28] This is an acceptable interpretation only if the achievement of such goals does not put such rights at the mercy of official discretion. One point of having rights is to exclude such discretion and if it is concluded, for instance, that socialist societies would treat rights in this way (as many liberals fear) then this means that such societies are, in effect, abandoning not revising the practice of rights.

However, the adoption of an overview in terms of which rights are identified and given authoritative expression need not involve giving officials wide discretion in the application of the relevant rules to particular circumstances, although it does imply that right-conferring rules should be altered in the light of experience and changing circumstances. This does make it less likely that there will be rights which are exempt from the threat of revision but it need not imply that the conception of the general interest in the light of which such revisions are

carried out is not analysable in terms of the identifiable interests of individual human beings, which is, of course, required if we are to conceive of any social organisation as being based on the concept of rights. If this seems far removed from the dogmatic simplicities of some traditions of natural or human rights then this may also be seen as an advantage since it recognises that there are no lucid and impervious moral intuitions which can provide ready answers to the complicated problems which arise in modern industrial societies.

Footnotes

1. This topic is considered at greater length in Tom Campbell, *The Left and Rights* (London, 1982).

2. See, for instance, D.D. Raphael (ed.), *Political Theory and the Rights of Man* (London, 1967).

3. John Lewis, *Marxism and the Open Mind* (Connecticut, 1973), p. 53.

4. Lewis, *op. cit.*, p. 59.

5. R.A. Putnam, "Rights of Persons and the Liberal Tradition", in Ted Honderich (ed.), *Social Ends and Political Means* (London, 1976), p. 106.

6. See Maurice Cranston, *What are Human Rights?* (London, 1973), p. 43.

7. *Op. cit.*, p. 110.

8. Richard Flathman, *The Practice of Rights* (Cambridge, 1976) pp. 1f.

9. Flathman, *op. cit.*, p. 80.

10. Flathman, *op. cit.*, p. 190.

11. See Friedrich Engels, *Socialism: Utopian and Scientific* (1880) in Lewis S. Feuer, Marx and Engels: *Basic Writings on Politics and Philosophy* (Glasgow, 1974), pp. 109-52, and R.C. Tucker, *The Marxian Revolutionary Idea* (London, 1970), pp. 37-48.

12. See Joel Feinberg, "The Nature and Value of Rights", *Journal of Value Enquiry*, Vol. 4, 1970, pp. 243-57.

13. Rejecting the idea of literal moral rights enables us to counter the arguments of liberals like R.M. Hare (see "Abortion and the Golden Rule", *Philosophy and Public Affairs*, Vol. 4, 1974, p. 20f), and R.G. Frey (*Interests and Rights* (Oxford, 1980), chap. 1) that appeals to 'rights' are no more than appeals to personal intuitions, and also similar objections made by socialist theorists, such as Paul Hirst ("Law, Socialism and

Rights", in Pat Carlen and Mike Collison (eds.), *Radical Issues in Criminology* (Oxford, 1980), p. 58) who draw attention to the obscure ontological status of such rights.

14. See H.L.A. Hart, *The Concept of Law* (Oxford, 1961), chap. 2.

15. See Tom Campbell, *The Left and Rights*, chap. 4.

16. Contrast K. Marx, "Critique of the Gotha Programme" (1875), in L. Feuer, *op. cit.*, p. 160, and F. Engels, *Socialism: Utopian and Scientific* (1880) in L. Feuer, *op. cit.*, p. 141.

17. Eugene Kamenka, *The Ethical Foundations of Marxism*, 2nd edition (London, 1972), p. xii. See also pp. 112ff.

18. See Wesley N. Hohfeld, *Fundamental Legal Conceptions* (New Haven, 1919).

19. If we discount Hobbes's natural rights as not being genuine rights since they do not correlate with any obligations, the Hobbesian version of the social contract theory is a good example of the contract theory. More commonly it is a theory which is applied to conventional or positive rights as opposed to natural or moral rights.

20. As in J. Rawls, *A Theory of Justice* (Oxford, 1972).

21. See Stephen Lukes, *Individualism* (Oxford, 1973), chaps. 11 and 12.

22. H.L.A. Hart, "Bentham on Legal Rights" in A.W.B. Simpson (ed.), *Oxford Essays in Jurisprudence*, 2nd Series (Oxford, 1973), p. 175.

23. See A.I. Melden, *Rights and Persons* (Oxford, 1977), pp. 72f.

24. For a defence of the interest theory of rights see D.N. MacCormick, "Rights in Legislation", in P.M.S. Hacker and J. Raz (eds.), *Law, Morality and Society* (Oxford, 1977), pp. 189-209.

25. For a discussion of this distinction see R.G. Frey, *op. cit.*, chap. 7.

26. Putnam, *op. cit.*, p. 108.

27. This is implicit in Article 23 of the Universal Declaration of Human Rights which mentions "protection against unemployment".

28. See Inga Markowitz, "Socialist vs. Bourgeois Rights - An East-West German Comparison", *The University of Chicago Law Review*, Vol. 45, 1978, pp. 614-17.
