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The Precarious Sovereignty of Rights

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I propose to argue that the typical theory of human rights (that is, a theory of moral rights whether or not they are identified and protected by law) is defective and misleading in an important way. Misleading, in that the rights these theories generate are far from the powerful moral swords and shields their advocates imply them to be; and defective, in that the theories fail to confront the chief sources of trouble for sustaining the sovereignty—claimed or implied—of the rights advocated. Rights, in short, as I shall show, do not have the finality in human affairs often claimed for them.

Of course, it is beyond the scope of this paper to take into account every theory of rights; at most, I can hope to support my position by drawing attention to the views of several contemporary philosophers. I apologize for this parochial limitation, but even if enlarging the scope of my survey were to require revising my position, something will nevertheless have been learned about certain important features of our rights and of the theories about them.

As we know, rights theories in political and ethical theory have been challenged by objections raised external to those theories. By "external objections" I mean the criticisms from utilitarians, communitarians, pragmatists, and positivists that emerge from their own alternative theories. My criticisms, however, are internal to rights theories; that is, they are criticisms that emerge from reflecting on features and aims internal to any conceivable rights theory, features that a rights theory must incorporate.

Finally, my aim is not to try to refute all or any rights theory, much less to pave the way for external criticisms. Elsewhere, I have shown considerable sympathy for various rights theories, and I am not about to withdraw that sympathy on this occasion. My purpose, instead, is to bring to light uncompleted projects on the agenda of any adequate theory of rights.

II

Three preliminary remarks. First, I take it that all the rights we have can be sorted, following Wesley Newcomb Hohfeld,1 into claims or strict rights, powers, immunities, and privileges, or some combination or "cluster" of these four basic types. What Hohfeld found when he analyzed legal rights has also been found by philosophers to be equally true of our moral rights. The features of our rights that I shall discuss arise with regard to all of these kinds of rights, including claim rights.

Second, I take it that the point of appealing to someone's rights is to constrain or permit someone's acts. In her book, The Realm of Rights, Judith Jarvis Thomson has pressed the insight that the practical point of a theory of rights is to tell right-holders and others what in certain circumstances they ought to do.2 But, as she has correctly stressed, there is in general no straightforward inference to be drawn from premises about someone's rights to conclusions about what someone (either the right-holder or someone else) ought to do—much less what someone must do. Having the right to do something, x, is not by itself even a reason (much less a good reason) for the right-holder to do x, even if it can be a good reason for someone else not to interfere with the right-holder's doing x.

Thus, from the fact that I have a certain power, it does not follow that I ought to
exercise it (I have the power to renew your lease, but there could be many good reasons why I ought not to exercise that power). From the fact that I have a certain privilege, it does not follow that I ought to exercise it (I have the privilege of trying to organize a new political party, but it does not follow that I ought to try). From the fact that I have a certain immunity, it does not follow that I ought to invoke it (although immune from being required to give testimony under oath that might implicate me in a crime, perhaps I ought to give such testimony nevertheless). And from the fact that I have a certain claim-right against you, it does not follow that you ought to, much less must, act in accord with your duty that my right entails. In every case of contemplated action on a right, we can see that other considerations of a wide variety are or may be relevant and even decisive as to whether the right-holder ought to act or demand action under that right.

Third, the considerations internal to the theory of rights that I want to explore are quite familiar yet regularly neglected. They revolve around the conception of rights as absolute, as alienable, as waivable, and as forfeitable. I take it that every theory of rights must have a position on these features, even if that position is largely implicit, as with the older "natural rights" theories. What I propose to show is that once we understand what theories of rights have to say about these features, we will see how far from sovereign are our rights in moral theory.

III

Let us begin with the easy case, namely, waiver of one's rights. I waive a right of mine whenever I have that right and choose not to exercise or act on it—perhaps waiting for another occasion or perhaps effectively relinquishing it altogether. Only the right-holder is in a position to waive a right, and doing so is exercising a certain power.

What reasons might I have for waiving one of my rights? There are selfish reasons, e.g., it might not suit my interests at the moment to exercise my power as your employer to abruptly terminate your employment. But there are also altruistic reasons, e.g., rather than mention the small unpaid debt you still owe me, I choose not to embarrass you and decide to wait a bit longer in the hope that you remember the debt and pay up. And there are moral reasons, e.g., although I am eligible for re-election as chairman of the board and am likely to be re-elected if I run, I choose not to, believing that it is better for the organization if no one person becomes entrenched in office.

So waiver of rights shows that various kinds of worthy considerations can account for one's willingness to forego the advantages that exercising one's right provide, in favor of advancing other values.

Are there rights that the right-holder cannot waive, that is, rights that the right-holder lacks the power to waive? Are there some rights that for whatever reason always must be acted on or invoked? What rights might these be? Hobbes's idea of our right of self-preservation comes close to such a right, but his account is unconvincing and confused, as I shall show shortly in another context. Can't we all think of cases where someone might have a reason for waiving any of her claims, privileges, powers, or immunities? To be sure, extensive or frequent waiver of certain rights will prove to be incompatible with also holding certain jobs, positions, or offices. But this fails to show that the rights in question cannot be waived; at best it shows that some rights won't be waived and ought not to be waived given other considerations—conditions having nothing to do with one's rights.

No doubt a constitutional government respecting the rule of law may refuse to accept
a person's waiver of all immunity when confronted with criminal charges, perhaps because there is so little difference between the situation of such a person and that of one who has no rights to waive in the first place. Nevertheless, lacking a right and waiving that right are not the same thing; and there is something inescapably paternalistic about refusing to accept another's waiver of rights.

However that issue is resolved, no rights theory can dismiss waiver of rights as a priori impossible. To the extent that waiver is recognized as permissible, even in some cases desirable, to that extent the right-holder gives pride of place to other considerations of value with greater force or weight than one's rights.

IV

Let us turn to alienation of rights. An inalienable right is any right that the right-holder lacks the power to transfer, give, or sell to another. Thus, an alienable right is like a waivable right, in that each involves a power of the right-holder. Jeremy Bentham, in his "Anarchical Fallacies," made a permanent contribution to the theory of rights by arguing against the idea that there are "imprescriptible" rights. My right to - is imprescriptible in Bentham's sense if and only if either no one can abridge or withhold (i.e., prescribe) it or no one ought to abridge or withhold it. Parallel interpretations apply to claims that rights are inalienable or unforfeitable. Do such claims mean that the rights in question can not, or ought not to be alienated or forfeited? For example, the preamble to the Universal Declaration of Human Rights implies that "all members of the human family" have "inalienable rights." Did the drafters and signers of this Declaration believe that we can not or that we ought not to alienate these rights? They did not say. (Nor did they say whether any human rights are forfeitable, though we might think it appropriate for a political manifesto of rights to have addressed that very issue.)

Hobbes in Leviathan, it will be recalled, insisted that our right of self-preservation was "inalienable," by which he seems to have meant some fusion of three distinguishable ideas: (a) no one ought to relinquish this right, (b) no one would relinquish it, and (c) no one could relinquish it - human nature being what it is. None of these three ideas can be defended, (much less all three) for reasons that will become evident. Locke, in his Second Treatise, offered a different and clearer argument: Our right to life is inalienable because our lives have been given in trust to us by God, and so my right to my own life does not include the power to alienate it. It isn't that I ought not to alienate this right, it's that I can't. However convincing to the converted such a theological foundation for my lack of power may be, it is unacceptable for any secular theory of rights.

Recent libertarian theories of rights, such as Robert Nozick's, hold that control over the rights one possesses is entirely in the hands of the rights possessor. In that case, any right you or I possess can be sold, given, or otherwise transferred to another. On such a theory, there are no inalienable rights. Thomson seems to hold the same view but she doesn't dwell on the point. Whether in a given case one ought to alienate a right of hers obviously cannot be decided by reference to what rights one has or to the kind of right in question. It must be decided by reference to the gains and losses one can reasonably expect to accrue by virtue of alienating that right.

I know of no rights theorist who would deny that we may alienate parts of our bodies, e.g., have the power to give away one of our two kidneys to a loved one who is on the brink of renal failure. Is there a rights theorist who wants to argue that I lack the power to give away my only kidney to a loved one dying of renal failure, when I know the gift will cost...
me my life? Even if I am dying of an inoperable brain tumor and waiting for my death before harvesting the organ would guarantee the death of my loved one who needs the kidney now? Sacrifices of this sort might well be praised and admired, and therefore permitted. Today's bioethicists balk at the idea of a market in such bodily parts, and I agree. But it is not clear to me how opposition to the sale of such parts could plausibly rest on the claim that no one has the power to alienate these parts – not even voluntarily and with fully informed consent.

At least since Locke rights theorists have assumed we may alienate our liberty, at least to the extent that doing so is a necessary condition of becoming what Marx later called “wage slaves” – selling our labor in order to satisfy our basic needs, needs that cannot be satisfied in any better way. Nor has classic indentured servitude, voluntarily and knowingly embarked upon, been held to be impossible or immoral or improbable on the ground that it requires an illegitimate alienation of liberty. On what ground, then, will one insist that complete alienation of one's life, liberty, or limb either cannot or would not or ought not to be done? Of course it can be done, even if circumstances are rare in which it would be reasonable to do so. So the inalienability of our rights reduces to the rather weak proposition that it is rarely to one's advantage to alienate certain basic rights.

Even if a right were inalienable, of course, that would not tell anyone what he or she ought to do on account of that right. The inalienability of my right to do – imposes no constraint on your conduct; as a lack of my power, however, it does amount to a constraint on me. And such constraint as my inalienable right does impose on you is a result of its being a right. Thus, an inalienable right does not tell the right-holder what he or she ought to do. What it does, rather, is to some extent moot that issue because the inalienability of one's right is identical with a certain lack of power in the right-holder.

Now let us consider forfeiture of a right. I forfeit a right whenever I have that right but by virtue of some act or omission of mine that transgresses some rule, and without any regard to my desires or preferences, I lose that right in the sense that it is in effect taken away. Thus, whereas the inalienability and nonwaivability of rights involve a lack of power in the right-holder, forfeiture of a right involves a lack of immunity in the right-holder: To forfeit a right is to change one's moral situation adversely. Unlike an alienated right, a forfeited right does not always or necessarily become the right of someone else; it simply evaporates. (I ignore any complications that arise from distinguishing between forfeiting one's right to x and forfeiting x itself.)

The idea of the forfeiture of one's rights must be as old as the very idea of a right (although no hint of its antiquity is to be found in the valuable historical account provided by Richard Tuck in his Natural Rights Theories).8 Locke, for one, certainly had the idea. He used it to explain how the death penalty (and by implication, any other kind of punishment) is legitimated. On the face of it, to punish someone by death in Locke's theory of rights ought to be a violation of that person's natural right to life. But Locke held otherwise, arguing that there are certain harmful acts that the innocent can suffer at the hands of others, such that those who are at "fault" for causing such a harm "forfeit" their lives just in case the punishment of death is what they "deserve."9 This amounts to saying that the moral offensiveness of not putting murderers to death outweighs whatever is morally desirable about letting murderers live in prison or in exile out of respect for their right to life or for any other moral value.
Forfeiture is a conspicuous case by means of which a theory of rights acknowledges that other moral considerations play a superior role in certain cases. Consider self-defense. You are an unprovoked aggressor, and I cannot escape or persuade you out of your intentions to victimize me. But I can shoot to wound. I do, only I kill you. Did I violate any right of yours in doing so? Friends of forfeiture will argue that I did not; they will say that by your aggression in the circumstances you forfeited your right to bodily security.

Consider another standard case involving the right to bodily security. Are we to believe that it is always a violation of someone's rights if he or she is tortured? (A right not to be tortured is a favorite candidate for an absolute right.) But suppose that a villain created a doomsday machine, set it to go off tomorrow, and we had no way to prevent its exploding except by getting the combination to the lock protecting the firing mechanism; but try as we might we cannot break the code. However, we have the villain in our power and we believe that he has memorized the code and that if we torture him he is likely to divulge it. Would we think that his right to bodily security protected him from our use of coercion and harm to extract the code from him against his will—especially if we also believed that it wouldn't take very much torture to get what we wanted, and if thereby we could save the whole planet from destruction?

The doctrine of forfeiture gets much lip service but little analysis by its friends or its critics. It is notoriously neglected in modern theories of rights; you will look in vain for it (except for a casual mention here and there) in the recent treatises on rights by Jack Donnelly, Ronald Dworkin, Richard Flathman, Alan Gewirth, Rex Martin, Abraham Melden, Diana Myers, Robert Nozick, Henry Shue, Hillel Steiner, Larry Sumner, and Carl Wellman, to mention a dozen recent writers. I shall not speculate on the causes for such marked silence.

But a rights theory must have a doctrine of forfeiture, or something equivalent, if the theory wants to accommodate or be linked with a theory of justified punishment. Locke's use of the idea of forfeiture makes that clear. For the kinds of things governments want to do to criminal offenders in the name of their deserved punishment—death, physical harm, incarceration, exile, fines, coercive community service, involuntary treatment—are clearly things that would amount to infringing or violating personal rights if private individuals were to do them. Thus, forfeiting one's rights smoothly paves the way for coercive punitive interventions.

However, this role for forfeiture of rights does not by itself show that every personal right is forfeitable. Well, is it? I know of only one case where an unforfeitable right (that is, a right one cannot forfeit) has been defended. I refer to Herbert Morris's claim that all of us have a nonwaivable, nonforfeitable, nonreliquishable right—the right to one's status as a moral being, a right that is implied in one's being a possessor of any rights at all. This echoes and restates in terms of rights theory a wise but neglected remark some years ago by Gregory Vlastos, when he was writing in a Kantian vein about the moral community. He observed: "The moral community is not a club from which members may be dropped for delinquency. Our morality does not provide for moral outcasts or half-castes." Elsewhere I have myself cited these passages in order to present the idea of an unforfeitable right. I hesitate to say that I have argued that we have such a right; but then it is doubtful whether either Vlastos or Morris argued for it, either. Perhaps one can argue that such a right is analytic of the idea of a certain kind of moral community because of the way such a right improves on all alternative conceptions. But I must leave
developing that argument for another occasion.

Judith Thomson is the only philosopher of rights, so far as I know, who has given serious consideration to the idea of forfeiting one's rights. Her idea of forfeiture is rather broader than mine, for it embraces waiver; hence on her use of that term claims can be forfeited in more ways than they can on mine. On my view, there is also both faulty and faultless forfeiture; on my view, only faulty forfeiture. Like Locke, she introduces serious discussion of forfeiture in the context of rationalizing punishment.24 Curiously, she ends her discussion by insisting that “The English word 'forfeit' is really too soft an affair to rest any great weight on”;25 but this does not lead her to conclude that the theory of rights would be better off if it simply dismissed the idea of forfeiture. What it does lead her to do is back off from deciding whether some person E, in an elevator with another person D, has forfeited certain rights when E suffers a “temporary fit of insanity and goes for D's throat to kill him.”26

Note that Thomson wants to say that morality allows D to kill E; the question she shuns answering is whether the circumstances warrant us in saying that E forfeited his claim-right against D not to be killed. What is also clear in this case, though Thomson doesn't discuss it, is that it is not E's rights that tell D what D ought to do or must do in this case. We can see that if we consider this argument: In the elevator, either E forfeits his right not to be harmed or E doesn't forfeit it. If E does not forfeit it, then D may kill E because of the stringency of D's right that E is violating. But if E does forfeit this right, then D may, if he wishes, kill E without violating or infringing any right of E's. So in neither case does the status of E's rights tell D what D ought to do or must do.

This seems to me to show in a dramatic way the insufficiency of rights theories, with or without a doctrine of forfeiture, to tell us what we ought to do in certain cases. If Thomson is correct, and any right we have can be forfeited, then the sovereignty of rights is in jeopardy, indeed. For once you have forfeited a given right, what now may or must or ought to be done to you by others as a consequence of that forfeiture will be decided by reference to moral considerations having little or even nothing to do with your (other remaining) rights (if any).

VI

Let us now turn to the idea of an absolute right. I take it that an absolute right is not one that the rightholder must exercise or act on; that would turn a right into something like a duty. Rather, a right of mine is absolute if and only if there are no other moral considerations that can prevail against it determining your conduct toward me. My right is absolute, in other words, if and only if you must conduct yourself accordingly. Hence, knowing what my absolute rights are tells you what you must do (or not do), and to that extent what you ought to do (or not do), because there are no stronger or weightier moral reasons directing you to act otherwise.

The idea of absolute rights has troubled philosophers for a long time. Perhaps Bentham was the first to worry about the following puzzle: If person A has an equally absolute right to do x, whereas person B has an absolute right to do y, and A can do x if and only if B does not do y, how is the conflict to be resolved without appealing to something outside the theory of rights?27 Two or more absolute rights, it seems, are two or more too many. For this reason, philosophers sympathetic to the idea of absolute rights have argued that there can be but one absolute right. But how do we know in advance that one person's absolute right to do x cannot conflict with another persons' absolute
right to do the same thing?

Leaving these familiar puzzles to the side, philosophers have been eager to recognize a distinction between justifiably and unjustifiably violating someone's rights. But if any right of yours is ever justifiably ignored or not honored, then that right can not be absolute. Thomson illustrates the idea of a justifiably violated right (I will follow her in calling this "infringing" a right\textsuperscript{28}) as follows. Suppose the shortest route from an accident scene to the nearest hospital is across your private land, and I have to decide whether to take that route without your permission (or even in the face of your prohibition) or risk the death of persons severely injured in the accident. Surely, I ought to take the shortcut even though I have no right to do so. So your right to prohibit trespass is not absolute; circumstances may warrant infringing your right. What sort of circumstances? Exactly what you would think—urgent needs that cannot otherwise be met, or that can be met otherwise only at grave risk of harm to the innocent.

Some philosophers (Alan Gewirth is one) believe that there are absolute rights, and that the need to protect them permits us to infringe the lesser rights of others.\textsuperscript{29} But Thomson's trespass example casts doubt on this reasoning. Surely, if rights differ in their stringency or weight, then the right to life is more stringent or weightier than the right to property; and so we can certainly argue that the absolute right to life entitles us to infringe the lesser right of property. But in the trespass example it wasn't the right to life of the injured (nor the duty to aid the injured) that we appealed to; it was rather the moral significance of the urgent lifethreatening need for hospital aid. What gave moral force to overriding or outweighing one person's property right was not some other person's absolute right.

The idea that rights are absolute seems to be conveyed in the metaphor, popularized by Ronald Dworkin two decades ago, that our rights are "trumps."\textsuperscript{30} Just as in the game of Bridge a weak trump card can prevail over any card in the other suits, so it is implied that individual rights prevail over collective goals, the general welfare, or net social happiness. However, Dworkin's trumps metaphor need not be understood as implying that rights are absolute in my sense of that term; a right could prevail over a collective goal without being absolute, because some other moral consideration could be more important in a given case than this right. Similarly, when philosophers say that rights "constrain" the pursuit of goals, individual or collective, as Nozick does,\textsuperscript{31} this does not imply such a right is absolute; it implies only that rights have sufficient moral weight or strength relative to goals to channel the pursuit of those goals.

Dworkin's trumps metaphor aside, it turns out that he really does think some rights are literally "absolute," but only in the sense that a political theory might so regard them.\textsuperscript{32} Thus, a right absolute on one theory might not be treated as absolute on another theory. Nowhere does he mention any right that is absolute on all theories. Nowhere does he mention any particular right that is absolute on his theory. Indeed, on his theory, rights vary in their "weight", some outweigh all other considerations—hence they are relatively absolute rights—while others are easily outweighed. Typically, rights are neither so strong as to be absolute nor so weak as to be pushed around easily by other moral considerations.\textsuperscript{33}

I conclude that neither Dworkin's trumps nor Nozick's constraints add any plausibility to the idea of absolute rights as I have defined them.

The idea that rights are absolute but only relative to a given political theory is anticipated in John Rawls's Theory of Justice. His first principle of justice (the only principle that mentions any rights) reads: "Each person is to have an equal right to the
most extensive total system of equal basic liberties compatible with a similar system of liberty for all." On such a theory, it is the equal liberties that are basic; the right to these liberties is secondary. Although Rawls does not say so, these liberties, I suggest, are analogous to Hohfeldian legal privileges, and thus are a species of (weak) moral rights.

Let us assume a political society that accepts such a first principle. Are there conditions under which this principle of equal rights may be suspended, say, in certain cases of national emergency? Are there conditions under which certain persons entitled to these equal basic liberties as of right nonetheless forfeit some or all of these liberties, say, by virtue of having been convicted of some crime? Are these or any of these basic liberties alienable or are all of them inalienable? Do these or any of these basic liberties have absolute priority over all other moral considerations?

In a footnote Rawls remarks that “Although specific rights are not absolute, the system of equal liberties is absolute practically speaking under favorable conditions.” Assuming that Rawls means by “absolute” more or less what I mean by it, two features of his position deserve mention here. First, he insists on the absolute status of the system of equal basic liberties as a feature of what he calls “ideal theory” – that part of the theory of justice addressed to “the nature and aims of a perfectly just society.” But is there any reason to believe that these rights are also absolute under non-ideal theory, that part of the theory of justice concerning “what we are faced with in everyday life”? The passage quoted earlier from Rawls suggests the answer is No.

Second, although we get some guidance in Rawls’s theory for the role of rights in deciding how to design our political system, we get little or no guidance from those rights for what we ought to do in making personal decisions involving appeal to our rights or to the rights of others. Rawls may reply that his principles of justice are designed to cover only “the basic structure” of a political society, and so have little or no direct application to the casuistry of personal moral decision making. (This, it will be remembered, was the gist of his reply to some of Nozick’s criticisms.) But that reply simply concedes the point under discussion: The theory offers no guidance at the very point where we need it. Rex Martin, in his book *Rawls and Rights*, goes somewhat beyond Rawls’s position when he says “All incumbent basic rights in a constitutional system are absolute,” but I cannot see that he makes such a claim very plausible – and I leave open whether it is the best interpretation of Rawls’s position on the point.

If, as I believe but of course cannot claim to have proved here, that there are no absolute rights – political, moral, or legal – then we have one conclusive reason why we cannot argue from premises stating what someone has a right to do, to a conclusion about what others ought to do or must do. Only if rights were absolute would such inferences be legitimate.

VII

Virtually every theory of rights recognizes in one way or another that our rights derive their entire importance from the way they protect and advance the interests – desires, needs – we have as human beings. If we had no such interests there would be nothing for our rights to protect. (It is this feature of rights that encourages some theorists to extend rights to animals and other living things – animals have interests, whatever else they lack.) But a theory of rights is in peril if it allows conclusions about what someone’s rights are to be derived straightforwardly from what that person’s needs are.

Thomson’s famous plugged-in violinist example reveals the faulty logic of such
inferences. Even though the violinist (owing to renal failure) needs life support and needs it now, even though the violinist has a very strong interest in continuing to live, and even though the violinist has a right to life, it does not follow that he has any right to your functioning kidney (which happens to be conveniently in the vicinity) even though without that kidney he will shortly die. His right to life is not absolute (i.e., does not prevail over the rights, interests, or needs of the person whose kidney is in question); his needs and interests do not give rise to any claim-right against you. Nevertheless his need (and not his rights) does tell the rest of us what we ought to do— or, if that is too strong in certain cases, other things being taken into account, it remains true that his needs do give others a reason for trying to help him. But this only shows that moral considerations external to the theory of rights must be relied on in cases such as this before anyone can claim to know what he or she ought to do.

VIII

It is instructive in this light to consider an important feature of Judith Thomson's theory of rights. On her account, what gives rise to our rights are "our inherently individual interests." She does not use this phrase as a mantra, but she does not clarify it, either. I suggest that an interest is inherent just in case it does not arise only from some special or unusual circumstances in which I might find myself but you don't (e.g., as my right to ticket an illegally parked car arises from my status as a traffic officer—a status you lack); I take it that the interest in question are individual because all genuine interests are the interests of individual persons; and I take it that an interest of someone's is not so much anything that he or she is interested in, but is something that is good for her or him either as a means to some end or for its own sake, whether or not he or she knows it or is interested in it.

On Thomson's view our rights not only arise from our inherently individual interests; they protect those interests and our conduct seeking to satisfy them. We might express her view by modifying a famous epigram of Kant's: Interests without rights are defenseless, rights without interests are empty. The result is a theory of moral rights to life, liberty, and bodily security at the minimum.

But now let us ask what is the difference, practically speaking, between a moral theory that regards our rights as derived from our inherently individual interests, and a moral theory that ignores rights but attaches great importance to those inherently human interests and needs? Why is a theory of the former sort inherently (or consequentially) superior to a theory of the latter sort? Why, for example, teach respect for the rights of others when we could just as well—indeed, perhaps even better—teach respect for the interests and concern for the needs of others?

We have seen that the rights one possesses do not always and invariably tell anybody what they ought to do, much less what they must do. We have also seen that on any theory of rights, what really matters is our interests and what we ought to do. Our rights are awkwardly sandwiched between these two and (to change the metaphor) cast only a feeble light on the connection between the two. So I end on what I hope is a provocative note: Why aren't our rights just a superfluous middle term between our interests, on the one side, and what we ought to do, on the other?

Interesting and important as this question is, I cannot pursue it here because it would quickly turn into just that sort of external criticism of the theory of rights that I have foresworn raising.
NOTES

17. Nozick, op. cit.
25. Ibid., p. 367.
26. Ibid., p. 366.
27. Bentham, op. cit.
32. Dworkin, op. cit., p. 92.
33. Ibid., pp. 83, 120f., 142f., 191, 202-04.
35. Ibid., p. 506 note 30.
36. Ibid., p. 9.
37. Ibid.

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