

what special form the three maxims of unequal distribution, 'to each according to his merit, his work, and the agreements he has made', may be joined without theoretical inconsistency or moral compromise to the two maxims of equal distribution, 'to each according to his need, and to his [human] worth'.

## III

ARE THERE ANY NATURAL RIGHTS?<sup>1</sup>

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I SHALL advance the thesis that if there are any moral rights at all, it follows that there is at least one natural right, the equal right of all men to be free. By saying that there is this right, I mean that in the absence of certain special conditions which are consistent with the right being an equal right, any adult human being capable of choice (1) has the right to forbearance on the part of all others from the use of coercion or restraint against him save to hinder coercion or restraint and (2) is at liberty to do (i.e. is under no obligation to abstain from) any action which is not one coercing or restraining or designed to injure other persons.<sup>2</sup>

I have two reasons for describing the equal rights of all men to be free as a *natural* right; both of them were always emphasized by the classical theorists of natural rights. (1) This right is one which all men

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<sup>1</sup> I was first stimulated to think along these lines by Mr Stuart Hampshire, and I have reached by different routes a conclusion similar to his.

<sup>2</sup> Further explanation of the perplexing terminology of freedom is, I fear, necessary. *Coercion* includes, besides preventing a person from doing what he chooses, making his choice less eligible by threats; *restraint* includes any action designed to make the exercise of choice impossible and so includes killing or enslaving a person. But neither coercion nor restraint includes *competition*. In terms of the distinction between 'having a right to' and 'being at liberty to', used above and further discussed in sect. I, B, all men say have, consistently with the obligation to forbear from coercion, the *liberty* to satisfy if they can such at least of their desires as are not designed to coerce or injure others, even though in fact, owing to scarcity, one man's satisfaction causes another's frustration. In conditions of extreme scarcity this distinction between competition and coercion will not be worth drawing; natural rights are only of importance 'where peace is possible' (Locke). Further, freedom (the absence of coercion) can be *valueless* to those victims of unrestricted competition too poor to make use of it; so it will be pedantic to point out to them that though starving they are free. This is the truth exaggerated by the Marxists whose *identification* of poverty with lack of freedom confuses two different evils.

have if they are capable of choice: they have it *qua* men and not only if they are members of some society or stand in some special relation to each other. (2) This right is not created or conferred by men's voluntary action; other moral rights are.<sup>3</sup> Of course, it is quite obvious that my thesis is not as ambitious as the traditional theories of natural rights; for although on my view all men are *equally* entitled to be free in the sense explained, no man has an absolute or unconditional right to do or not to do any particular thing or to be treated in any particular way; coercion or restraint of any action may be justified in special conditions consistently with the general principle. So my argument will not show that men have any right (save the equal right of all to be free) which is 'absolute', 'indefeasible', or 'imprescriptible'. This may for many reduce the importance of my contention, but I think that the principle that all men have an equal right to be free, meagre as it may seem, is probably all that the political philosophers of the liberal tradition need have claimed to support any programme of action even if they have claimed more. But my contention that there is this one natural right may appear unsatisfying in another respect; it is only the conditional assertion that *if* there are any moral rights then there must be this one natural right. Perhaps few would now deny, as some have, that there are moral rights; for the point of that denial was usually to object to some philosophical claim as to the 'ontological status' of rights, and this objection is now expressed not as a denial that there are any moral rights but as a denial of some assumed logical similarity between sentences used to assert the existence of rights and other kinds of sentences. But it is still important to remember that there may be codes of conduct quite properly termed moral codes (though we can of course say they are 'imperfect') which do not employ the notion of a right, and there is nothing contradictory or otherwise absurd in a code or morality consisting wholly of prescriptions or in a code which prescribed only what should be done for the realization of happiness or some ideal of personal perfection.<sup>4</sup> Human actions in such systems would be evaluated or criticized as compliances with prescriptions or as *good* or *bad*, *right* or *wrong*, *wise* or *foolish*, *fitting* or *unfitting*, but no one in such a system would have, exercise, or claim rights, or

<sup>3</sup> Save those general rights (cf. sect. II, B) which are particular exemplifications of the right of all men to be free.

<sup>4</sup> Is the notion of a right found in either Plato or Aristotle? There seems to be no Greek word for it as distinct from 'right' or 'just' (*δικαίον*), though expressions like *τὰ ἐμὰ δικαιά* are I believe fourth-century legal idioms. The natural expressions in Plato are *τὸ ἐαυτὸν* (*ἔχειν*) or *τὰ τιμὴ βεβηλόμυνα*, but these seem confined to property or debts. There is no place for a moral right unless the moral value of individual freedom is recognized.

violate or infringe them. So those who lived by such systems could not of course be committed to the recognition of the equal right of all to be free; nor, I think (and this is one respect in which the notion of a right differs from other moral notions), could any parallel argument be constructed to show that, from the bare fact that actions were recognized as ones which ought or ought not to be done, as right, wrong, good, or bad, it followed that some specific kind of conduct fell under these categories.

## I

(A) Lawyers have for their own purposes carried the dissection of the notion of a legal right some distance, and some of their results<sup>5</sup> are of value in the elucidation of statements of the form 'X has a right to . . .' outside legal contexts. There is of course no simple identification to be made between moral and legal rights, but there is an intimate connection between the two, and this itself is one feature which distinguishes a moral right from other fundamental moral concepts. It is not merely that as a matter of fact men speak of their moral rights mainly when advocating their incorporation in a legal system, but that the concept of a right belongs to that branch of morality which is specifically concerned to determine when one person's freedom may be limited by another's<sup>6</sup> and so to determine what actions may appropriately be made the subject of coercive legal rules. The words '*droit*', '*diritto*', and '*Recht*', used by continental jurists, have no simple English translation and seem to English jurists to hover uncertainly between law and morals, but they do in fact mark off an area of morality (the morality of law) which has special characteristics. It is occupied by the concepts of justice, fairness, rights, and obligation (if this last is not used as it is by many moral philosophers as an obscuring general label to cover every action that morally we ought to do or forbear from doing). The most important common characteristic of this group of moral concepts is that there is no incongruity, but a special congruity in the use of force or the threat of force to secure that what is just or fair or

<sup>5</sup> As W. D. Lamont has seen: cf. his *Principles of Moral Judgement* (Oxford, 1946); for the jurists, cf. Hohfeld's *Fundamental Legal Conceptions* (New Haven, 1923).

<sup>6</sup> Here and subsequently I use 'interfere with another's freedom', 'limit another's freedom', 'determine how another shall act', to mean either the use of coercion or demanding that a person shall do or not do some action. The connection between these two types of 'interference' is too complex for discussion here; I think it is enough for present purposes to point out that having a justification for demanding that a person shall or shall not do some action is a necessary though not a sufficient condition for justifying coercion.

someone's right to have done shall in fact be done; for it is in just these circumstances that coercion of another human being is legitimate. Kant, in the *Rechtslehre*, discusses the obligations which arise in this branch of morality under the title of *officia juris*, 'which do not require that respect for duty shall be of itself the determining principle of the will', and contrasts them with *officia virtutis*, which have no moral worth unless done for the sake of the moral principle. His point is, I think, that we must distinguish from the rest of morality those principles regulating the proper distribution of human freedom which alone make it morally legitimate for one human being to determine by his choice how another should act; and a certain specific moral value is secured (to be distinguished from moral virtue in which the goodwill is manifested) if human relationships are conducted in accordance with these principles even though coercion has to be used to secure this, for only if these principles are regarded will freedom be distributed among human beings as it should be. And it is I think a very important feature of a moral right that the possessor of it is conceived as having a moral justification for limiting the freedom of another and that he has this justification not because the action he is entitled to require of another has some moral quality but simply because in the circumstances a certain distribution of human freedom will be maintained if he by his choice is allowed to determine how that other shall act.

(B) I can best exhibit this feature of a moral right by reconsidering the question whether moral rights and 'duties'<sup>7</sup> are correlative. The contention that they are means, presumably, that every statement of the form 'X has a right to . . .' entails and is entailed by 'Y has a duty (not) to . . .', and at this stage we must not assume that the values of the name-variables 'X' and 'Y' must be different persons. Now there is certainly one sense of 'a right' (which I have already mentioned) such that it does not follow from X's having a right that X or someone else has any duty. Jurists have isolated rights in this sense and have referred to them as 'liberties' just to distinguish them from rights in the centrally

<sup>7</sup> I write 'duties' here because one factor obscuring the nature of a right is the philosophical use of 'duty' and 'obligation' for all cases where there are moral reasons for saying an action ought to be done or not done. In fact 'duty', 'obligation', 'right', and 'good' come from different segments of morality, concern different types of conduct, and make different types of moral criticism or evaluation. Most important are the points (1) that obligations may be voluntarily incurred or created, (2) that they are *owed* to special persons (who have rights), (3) that they do not arise out of the character of the actions which are obligatory but out of the relationship of the parties. Language roughly though not consistently confines the use of 'having an obligation' to such cases.

important sense of 'right' which has 'duty' as a correlative. The former sense of 'right' is needed to describe those areas of social life where competition is at least morally unobjectionable. Two people walking along both see a ten-dollar bill in the road twenty yards away, and there is no clue as to the owner. Neither of the two are under a 'duty' to allow the other to pick it up; each has in this sense a right to pick it up. Of course there may be many things which each has a 'duty' not to do in the course of the race to the spot—neither may kill or wound the other—and corresponding to these 'duties' there are rights to forbearances. The moral propriety of all economic competition implies this minimum sense of 'a right' in which to say that 'X has a right to' means merely that X is under no 'duty' not to. Hobbes saw that the expression 'a right' could have this sense but he was wrong if he thought that there is no sense in which it does follow from X's having a right that Y has a duty or at any rate an obligation.

(C) More important for our purpose is the question whether for all moral 'duties' there are correlative moral rights, because those who have given an affirmative answer to this question have usually assumed without adequate scrutiny that to have a right is simply to be capable of benefiting by the performance of a 'duty'; whereas in fact this is not a sufficient condition (and probably not a necessary condition) of having a right. Thus animals and babies who stand to benefit by our performance of our 'duty' not to ill-treat them are said *therefore* to have rights to proper treatment. The full consequence of this reasoning is not usually followed out; most have shrunk from saying that we have rights against ourselves because we stand to benefit from our performance of our 'duty' to keep ourselves alive or develop our talents. But the moral situation which arises from a promise (where the legal-sounding terminology of rights and obligations is most appropriate) illustrates most clearly that the notion of having a right and that of benefiting by the performance of a 'duty' are not identical. X promises Y in return for some favour that he will look after Y's aged mother in his absence. Rights arise out of this transaction, but it is surely Y to whom the promise has been made and not his mother who *has* or *possesses* these rights. Certainly Y's mother is a person concerning whom X has an obligation and a person who will benefit by its performance, but the person *to whom* he has an obligation to look after her is Y. This is something *due to* or *owed to* Y, so it is Y, not his mother, whose right X will disregard and to whom X will have done *wrong* if he fails to keep his promise, though the mother may be physically injured. And it is Y who has a moral *claim* upon X; is *entitled* to have his mother looked after, and who can *waive* the claim and *release* Y from the obligation.

Y is, in other words, morally in a position to determine by his choice how X shall act and in this way to limit X's freedom of choice; and it is this fact, not the fact that he stands to benefit, that makes it appropriate to say that he has a *right*. Of course often the person to whom a promise has been made will be the only person who stands to benefit by its performance, but this does not justify the identification of 'having a right' with 'benefiting by the performance of a duty'. It is important for the whole logic of rights that, while the person who stands to benefit by the performance of a duty is discovered by considering what will happen if the duty is not performed, the person who has a right (to whom performance is *owed* or *due*) is discovered by examining the transaction or antecedent situation or relations of the parties out of which the 'duty' arises. These considerations should incline us not to extend to animals and babies whom it is wrong to ill-treat the notion of a right to proper treatment, for the moral situation can be simply and adequately described here by saying that it is wrong or that we ought not to ill-treat them or, in the philosopher's generalized sense of 'duty', that we have a duty not to ill-treat them.<sup>8</sup> If common usage sanctions talk of the rights of animals or babies it makes an idle use of the expression 'a right', which will confuse the situation with other different moral situations where the expression 'a right' has a specific force and cannot be replaced by the other moral expressions which I have mentioned. Perhaps some clarity on this matter is to be gained by considering the force of the preposition 'to' in the expression 'having a duty to Y' or 'being under an obligation to Y' (where 'Y' is the name of a person); for it is significantly different from the meaning of 'to' in 'doing something to Y' or 'doing harm to Y', where it indicates the person affected by some action. In the first pair of expressions, 'to' obviously does not have this force, but indicates the person to whom the person morally bound is bound. This is an intelligible development of the figure of a bond (*vinculum juris: obligare*); the precise figure is not that of two persons bound by a chain, but of *one* person bound, the other end of the chain lying in the hands of another to use if he chooses.<sup>9</sup> So it appears absurd to speak of having duties or owing obligations to ourselves—of course we may have 'duties' not to do harm to ourselves, but what could be meant (once the distinction between these different meanings of 'to' has been grasped) by insisting that we have duties or obligations *to* ourselves not to do harm to ourselves?

<sup>8</sup> The use here of the generalized 'duty' is apt to prejudice the question whether animals and babies have rights.

<sup>9</sup> Cf. A. H. Campbell, *The Structure of Stair's Institutes* (Glasgow, 1954), p. 31.

(D) The essential connection between the notion of a right and the justified limitation of one person's freedom by another may be thrown into relief if we consider codes of behaviour which do not purport to confer rights but only to prescribe what shall be done. Most natural law thinkers down to Hooker conceived of natural law in this way: there were natural duties compliance with which would certainly benefit man—things to be done to achieve man's natural end—but not natural rights. And there are of course many types of codes of behaviour which only prescribe what is to be done, e.g. those regulating certain ceremonies. It would be absurd to regard these codes as conferring rights, but illuminating to contrast them with rules of games, which often create rights, though not, of course, moral rights. But even a code which is plainly a moral code need not establish rights; the Decalogue is perhaps the most important example. Of course, quite apart from heavenly rewards human beings stand to benefit by general obedience to the Ten Commandments: disobedience is wrong and will certainly harm individuals. But it would be a surprising interpretation of them that treated them as conferring rights. In such an interpretation obedience to the Ten Commandments would have to be conceived as due to or owed to individuals, not merely to God, and disobedience not merely as wrong but as *a wrong to* (as well as harm to) individuals. The Commandments would cease to read like penal statutes designed only to rule out certain types of behaviour and would have to be thought of as rules placed at the disposal of individuals and regulating the extent to which *they* may demand certain behaviour from others. Rights are typically conceived of as *possessed* or *owned by* or *belonging to* individuals, and these expressions reflect the conception of moral rules as not only prescribing conduct but as forming a kind of moral property of individuals to which they are as individuals entitled; only when rules are conceived in this way can we speak of *rights* and *wrongs* as well as right and wrong actions.<sup>10</sup>

## II

So far I have sought to establish that to have a right entails having a moral justification for limiting the freedom of another person and for determining how he should act; it is now important to see that the moral justification must be of a special kind if it is to constitute a right, and this will emerge most clearly from an examination of the circumstances in which rights are asserted with the typical expression 'I have

<sup>10</sup> Continental jurists distinguish between '*subjektives*' and '*objektives Recht*', which corresponds very well to the distinction between *a* right, which an individual has, and what it is right to do.

a right to . . .'. It is I think the case that this form of words is used in two main types of situations: (A) when the claimant has some special justification for interference with another's freedom which other persons do not have ('I have a right to be paid what you promised for my services'); (B) when the claimant is concerned to resist or object to some interference by another person as having no justification ('I have a right to say what I think').

(A) *Special rights*. When rights arise out of special transactions between individuals or out of some special relationship in which they stand to each other, both the persons who have the right and those who have the corresponding obligation are limited to the parties to the special transaction or relationship. I call such rights special rights to distinguish them from those moral rights which are thought of as rights against (i.e. as imposing obligations upon)<sup>11</sup> everyone, such as those that are asserted when some unjustified interference is made or threatened as in (B) above.

(i) The most obvious cases of special rights are those that arise from promises. By promising to do or not to do something, we voluntarily incur obligations and create or confer rights on those to whom we promise; we alter the existing moral independence of the parties' freedom of choice in relation to some action and create a new moral relationship between them, so that it becomes morally legitimate for the person to whom the promise is given to determine how the promisor shall act. The promisee has a temporary authority or sovereignty in relation to some specific matter over the other's will which we express by saying that the promisor is under an obligation *to* the promisee to do what he has promised. To some philosophers the notion that moral phenomena—rights and duties or obligations—can be brought into existence by the voluntary action of individuals has appeared utterly mysterious; but this I think has been so because they have not clearly seen how special the moral notions of a right and an obligation are, nor how peculiarly they are connected with the distribution of freedom of choice; it would indeed be mysterious if we could make actions morally good or bad by voluntary choice. The simplest case of promising illustrates two points characteristic of all special rights: (1) the right and obligation arise not because the promised action has itself any particular moral quality, but just because of the voluntary transaction between the parties; (2) the identity of the parties concerned is vital—only *this* person (the promisee) has the moral justification for determining how the promisor shall act. It is

<sup>11</sup> Cf. sect. (B) below.

*his* right; only in relation to him is the promisor's freedom of choice diminished, so that if he chooses to release the promisor no one else can complain.

(ii) But a promise is not the only kind of transaction whereby rights are conferred. They may be *accorded* by a person consenting or authorizing another to interfere in matters which but for his consent or authorization he would be free to determine for himself. If I consent to your taking precautions for my health and happiness or authorize you to look after my interests, then you have a right which others have not, and I cannot complain of your interference if it is within the sphere of your authority. This is what is meant by a person surrendering his rights to another; and again the typical characteristics of a right are present in this situation: the person authorized has the right to interfere not because of its intrinsic character but because *these* persons have stood in *this* relationship. No one else (not similarly authorized) has any *right*<sup>12</sup> to interfere in theory even if the person authorized does not exercise his right.

(iii) Special rights are not only those created by the deliberate choice of the party on whom the obligation falls, as they are when they are accorded or spring from promises, and not all obligations to other persons are deliberately incurred, though I think it is true of all special rights that they arise from previous voluntary actions. A third very important source of special rights and obligations which we recognize in many spheres of life is what may be termed mutuality of restrictions, and I think political obligation is intelligible only if we see what precisely this is and how it differs from other right-creating transactions (consent, promising) to which philosophers have assimilated it. In its bare schematic outline it is this: when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission. The rules may provide that officials should have authority to enforce obedience and make further rules, and this will create a structure of legal rights and duties, but the moral obligation to obey the rules in such circumstances is *due to* the co-operating members of the society, and they have the correlative moral right to obedience. In social situations of this sort (of which political society is the most complex example) the obligation to obey the rules is something distinct from whatever other moral reasons there may be for obedience in terms of good consequences (e.g. the prevention of suffering); the obligation

<sup>12</sup> Though it may be *better* (the lesser of two evils) that he should: cf. below.

is due to the co-operating members of the society as such and not because they are human beings on whom it would be wrong to inflict suffering. The utilitarian explanation of political obligation fails to take account of this feature of the situation both in its simple version that the obligation exists because and only if the direct consequences of a particular act of disobedience are worse than obedience, and also in its more sophisticated version that the obligation exists even when this is not so, if disobedience increases the probability that the law in question or other laws will be disobeyed on other occasions when the direct consequences of obedience are better than those of disobedience.

Of course to say that there is such a moral obligation upon those who have benefited by the submission of other members of society to restrictive rules to obey these rules in their turn does not entail either that this is the only kind of moral reason for obedience or that there can be no cases where disobedience will be morally justified. There is no contradiction or other impropriety in saying 'I have an obligation to do X, someone has a right to ask me to, but I now see I ought not to do it'. It will in painful situations sometimes be the lesser of two moral evils to disregard what really are people's rights and not perform our obligations to them. This seems to me particularly obvious from the case of promises: I may promise to do something and thereby incur an obligation just because that is one way in which obligations (to be distinguished from other forms of moral reasons for acting) are created; reflection may show that it would in the circumstances be wrong to keep this promise because of the suffering it might cause, and we can express this by saying '*I ought not to do it though I have an obligation to him to do it*' just because the italicized expressions are not synonyms but come from different dimensions of morality. The attempt to explain this situation by saying that our real obligation here is to avoid the suffering and that there is only a prima-facie obligation to keep the promise seems to me to confuse two quite different kinds of moral reason, and in practice such a terminology obscures the precise character of what is at stake when 'for some greater good' we infringe people's rights or do not perform our obligations to them.

The social-contract theorists rightly fastened on the fact that the obligation to obey the law is not merely a special case of benevolence (direct or indirect), but something which arises between members of a particular political society out of their mutual relationship. Their mistake was to identify *this* right-creating situation of mutual restrictions with the paradigm case of promising; there are of course important similarities, and these are just the points which all special rights have in common, viz. that they arise out of special relationships between

human beings and not out of the character of the action to be done or its effects.

(iv) There remains a type of situation which may be thought of as creating rights and obligations: where the parties have a special natural relationship, as in the case of parent and child. The parent's moral right to obedience from his child would I suppose now be thought to terminate when the child reaches the age 'of discretion', but the case is worth mentioning because some political philosophies have had recourse to analogies with this case as an explanation of political obligation, and also because even this case has some of the features we have distinguished in special rights, viz. the right arises out of the special relationship of the parties (though it is in this case a natural relationship) and not out of the character of the actions to the performance of which there is a right.

(v) To be distinguished from special rights, of course, are special liberties, where, exceptionally, one person is *exempted* from obligations to which most are subject but does not thereby acquire a *right* to which there is a correlative obligation. If you catch me reading your brother's diary, you say, 'You have no right to read it'. I say, 'I have a right to read it—your brother said I might unless he told me not to, and he has not told me not to.' Here I have been specially *licensed* by your brother who had a right to require me not to read his diary, so I am exempted from the moral obligation not to read it. Cases where *rights*, not liberties, are accorded to manage or interfere with another person's affairs are those where the licence is not revocable at will by the person according the right.

(B) *General rights*. In contrast with special rights, which constitute a justification peculiar to the holder of the right for interfering with another's freedom, are general rights, which are asserted defensively, when some unjustified interference is anticipated or threatened, in order to point out that the interference is unjustified. 'I have the right to say what I think.'<sup>13</sup> 'I have the right to worship as I please.' Such rights share two important characteristics with special rights. (1) to have them is to have moral justification for determining how another shall act, viz. that he shall not interfere.<sup>14</sup> (2) The moral justification

<sup>13</sup> In speech the difference between general and special rights is often marked by stressing the pronoun where a special right is claimed or where the special right is denied. 'You have no right to stop him reading that book' refers to the reader's general right. 'You have no right to stop him reading that book' denies that the person addressed has a special right to interfere though others may have.

<sup>14</sup> Strictly, in the assertion of a general right both the *right* to forbearance from coercion and the *liberty* to do the specified action are asserted, the first in the face of actual or threatened coercion, the second as an objection to an actual

does not arise from the character of the particular action to the performance of which the claimant has a right; what justifies the claim is simply—there being no special relation between him and those who are threatening to interfere to justify that interference—that this is a particular exemplification of the equal right to be free. But there are of course striking differences between such defensive general rights and special rights. (1) General rights do not arise out of any special relationship or transaction between men. (2) They are not rights which are peculiar to those who have them but are rights which all men capable of choice have in the absence of those special conditions which give rise to special rights. (3) General rights have as correlatives obligations not to interfere to which everyone else is subject and not merely the parties to some special relationship or transaction, though of course they will often be asserted when some particular persons threaten to interfere as a moral objection to the interference. To assert a general right is to claim in relation to some particular action the equal right of all men to be free in the absence of any of those special conditions which constitute a special right to limit another's freedom; to assert a special right is to assert in relation to some particular action a right constituted by such special conditions to limit another's freedom. The assertion of general rights directly invokes the principle that all men equally have the right to be free; the assertion of a special right (as I attempt to show in Section III) invokes it indirectly.

### III

It is, I hope, clear that unless it is recognized that interference with another's freedom requires a moral justification the notion of a right could have no place in morals; for to assert a right is to assert that there is such a justification. The characteristic function in moral discourse of those sentences in which the meaning of the expression 'a right' is to be found—'I have a right to . . .', 'You have no right to . . .', 'What right have you to . . .?'—is to bring to bear on interferences with another's freedom, or on claims to interfere, a type of moral evaluation or criticism specially appropriate to interference with freedom and characteristically different from the moral criticism of actions made with the use of expressions like 'right', 'wrong', 'good', and 'bad'. And this is only one of many different types of moral ground for saying 'You ought . . .' or 'You ought not . ..'. The use of the expression 'What

or anticipated demand that the action should not be done. The first has as its correlative an obligation upon everyone to forbear from coercion. the second the absence in any one of a justification for such a demand. Here, in Hohfeld's words, the correlative is not an obligation but a 'no-right'.

right have you to . . .?' shows this more clearly, perhaps, than the others; for we use it, just at the point where interference is actual or threatened, to call for the moral *title* of the person addressed to interfere; and we do this often without any suggestion at all that what he proposes to do is otherwise wrong and sometimes with the implication that the same interference on the part of another person would be unobjectionable.

But though our use in moral discourse of 'a right' does presuppose the recognition that interference with another's freedom requires a moral justification, this would not itself suffice to establish, except in a sense easily trivialized, that in the recognition of moral rights there is implied the recognition that all men have a right to equal freedom; for unless there is some restriction inherent in the meaning of 'a right' on the type of moral justification for interference which can constitute a right, the principle could be made wholly vacuous. It would, for example, be possible to adopt the principle and then assert that some characteristic or behaviour of some human beings (that they are im-provident, or atheists, or Jews, or Negroes) constitutes a moral justification for interfering with their freedom; *any* differences between men could, so far as my argument has yet gone, be treated as a moral justification for interference and so constitute a right, so that the equal right of all men to be free would be compatible with gross inequality. It may well be that the expression 'moral' itself imports some restriction on what can constitute a moral justification for interference which would avoid this consequence, but I cannot myself yet show that this is so. It is, on the other hand, clear to me that the moral justification for interference which is to constitute a *right* to interfere (as distinct from merely making it morally good or desirable to interfere) is restricted to certain special conditions and that this is inherent in the meaning of 'a right' (unless this is used so loosely that it could be replaced by the other moral expressions mentioned). Claims to interfere with another's freedom based on the general character of the activities interfered with (e.g. the folly or cruelty of 'native' practices) or the general character of the parties ('We are Germans. They are Jews') even when well founded are not matters of moral right or obligation. Submission in such cases even where proper is not *due to* or *owed to* the individuals who interfere, it would be equally proper whoever of the same class of persons interfered. Hence other elements in our moral vocabulary suffice to describe this case, and it is confusing here to talk of rights. We saw in Section II that the types of justification for interference involved in special rights was independent of the character of the action to the performance of which there was a right but

depended upon certain previous transactions and relations between individuals (such as promises, consent, authorization, submission to mutual restrictions). Two questions here suggest themselves: (1) On what intelligible principle could these bare forms of promising, consenting, submission to mutual restrictions, be either necessary or sufficient, irrespective of their content, to justify interference with another's freedom? (2) What characteristics have these types of transaction or relationship in common? The answer to both these questions is I think this: if we justify interference on such grounds as we give when we claim a moral right, we are in fact indirectly invoking as our justification the principle that all men have an equal right to be free. For we are in fact saying in the case of promises and consents or authorizations that this claim to interfere with another's freedom is justified because he has, in exercise of his equal right to be free, freely chosen to create this claim; and in the case of mutual restrictions we are in fact saying that this claim to interfere with another's freedom is justified because it is fair; and it is fair because only so will there be an equal distribution of restrictions and so of freedom among this group of men. So in the case of special rights as well as of general rights recognition of them implies the recognition of the equal right of all men to be free.

## IV

## ARE THERE ANY ABSOLUTE RIGHTS?

ALAN GEWIRTH

IT IS a widely held opinion that there are no absolute rights. Consider what would be generally regarded as the most plausible candidate: the right to life. This right entails at least the negative duty to refrain from killing any human being. But it is contended that this duty may be overridden, that a person may be justifiably killed if this is the only way to prevent him from killing some other, innocent person, or if he is engaged in combat in the army of an unjust aggressor nation with which one's own country is at war. It is also maintained that even an innocent person may justifiably be killed if failure to do so will lead to the deaths of other such persons. Thus an innocent person's right to life is held to be overridden when a fat man stuck in the mouth of a cave prevents the exit of speleologists who will otherwise drown, or when a child or some other guiltless person is strapped onto the front of an aggressor's tank, or when an explorer's choice to kill one among a group of harmless natives about to be executed is the necessary and sufficient condition of the others' being spared, or when the driver of a runaway trolley can avoid killing five persons on one track only by killing one person on another track.<sup>1</sup> And topping all such tragic examples is the catastrophic situation where a nuclear war or some other

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<sup>1</sup> For the cave example, see Philippa Foot, 'The Problem of Abortion and the Doctrine of Double Effect', *Oxford Review*, no. 5 (1967), p. 7. For the 'innocent shield' and the tank, see Robert Nozick, *Anarchy, State, and Utopia* (New York, 1974), p. 35, and Judith J. Thomson, *Self-Defense and Rights* (Lindley Lecture, University of Kansas, 1976), p. 11. For the explorer and the natives, see Bernard Williams, 'A Critique of Utilitarianism', in J. J. C. Smart and B. Williams, *Utilitarianism For and Against* (Cambridge, 1973), pp. 98-9. For the trolley example, see Foot, op. cit., p. 8, and Judith J. Thomson, 'Killing, Letting Die, and the Trolley Problem', *The Monist*, 59 (1976), pp. 206 ff. I have borrowed from Thomson's *Self-Defense and Rights*, p. 10, the terminological distinction used below between 'infringing' and 'violating' a right.