

Chapter 2

The Right to Oneself

Antecedents

Writers who have argued that people have rights to themselves have tended to treat this as a first principle rather than an implication of more basic principles. Thus John Locke begins his discussion of slavery in his *Second Treatise of Government* with:

The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of Nature for his rule (paragraph 21).

In his discussion of property Locke says, on the basis of no prior argument:

[E]very man has a property in his own person. This nobody has any right to but himself. The labor of his body and the work of his hands, we may say, are properly his (paragraph 26).

Similarly, in the Declaration of Independence Thomas Jefferson writes:

We hold these truths to be self-evident, that all men are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.

On the other hand, in *Progress and Poverty* Henry George offers an explanation of why people have rights to themselves:

What constitutes the rightful basis of property? What is it that enables a man justly to say of a thing, "It is mine!" From what springs the sentiment which acknowledges his exclusive right as against all the world? Is it not, primarily, the right of a man to himself, to the use of his own powers, to the enjoyment of the fruits of his own exertions? Is it not this individual right, which springs from and is testified to by the natural facts of individual organization—the fact that each particular pair of hands obey a particular brain and are related to a particular stomach; the fact that each man is a definite, coherent, independent whole—which alone justifies individual ownership? (Book VII, Chapter 1, paragraph 4).

In other words, George proposes that the reason people have rights to themselves is that the pangs of hunger from not eating are felt in the same brain that directs the hands that can secure food to overcome that hunger, and because people have the capacity for independent action.

Ways that Modern Institutions Do and Do Not Support the Right of People to Themselves

Building on the Declaration of Independence, the Bill of Rights of the U.S. Constitution specified rights of citizens. The most important of these are:

freedom of religion, speech and the press, and the right to assemble peaceably and to petition the government for redress of grievances (first amendment)

the right to keep and bear arms (second amendment)

the right to be secure in one's person, house, papers and effects against unreasonable searches and seizures, and the right to be subject only to warrants issued on probable cause, supported by oath or affirmation and describing the place to be searched and the persons or things to be seized (fourth amendment)

the right to have to answer for a crime only if indicted by a grand jury, except in cases arising in the armed services when in actual service in time of war or public danger, the right to not be tried twice for the same crime, the right to not testify against oneself, and to not be deprived of life, liberty or property without due process of law, and the right to not have private property taken for public use without just compensation (fifth amendment)

the right to a speedy and public trial by an impartial jury of the state and district wherein the crime for which one is tried was committed, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against oneself; to have compulsory process for obtaining witnesses in one's favor, and to have the assistance of counsel for one's defense (sixth amendment)

the right to be free of excessive bail, excessive fines, and cruel and unusual punishments (eighth amendment)

It was not until after the Civil War that the passage of the thirteenth amendment the U.S. constitution outlawed slavery, and the fourteenth amendment extended to the states the prohibitions that the Constitution had placed on the federal government.

The nineteenth amendment in 1920 extended to women the right to vote. What differences the law may specify in the rights and obligations of men and women is

not clear. For example, men have an obligation to register for a possible draft, and women do not. Except on Massachusetts, only men have the right to marry a willing woman, and only women have the right to marry a willing man.

The Civil Rights Act of 1964 made it clear that the U.S. was going to attach importance to ensuring that persons of all races had the same civil and political rights. In 1967 the U.S. Supreme Court, in the case of *Loving v. Virginia*, overturned all laws against interracial marriages.

In addition to these enumerated rights and historical milestones, there are a number of other expressions of our understanding of the rights of people to themselves that we take for granted in Western culture, though they are not assured in all cultures. We take it for granted that we, and not our parents, will choose our spouses, that we can choose what careers to pursue, that in conjunction with our spouses we will decide whether to seek to conceive children, and that we can leave our communities or our countries if we choose. All of these freedoms are aspects of our rights to ourselves.

In other ways our rights to ourselves are not recognized by modern societies. Our rights to ourselves are not understood by modern societies to include the right to keep all of the proceeds of productive cooperation with others: modern societies generally accept income taxes. Many modern societies have a military draft, which is a denial of individual freedom. Certain classes of persons are routinely denied the right to determine their lives—children and those who are insane or senile. In most places, people are denied the right to determine the time and manner of their death. During the Vietnam War, the U.S. made half-hearted efforts to prevent men of draft age from emigrating to Canada. Everywhere, people lose their rights to themselves when they are convicted of crimes.

A Theory of the Right to Oneself

Those to whom we owe recognition of their rights to themselves are those with whom we can converse, and whom we can reasonably count on to respect our rights to ourselves and to understand the consequences of their actions. The conversation might need to take place in sign language or through a translator, but some form of conversation is essential to the mutual recognition entailed in the right to oneself. We cannot grant tigers rights to themselves because we cannot be confident that they will grant us rights to ourselves. Those who are senile do not have rights to themselves because they do not communicate meaningfully and cannot be presumed to understand the consequences of their actions. Those who are insane do not have rights to themselves because we do not believe they understand the consequences of their actions and cannot count on them to recognize our rights to ourselves. Children do not have full rights to themselves because they, similarly, often do not understand the consequences of their actions or respect the rights of others to themselves. The transition from being regarded as

a child to being regarded as an adult ought to come when a maturing child attains the ability to understand and to accept the consequences of his or her actions.

The right to oneself is the right to be who one wishes to be, to do what one wishes to do, to take the risks that one wishes to take, to pursue the purpose in life that one wishes to pursue, to cooperate with whom one chooses to cooperate, for whatever purposes are mutually agreed, and to end one's life prematurely, if one so wishes, when and how one chooses to end it, as long as one does not interfere with the equal rights of others.

The right to oneself includes the right to form or join societies that live under whatever restrictive rules the members of the society choose, with two limitations: no society may infringe on the rights of those outside the society, and no society may prevent its citizens from leaving. The reason that no society may prevent its members from leaving is that the right to oneself is not determined by one's past. Every person with whom we can converse, and whom we can reasonably count on to respect our rights to ourselves and to understand the consequences of his or her actions has a right to himself or herself. Except by becoming incompetent, the present self cannot give up the rights of future selves to themselves. The present self cannot annul the competent will of the future self.

The only concern that one society can properly have about the justice of the treatment that another society accords its citizens is whether that society allows its citizens to leave if they wish. To exercise the right to leave a society if one wishes, there must be some place that one can go, and one cannot justly insist on being allowed to enter some other society. Thus every just society will permit any dissatisfied individual or group in the society to form a separate society somewhere, on an appropriate share of the larger society's territory.

Challenges to the Right to Oneself in Other Theories of Justice

The totalitarian claim that the state has full rights over its citizens does not count as a theory of justice. More significant challenges to the right to oneself come from those who find it unjust that differences in abilities lead to differences in incomes. Some people are unable to provide for themselves, and a number of theories of justice limit the rights of more capable persons to themselves, in order to ensure that those who are unable to provide for themselves will survive.

It is indeed important to provide for those who are unable to provide for themselves. The fact that it is possible to get as much agreement as there is on the importance of providing for those who are unable to provide for themselves is evidence that it is not necessary to infringe on the rights of people to themselves, to ensure that all are provided for. People want to live in societies that provide for the less able. It should be expected that the societies that people choose to form and to join will generally include provision for those who are unable to provide for themselves. But if some selfish people want to form a society where there is no

organized provision for those who are unable to provide for themselves, it would be unjust to try to stop them from doing so.

Rawlsian Contractarianism

Theories of justice use a variety of devices to reach the conclusion that it is just to compel the able to provide for the unable. While Rawls does not endorse any principle of justified coercion, his admirers do not always appreciate this. So consider the Rawlsian contractarian, who believes that it is just to coerce people to abide by the rules that Rawls argues people would find attractive in the original position.

One might suppose that Rawls' first principle, "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others," would be equivalent to people having rights to themselves. But Rawls says,

[E]ven if it works to perfection in eliminating the influence of social contingencies, it [the liberal interpretation of the two principles of justice] still permits the distribution of wealth and income to be determined by the natural distribution of abilities and talents. Within the limits allowed by the background arrangements distributive shares are decided by the outcome of the natural lottery, and this outcome is arbitrary from a moral perspective. There is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune (*Theory*, pp. 73-74).

It is possible to decline to "permit the distribution of income and wealth to be settled by the distribution of natural assets" while recognizing the rights of persons to themselves? This question is more complex than it might seem at first. The argument that a society *cannot* heed Rawls' advice while recognizing the rights of persons to themselves begins with the point that attaining greater income and wealth involves doing things—cooperating with one another in productive ventures—that people should be able to do if they have rights to themselves. How can people have rights to themselves if they are not allowed to cooperate with one another?

If Rawls allowed those who had different conceptions of a good society to form their own societies, there would be no problem. But Rawls chose to analyze society as a closed system isolated from other societies, so there is no possibility of emigration in Rawls' framework.

I believe that Rawls would say that the reason that income taxes do not abridge basic liberties is that the opportunity to cooperate with others is merely an economic opportunity and not a basic liberty. If this is his answer, I disagree. I understand the right of persons to themselves to include the basic liberty for them to cooperate with whom they choose in whatever productive or unproductive activities they wish, as long as others are not directly harmed by their actions.

Since this caveat is somewhat vague, another formulation may be helpful. Anything that persons may do, acting independently, because they have rights to themselves, they should also be allowed to do while acting in coordination with others. Thus an income tax is consistent with the rights of people to themselves only if people have a reasonable opportunity to avoid the tax by joining another society.

Bruce Ackerman

The principle of Ackerman's that is closest to the idea of people having rights to themselves is his principle that each citizen should be able to freely exchange his initial entitlements in a flexible transactional network. But this is not a primary principle for Ackerman. It is one of four entitlements that Ackerman assigns to citizens. And while Ackerman does not discuss the question of whether an income tax is just, his advocacy of a principle of equal sacrifice suggests that it would be appropriate to limit the ability of citizens with adequate genetic endowments to exchange the use of their talents for other things they want, through an income tax, in order to bring other citizens closer to adequate genetic endowments. Thus Ackerman's framework does not imply that a just government must recognize the right of citizens to cooperate with whom they choose for whatever purposes they choose.

Could a citizen migrate to avoid an income tax in Ackerman's framework? To his credit, Ackerman sees his principles as applying globally rather than just to a single nation. He says,

[S]uppose powerful political movements in both China and India prepared realistic programs that promised the ultimate construction of a liberal power structure. While most of the work was to be done at home, the plan would demand from richer nations assistance valued at hundreds of billions a year for a generation. I say demand, not request: If the people of China and India proposed to build their own domestic relations on liberal principles, would they not have an equal right to regulate their relations with others on the same basis? Are they not as good as anybody else is?

Thus in Ackerman's framework, being in a different nation does not excuse one from the obligation to share equally in the sacrifice that is necessary because of our inability to provide all of the world's citizens with the rights that Ackerman's framework assigns to them.

While I agree with Ackerman that our obligations to recognize the rights of others do not end at national borders, I claim that our rights to ourselves must be placed ahead of any possible rights to a adequate genetic endowment, a liberal education, and a starting position of material equality with our fellow citizens. Our

rights to ourselves are uncompromisably primary. They cannot justly be traded against other goals.

G. A. Cohen

G. A. Cohen argues that a commitment to joint ownership of natural opportunities leads to an obligation of the able to support the less able. His argument uses the example of a society of just two persons, one able and the other infirm, who have joint ownership of all natural opportunities. If the infirm person is unable to produce anything himself but his permission is needed for the able person to produce, he will not grant that permission unless some provision is made for him. (*Left Libertarianism II*, pp. 271-89)

The lesson that I draw from this example is that the concept of joint ownership as envisioned by Cohen is indeed fatal to the concept of a right to oneself. It is not possible for a person to have a right to himself unless there is a place where he can do the things that having a right to oneself ought to permit him to do. While I endorse a principle of equal rights to natural opportunities, I argue that this means that at least some of our equal rights to natural opportunities must be used to award all persons separate equal shares, so that every person will have the right to a place to pursue his own conception of the good, as long as he does not interfere with others.

Richard Epstein considers Cohen's example and makes the point that legal systems have traditionally interpreted joint ownership arrangements to permit any of the owners to sever his share of the thing owned from the shares of others. (Epstein, *Skepticism and Freedom*, pp. 132-38)

A Right to Oneself and Self-Ownership

Some justice theorists write of people owning themselves. People are able to sell the things that they own, so a person who owned himself would be able to sell himself into slavery. Can people sell themselves into slavery? If not, why not? And if they cannot sell themselves into slavery, to what extent does justice permit them to commit themselves?

A more general question is, what is the proper relationship among "the selves of different times?" Ackerman addresses this question in *Social Justice in the Liberal State* (pp. 196-98). He considers the case of a person, Shifty, who wants at age 20 to join an ascetic commune that demands a lifelong commitment, even though it can be predicted that age 40 he will want to leave the commune for a libertine life. If Shifty does join the commune, what does justice require when he reaches 40 and wants out? Ackerman says that the answer is indeterminate, that either permitting the 20-year-old Shifty to commit himself to the life plan that he

wants at that age or allowing the 40-year-old Shifty to choose the life that he wants is consistent with justice.

Since the right to oneself is so strongly connected to the ability to engage in conversation, one should always listen to the person with whom one is conversing and ignore the past self who is not part of the conversation.

A person with a right to himself can commit himself to the extent of his current possessions. He can justly say, "If I am unable to fulfill my promise, you may have all of my possessions," and a court can justly turn all of his possessions over to the promisee if he fails to keep his promise. (And a society may also justly decide that it will limit the damages from failure to keep a promise.) But a person cannot justly subject a future self to coercion for failure to keep the promises of the present self.

This inability to commit one's future self will sometime be a disadvantage to people. An advantage of being able to bind oneself, with coercive penalties for non-compliance, is that this permits one to gain the trust of persons who would not otherwise trust. I once knew a man who wished that he could contract for a loan with a bank, stipulating that if he failed to repay the loan the bank would have the right to tie a ball and chain around his leg and require him to break rocks for 12 hours per day. He believed that if such a contract were enforceable, the bank would be willing to lend him a large amount of money, and he could get rich in real estate. Refusing to enforce contracts that subject a person to physical coercion deprives people of the chance to benefit from the contracts that become possible when such arrangements are needed to generate trust. But the enforcement of such contracts is inconsistent with justice. The worst thing that a person could justly agree would happen to him in the event of failure to keep a promise would be the appropriation of all of his wealth, and exile.

Conclusion

People have rights to themselves, to be who they want to be, to pursue their individual conceptions of the good, to cooperate with whom they choose for whatever purposes are mutually agreed, so long as they do not interfere with the equal rights of others. The claims of those who are unable to provide for themselves are moral claims of compassion and not claims of justice. They do not justify intruding on the rights of people to themselves. The rights of persons to themselves come before all other rights and are not to be compromise for the sake of greater fulfillment of other rights. The rights of people to natural opportunities must be understood in a way that does not compromise their rights to themselves. There must be a place where each person can exercise his right to himself.

Those who have rights to themselves are those with whom we can converse, and who can reasonably be relied upon to respect the rights of others and be willing to accept the consequences of their choices.