A THEORY OF RIGHTS AND OBLIGATIONS

by

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B.A., University of British Columbia, 1973
M.A., University of British Columbia, 1974

A THESIS SUBMITTED IN PARTIAL FULFILMENT OF

THE REQUIREMENTS FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

in

THE FACULTY OF GRADUATE STUDIES

in the Department of

Philosophy

We accept this thesis as conforming to the required standard.

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THE UNIVERSITY OF BRITISH COLUMBIA
February, 1979

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Abstract

I attempt in this thesis to present a comprehensive theory of rights. The theory is composed of two major parts, the first containing a theory of natural rights, and the second, a theory of what I call special rights.

In the first part, I argue that for A to have a natural right to X is for it to be the case that, in virtue of certain natural characteristics of A (which I specify), and in the absence of limiting and certain other conditions (which I also specify), it is prima facie seriously wrong for others to be positively instrumental in A's not having X. I argue that the general natural rights are to life, well-being and autonomy; I then specify what characteristics a creature must have in order to possess any of these general rights. In particular, I argue that a creature must be conscious in order to have a right to well-being, and must be self-conscious in order to have a right to life or autonomy. I follow this with a discussion of what the limitations are on the general natural rights, what constitutes a violation, and when violations are permissible.

The second part of the thesis consists of a theory of special rights. An analysis of obligations forms an important part of this theory. I come to the conclusion that for A to have an obligation to B to do 0 is for the
following to be true:

i. A is subject to a rule which says, if event e occurs, then a is to do o for b, except under conditions $t_1-t_i$;

ii. e occurs;

iii. none of the conditions $t_1-t_i$ hold;

iv. the event e involves both the obliged and either the intended beneficiary of the rule or someone who is so related to the intended beneficiary that his loss is also a loss to the intended beneficiary;

v. one of the following is true:

(a) the obliged could have prevented e by exercising due care;

(b) the obliged could have prevented the obliging event by deciding not to act in an obligedness-creating way; i.e. he could have decided not to do e, and he knew e had (or would have) an obligedness-creating property.

I argue that obligations and special rights are strictly correlative; that is, if A has an obligation to B to do O, then B has a special right against A to his doing O, and vice versa. So, to say that B has a special right against A to his doing O, is for the same conditions to hold as for A to have an obligation to B to do O.

I then consider when a special right can be waived, what constitutes a violation of a special right, and when
violations are permissible.

I conclude by arguing that special and natural rights are both rights because of certain important features which they have in common, and that there are no other kinds of genuine rights.
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Introduction

Judith Jarvis Thomson once expressed the opinion that in order to arrive at solutions to most of the central moral problems one had to have a theory of rights, but that to date no one had provided an adequate one. I concur with Thomson's opinion that rights have a central part to play in the solution to many moral problems—for example, those concerning the acceptable treatment of fetuses, children, adult humans, criminals, and animals. In order to arrive at correct moral judgments about how these creatures ought to be treated we need to know whether or not they have rights, what the limits of their rights are, when they are violated, and when they can be overridden. In this thesis I attempt to provide a theory of moral rights which contains the answers to these and other questions.

In order to provide a complete theory of moral rights I found that I had to distinguish two distinct kinds of moral rights: ones which I call natural rights because they arise out of certain natural attributes; and ones which I call special rights, because they arise out of special kinds of events. Thus my theory really consists of two sub-theories, one dealing with natural rights and the other with special rights, the first of which is found in Part I and the second in Part II. I shall defend in the conclusion to this thesis the contention that these are the two and only two kinds of moral rights; claims to the effect that there are additional senses of right which mean
'not wrong to', or 'privilege' or 'permission' will be shown to be false. I shall also provide explanations for the views that there are these additional senses.

In Part I, I develop the sub-theory on natural rights. I begin with an analysis of natural rights, and a defence of my view that the three general natural rights are: the right to life; the right to well-being; and the right to autonomy. I then consider the characteristics which a creature must have in order to possess one or more of these rights; the limits on a creature's natural rights; when interference with the object of a natural right is, and when it is not a violation of that right; the conditions under which a violation is permissible; and I conclude with consideration of some special problems.

In Part II, I develop the sub-theory on special rights. I start with a fairly extensive analysis of obligations, and then argue that obligations and special rights correlate, i.e. that if A has an obligation to do X for B, then B has a special right against A to his doing X, and vice versa. Because of this correlation, once we have an analysis of obligations, we can fairly easily produce an analysis of special rights. I provide this analysis, and then consider questions similar to those which I considered with respect to natural rights; in particular, how one waives special rights, when failure to fulfill an obligation is a non-violation of a special right, and when violations
are permissible.

Before turning to Part I, I should like to point out that I do not see moral rights (natural and special) as being the only kind of moral consideration. I think that justice and charity must also be taken into account. Since it is not essential to my thesis, I shall not take a position on whether these three areas—moral rights, justice and charity—are special parts of some more general, all-inclusive area of morality, such as utility, or whether they constitute distinct and irreducible areas of morality. All I maintain is that all three are relevant to any moral judgment or decision. I hope by the end of this thesis to have provided sufficient evidence in favour of this claim to make it a plausible one. And I hope to have provided evidence that a moral theory which incorporates these three divisions and assigns rights the role I do will sit well with our most basic intuitions, will reflect our most considered moral judgments, and will be the simplest of all morally acceptable alternative theories.
Section 1. Introduction

a) An analysis. I propose to defend the following analysis of natural rights: A has a natural right to X if and only if it is the case that in virtue of certain natural characteristics of A, and in the absence of certain conditions, it is prima facie seriously wrong for others to be positively instrumental in A's not having X.

We shall see in Section 3 that a fuller specification of the analysans will indicate precisely who the right is against, and at what time. And thus so will the analysandum. In addition, in that section, we shall see that the analysandum must specify that no 'limiting conditions' are in effect. But it would needlessly complicate things to include these features here. I shall specify in Section 2 what the 'certain natural characteristics' are which are referred to in this analysis. And I shall indicate in Section 4, when I discuss the conditions of violation and non-violation of rights, what the 'certain conditions' are. What I offer above, then, is really a preliminary analysis, the full analysis to be presented later.

Before I begin the defense of this analysis, I should first like to indicate why I say it is 'prima facie seriously wrong for any moral creature...'. First, let us call 'being positively instrumental in A's not having X, 'doing Y'. If B's doing Y is prima facie seriously wrong, this means that doing Y is a seriously wrong-making characteristic.
of B's behaviour. But there might be other aspects of B's behaviour, such as its being a 'preventing-more-important-rights-from-being-violated', which are right-making characteristics. Now, if there are right-making characteristics of B's behaviour of sufficient moral weight, they might well outweigh the seriously wrong-making aspect of B's behaviour, and thus render his doing Y morally permissible, all things considered. Those conditions under which prima facie serious wrongness can be overridden will be taken up in Section 5: Permissible violations of natural rights.

I shall now defend that part of the analysis in which I claim that if A has a natural right to X it is prima facie seriously wrong to be positively instrumental in A's not having X. I divide this defense into two parts. In the first I defend the view that violating a right is prima facie seriously wrong. And in the second, I defend the view that it is positive and not negative instrumentality in a creature's not having something he has a right to which is prima facie seriously wrong.

When I say that it is seriously wrong to violate a natural right I mean that one must have reasons of a very powerful sort in order to justify the violation, more powerful than would be necessary to justify depriving a creature of something he does not have a right to. To see that this is the case consider the different kinds of
reasons one would have to give in order to justify killing one's dog (who we will assume does not have a right to life) and killing one's grandfather. We might well be able to justify killing the dog if it is old and incontinent, or if it killing all the cats in the neighborhood. However, we could hardly justify killing our grandfather on the grounds that he is old and incontinent or is killing all the cats in the neighborhood. Our reasons must be of a much more powerful sort than that.¹

Involved in the serious wrongness of violating a creature's rights is the fact that where utilities will be gained, or disutilities avoided by the violation, they must be much larger in order to justify that violation than they would have to be were a right not at stake. In the above example, even if the total utilities would be significantly greater were my grandfather dead than they are with him alive, this would still not make it permissible to kill him.

Before presenting arguments in support of the second half of my thesis, that it is seriously wrong to be positively instrumental in a creature's not having something he has a right to, I need to explain what it is to

¹McCloskey makes the same point in 'The Right to Life', Mind, LXXXIV (1975), 410.
be positively instrumental with respect to some event. In doing so I rely on Bennett's analysis of positive and negative instrumentality.²

The things A can do at any time can be divided into those which are such that if A does them upshot U will ensue, and those which are such that if A does them upshot U will not ensue. If the former class of things is small in comparison with the latter class, then if A does any one of the former class he is positively instrumental in the occurrence of upshot U. But, if the former class of things is large in comparison with the latter, then, if A does any one of the former class, he is negatively instrumental in the occurrence of upshot U. Take for example the following two cases.

In the first there is a car rolling down a hill, which will go over a cliff unless A interposes a rock. Here there is a very large class of things which A can do which are such that if he does any one of them the car's going over the cliff will ensue. He can dance a jig, chew his fingernails, scratch his head, climb a tree, hum a song, etc., etc. If he does any one of these and nothing else he will be negatively instrumental in the destruction of the car.

In the second case, the car is sitting at the top of

the hill; it will stay there unless A pushes it. Here there is a very small class of things A can do which are such that if he does any one of them the car's destruction will ensue. If he does any of the things in that class, i.e. pushes the car, then he is positively instrumental in its destruction.

My position is that if one has a right to X, it will be seriously wrong for anyone to be positively instrumental in the right-holder's not having X. I shall make two points in defense of this position. The first has to do with the concept of violation.

If my analysis is correct, a right is violated if and only if someone is positively instrumental in a right-holder's not having the object of a right. If we were to include negative instrumentality in the analysis, then someone's being negatively instrumental in a right-holder's not having the object of a right would also violate that right. But to say that a right is violated in such circumstances will usually be highly misleading. Consider the following cases.

1. A is being held unjustly as a political prisoner by his government. Although B, a private citizen, knows of this situation, he fails to try to obtain A's release; he simply goes about his own business. A is not released. Given the position that negative instrumentality constitutes a violation of a right, we must conclude that B
violates A's right to autonomy.

2. A is suffering from a kidney ailment from which he will die unless someone with good kidneys is plugged into him. B, who is a suitable person, knows that this is the case, but fails to offer assistance. A dies. Given the position that negative instrumentality constitutes a violation of a right, we must conclude that B violates A's right to life.

3. A needs to have an operation which will cost $4,000. If he does not have the operation he will die. B knows that this is the case, and has $4,000, but does not offer to pay for the operation. A dies. We must, as above, conclude that B violates A's right to life.

It seems to me that the claims of violation in the above cases are extremely counter-intuitive. This is because when we say someone has violated another's right we imply that it is he in particular who is responsible for the right-holder's not having what he has a right to; and that it would therefore be appropriate, were he able to do so, for the right-holder to make a claim against him for reparation. But in the above cases, and in most other cases of negative instrumentality—the exceptions being those cases in which B is in such a position that he is the only one who could prevent the event in question—these things are not true. It is not B in particular who fails to obtain A's release from prison, who fails to offer to
be plugged into the patient, or who fails to give the boy $4,000 for an operation, in the respective cases cited above. Rather, he, along with numerous others, have failed to do these things.

Because in most cases of negative instrumentality one is not the one responsible for an event, nor for reparation following the event, and because the concept of violation implies that one is responsible for the event and for reparation, that concept--of violation--has come to be strongly associated with positive instrumentality. And thus to use it with negative instrumentality will usually be very misleading.

The other point in the defense of my analysis of rights in terms of positive instrumentality has to do with the implausibility of the position that it is seriously wrong to be negatively instrumental in a right-holder's not having the object of one of his rights. This certainly doesn't appear to be the case in the cases cited above. That it would be very inconvenient to be plugged into a kidney patient, that $4,000 is one's total savings, or that helping a political prisoner would cause one to jeopardize one's job, are reasons which, it seems to me, would be sufficient to justify negative instrumentality. But these reasons would not justify one's being positively instrumental in the right-holders' losing the objects of their respective rights. (For example, that one would jeopardize
one's job by refusing to unjustly imprison persons for political reasons, would not justify one's being positively instrumental in their imprisonment.) This indicates that such reasons are not strong justifying reasons, for if they were they could justify positive instrumentality as well as negative. And this means that negative instrumentality in the cases cited is not seriously wrong. This feature is not peculiar to these cases. It is a fairly general phenomenon: negative instrumentality will usually not require strong justifying reasons in order to make it morally acceptable, and so is usually not seriously wrong.

Because of these two features of negative instrumentality—that it is usually misleading to use it in conjunction with the concept of violation and that it is usually not seriously wrong to be negatively instrumental in the occurrence of some event—we have developed a concept of right which is defined in terms of positive instrumentality, tout court, rather than one which is defined in terms of positive instrumentality and those rare instances of negative instrumentality which don't have the above features. At least that is the position which I take.

The position that natural rights entail the serious wrongness of positive and not negative instrumentality is in accordance with the classical position as espoused by
Locke\(^3\) in which the possession of a right called for non-interference with its object. Many writers at present also follow this tradition. For example, Tooley in 'Abortion and Infanticide'\(^4\) analyses natural rights in terms of what others are to refrain from doing; Phillipa Foot in 'Euthanasia'\(^5\) makes a distinction between rights, which normally require only negative acts, and charity, which requires positive acts; and Jeffrey Murphy in 'The Killing of the Innocent'\(^6\) holds that rights are violated by positive, not negative acts.

This concludes my argument in defense of that part of my analysis of natural rights which says that A has a natural right to X if and only if it is prima facie seriously wrong to be positively instrumental in A's not having X.

b) The natural rights are to life, well-being and autonomy

In this sub-section, I shall defend the position that the only possible objects of natural rights are life.

\(^3\)Second Treatise of Civil Government, ed. Thomas P. Peardon (New York, N.Y.: The Bobbs-Merrill Company, Inc., 1952). In particular section 6 where he says: '...no one ought to harm another in his life, health, liberty, or possessions:...'; and section 7, where he says: '...and may not, unless it be to do justice to an offender, take away or impair the life, or what tends to the preservation of the life, the liberty, health, limb or goods of another.'

\(^4\)Philosophy and Public Affairs, 2 (1972), 46.

\(^5\)Philosophy and Public Affairs, 6 (1977), 97.

\(^6\)The Monist, 57 (1973), 546-547.
The first premise in this argument is as follows:

Premise 1: The fundamental goods for a creature fall under either the category of well-being or the category of autonomy.

Under some conceptions of well-being and autonomy the latter might be considered a species of the former, but given the way I use these terms, this is not the case. I mean by attributing well-being to someone that he is not suffering from any episodic states of ill-being, say from the pangs of hunger, the pain of an injury, a crippling neurosis, an emotional trauma, etc. And by attributing autonomy to someone I am asserting that his power or capacity to be self-directing has not been curtailed by the actions of others, as would be the case were he locked in a cell, kept in a fenced compound, chained to a stake, or had his legs amputated. Laws also diminish one's autonomy by restricting the things one can do without threat of punishment. They diminish, not one's physical powers or capacities, but one's legal powers or capacities.

Frequently, of course, when one's autonomy is restricted one's well-being also suffers, but this is not always the case. It frequently is not when the restriction is of a legal sort. In fact there are laws which diminish one's autonomy but promote one's well-being. There are also examples outside the legal sphere. Say A is confined to a cell. Obviously his autonomy is restricted. But he might
well not suffer any physical or mental ill-being while being so confined. He might exercise regularly, eat well, suffer no physical brutality, and spend his time in meditation. He might, in fact, be better off mentally and physically than he is when his autonomy is not restricted.

The second premise in the argument that the three basic natural rights are to life, well-being and autonomy is as follows:

Premise 2: One's treatment of others has moral implications if and only if one is either positively or negatively instrumental in others' having or not having some good.

This I take as a conceptual point about goods and morality. I hope that it is a sufficiently plausible claim not to be in need of supporting arguments, as I do not wish to take the time or space to marshall them in this work.

From these two premises I draw the following conclusion:

Conclusion 1: One's treatment of another creature has moral implications if and only if one is positively or negatively instrumental in that creature's having or not having well-being or autonomy.

Now there are two different ways in which one can be positively or negative instrumental in a creature's not having either well-being or autonomy. One can be instrumental in another's not having well-being (1) by being instrumental in his ill-being; or (2) by being instrumental in his death. And similarly, one can be instrumental in a creature's not having autonomy (1) by being instrumental
in his loss of autonomy other than by being instrumental in his death; or (2) by being instrumental in his death. These differences are obviously morally significant and should therefore be registered in any statement which purports to say what actions or inactions have moral implications. I propose then that we re-write conclusion 1 as follows:

Conclusion 1': One's treatment of another creature has moral implications if and only if:

(i) one is instrumental in that creature's having well-being or autonomy;

(ii) one is instrumental in that creature's ill-being or loss of autonomy other than by being instrumental in his death;

(iii) one is instrumental in his death.

This is a very cumbersome statement. In order to simplify it and some subsequent material I will use being instrumental in a creature's loss of autonomy as short for being instrumental in a creature's loss of autonomy other than by being instrumental in his death. I will also use being instrumental in a creature's loss of well-being to mean being instrumental in a creature's ill-being.

So we can write conclusion 1' as follows:

Conclusion 1'': One's treatment of another creature has moral implications if and only if:

(i) one is instrumental in that creature's having well-being or autonomy;

(ii) one is instrumental in that creature's not having well-being or autonomy;

(iii) one is instrumental in that creature's death.
The third premise in the present argument is as follows:

Premise 3: When we say that A has a natural right to X, we mean that in virtue of his having certain natural characteristics, and in the absence of certain conditions, it is prima facie seriously wrong for anyone to be positively instrumental in his not having X.

Those parts of this premise which are needed for my present purposes have already been defended in sub-section (a). What I intend to do now is use conclusion 1'' and premise 3 to draw my final conclusion.

Premise 3 says that it is prima facie seriously wrong to be positively instrumental in a creature's not having the object of one of his rights. Such interference then, obviously has moral implications—it is prima facie seriously wrong. And conclusion 1'' says that only positive or negative instrumentality in a creature's having or not having well-being, autonomy or life has moral implications. It follows from these two considerations that

Conclusion 2: The only things a creature can have a natural right to are life, well-being and autonomy.

Whether a creature does in fact have any of these natural rights will depend on whether he has the natural characteristic which is necessary for its possession. What characteristics are necessary for the possession of what natural rights is the question I take up in the next section.

Section 2. The conditions for the possession of natural rights.

In this section I shall first defend the following
claims:

1. that a creature's being self-conscious is necessary for its having a right to life;

2. that a creature's being self-conscious is necessary for its having a right to autonomy; and

3. that a creature's being conscious is necessary for its having a right to well-being.

In order to defend the above three claims, I must first make some remarks about rights and desires. It was Michael Tooley who had the important insight that rights and desires are conceptually connected, desires being important in determining both who has what rights, and when a right has been violated. I owe a great deal to that insight, and to some of the details of his development of it. However, Tooley does not clearly distinguish nor deal separately with the questions: what a right is; what the necessary conditions are for having a right; and what the conditions are under which a right is violated; although he actually has things to say about all three. It was not essential for his purposes to do so. However, I separate these questions as I have found doing so essential for my development of a theory of natural rights. This means that the way I present the relationship between desires, rights and violations differs somewhat from Tooley's, although I think he would probably find my way of doing things congenial. Because of the way my work relates to Tooley's with
respect to rights and desires, it is difficult to be precise about what comes directly from Tooley and what was merely suggested by him.\textsuperscript{7}

We shall see in Section 4, that only if a creature desires, or would desire under certain conditions, that a certain state of affairs be the case, can interference with that state of affairs constitute a violation of his right to it. Now, if he cannot desire--is not capable of desiring--the existence of a certain state of affairs, nothing that could be done could ever constitute a violation of his right to the existence of that state of affairs. I take the impossibility of violating a right to be equivalent to the absence of such a right. This suggests that the ability to desire X is necessary for a creature to have a right to X. However, there are some obvious problems which indicate that this is not quite right. One might, for example, be in a temporary state in which it is not possible to desire anything, as is the case when one is asleep or in a temporary coma. But we do not want such temporary conditions to be relevant to whether someone has any natural rights. An obvious way to avoid such an undesirable result is to take into account not only present

\textsuperscript{7}For details of Tooley's position, see his article, 'Abortion and Infanticide' (Philosophy and Public Affairs, 2 (1972), 37-65) and the correspondence on that paper (Philosophy and Public Affairs, 2 (1972), 419-432).
abilities, but past ones as well. So let us consider the following proposal, that A has a right to X only if he is capable at present of desiring X, or was capable in the past of desiring X. This means that killing someone in his sleep violates his right to life, even though he is not capable of desiring to live while in that state. But it also means that those in permanent comas, whose state of existence is not relevantly different from plants, also have a right to life. And that, it seems to me, is unacceptable. I suggest that the way to avoid that result is to elaborate the condition still further so it reads as follows: A has a right to X only if he is capable at present of desiring X; or, he was capable in the past of desiring X and it is empirically possible that he will be capable of desiring X again in the future.

I must also point out before continuing, that what a creature is capable of desiring is limited to those things of which he has a concept. He cannot desire to go to the moon unless he has a concept of the moon, and he cannot desire yams unless he has a concept of yams.

Using the above results I can now defend my claims about what natural characteristics are necessary for a creature to have the various natural rights.

Before considering the right to life we should be clearer as to just what that right is a right to. Tooley has pointed out that we are not really concerned with the
continued existence of a biological organism, as is suggested by the word 'life', but rather with the continued existence of a subject of experiences and other mental states. He illustrates this with the following example. Say some technology is developed whereby the brain of an adult human can be completely reprogrammed so that that organism ends up with memories, beliefs, attitudes, and personality traits completely different from those associated with it before it was subjected to reprogramming. Surely we want to say that in such a case a right to life has been violated even though no biological organism has been killed. In order for that to be the case we must really be concerned with the subject of experiences and not biological organisms. The right to life, then, is really the right to continue to exist as the subject of experiences and other mental states.

Given the relationship between rights and desires defended above, it is clear that if a creature is to have a right to continue to exist as the subject of mental experience, he must be either capable now of desiring to continue as such a being, or have been capable in the past of such a desire and will again be capable of such a desire in the future. In order to desire to continue as the

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8Tooley, 46.
subject of mental experiences a creature must have a concept of himself as subject, which is to say, he must be self-conscious. And, although I cannot prove this is the case, it seems to me that a creature needs no further characteristics in order to be capable of desiring to continue as the subject of mental experiences.

We can conclude, then, that in order for a creature to have a right to continue as the subject of mental experiences, he must either be self-conscious now, or have been self-conscious in the past and will be again in the future. Any creature who satisfies either one of these disjuncts is a self-conscious type of creature. And this means that self-consciousness is the natural characteristic which a creature must possess in order to have a right to life.

I now have the tools to handle some of the problems surrounding euthanasia. There are three kinds of cases which need to be considered:

1. where a human has ceased to have any brain activity, but whose body continues to operate. As I understand what the cessation of brain activity involves, the only way the body could be kept operating would be with the help of various machines;

2. where a human is in a state of permanent unconsciousness;

3. where a human is conscious, but in severe and relentless pain which will cease only with death.
Now, in the first case, the human is clinically dead, so he is no longer a self-conscious type of being. Thus, he cannot have a right to life. So unhooking his body from whatever machines are keeping it going could hardly constitute a violation of his right to life. Furthermore, as keeping his bodily functions going is likely to be expensive and wasteful of resources, it is morally required that he be unhooked.

In the second case, although the human is not clinically dead, he has nonetheless ceased to be a self-conscious type of organism. And thus, as in the first case, he no longer has a right to life. So, if machines are being used to keep his body going, they can be unhooked even if this results in his biological death. And if unhooking him does not result in his biological death, then it would be permissible to use some other means of stopping the continued bodily functions.

In the third case, the human, still being a self-conscious type, does indeed have a right to life. Therefore, taking any means whatever to bring about his death, or even to speed his death, will violate his right to life, unless certain special conditions to be discussed in Section 4 are in effect.

I have in the above relied on what is perfectly obvious, that normally a fully developed human being is a self-conscious type of creature, and so does indeed have
a right to life. But there are much more controversial sorts of cases. Are two-week old infants self-conscious? And what of chimpanzees, dogs and horses? The general consensus of opinion is that very young infants and most, but perhaps not all, animals are not self-conscious, and so do not have a right to life.

This means of course, that killing infants before they are self-conscious will not violate their right to life, since they will not have one. And that no doubt will go counter to many people's intuitions on the matter. However, I do not think it is as drastic a result as some might think. First, it leaves us free to kill those infants who are so severely mentally or physically defective that life could not possibly bring them a minimally acceptable level of goods. And that, it seems to me, is a desirable consequence of this position. And second, because questions of morality are not resolved solely on the basis of natural rights, it does not license the wholesale killing of infants. Rules and principles generated by other areas of morality must be taken into consideration. It seems to me likely that we could generate from principles of utility moral rules which would prohibit the killing of a creature whose life brings it some minimal amount of goods, unless there are extremely strong moral reasons for doing so. This would make the killing of infants, as well as other conscious beings, prima facie wrong.
I cannot leave this present topic without saying something about the abortion issue. Clearly, given my theory thus far developed, fetuses do not have a right to life. Furthermore, until such time as a fetus is conscious (I do not know when or if that happens in fetal development, but I suspect it is fairly late, if at all), life cannot bring it any goods. So until the point at which a fetus becomes conscious there will be no moral reasons generated by considerations to do with it (in distinction from reasons which might be generated by considerations to do with the mother or others) which will make killing it wrong. The only way I see to avoid this conclusion, although I personally do not feel compelled to avoid it, is with some kind of argument from potentiality. To my knowledge, no one has succeeded in showing that the potential for acquiring certain characteristics is a morally relevant feature of a creature.

I shall now consider what characteristic(s) a creature must have in order to possess the right to autonomy. Autonomy, as I am using that term here, is the ability to be self-directing, so the right I am actually concerned with is the right to be self-directing. Given the connection noted above between rights and desires, we can say that a creature has the right to be self-directing only if he is capable now of desiring to be self-directing, or was capable of such a desire in the past and will again be capable
of such a desire in the future. In order to have such a desire a creature must be a self-conscious type of creature, because otherwise he could not desire to be self-directing. Furthermore, although I cannot prove this is the case, it seems to me that a creature needs no additional characteristics in order to be capable of desiring to be self-directing. From this we can conclude that self-consciousness is the attribute which a creature must possess in order to have a right to autonomy.

We should note that while conscious creatures who lack self-consciousness are capable of desiring to do particular things, they are not capable of desiring to be self-directing with respect to doing those things. And while the desire simply to do something can be satisfied by one's being permitted to do that thing, the desire to be self-directing with respect to doing something is satisfied only when the wills of others do not form part of the causal conditions for action. This means that one's right to autonomy can be violated even if in fact one does what one desires to do if permission to do so must be sought.

Finally, I should like to consider what characteristic(s) are necessary for a creature to have the right to well-being. Before I can do so I must be more precise in my formulation of the statement of that right. I claim that when we attribute to a creature the right to well-being
what we are really attributing to him is a set of rights which contains an indefinitely large number of rights of the following form: A has the right to do or be X, where being positively instrumental in his not doing or being X is to be positively instrumental in his ill-being, against b at time t. In the next section I develop and defend this position.

Given the connection between rights and desires, if a creature is to have a right to do or be X, it must be the case that he is able to desire to do or be X now, or was able to do in the past and will again be able to do so in the future. And in order to be capable of desires, a creature must be conscious. It seems obvious that he doesn't need any other characteristics. So we can conclude that in order for a creature to have a right to do or be X, where being positively instrumental in his not doing or being X is to be positively instrumental in his ill-being, it must be the case either that he is conscious now, or was conscious in the past and will again be conscious in the future. If he satisfies either one of these disjuncts he is a conscious type of creature. So consciousness is the characteristic which a creature must have in order to have a right to well-being.

This concludes my defense of the claims with which I started this section: 1. that a creature's being self-conscious is necessary for it to have a right to life; 2. that a creature's being self-conscious is necessary for
it to have a right to autonomy; and 3. that a creature's being conscious is necessary for it to have a right to well-being.

Although I cannot prove this is true, it seems to me that self-consciousness is also sufficient for a creature's having a right to life and a right to autonomy, and that consciousness is sufficient for a creature's having a right to well-being. I base these claims on the moral judgment that it is in virtue of these characteristics alone that it is seriously wrong to be positively instrumental in a creature's death, loss of autonomy, or loss of well-being, respectively. I expect that this judgment will be in accordance with most people's intuitions on the matter.

Section 3. The limits on natural rights

A discussion of the limits of rights requires that the structure of each of the natural rights be made explicit. This I now propose to do.

I suggest that what we actually mean when we attribute to a creature a right to life, a right to well-being, or a right to autonomy is that he has rights of the following forms, respectively: the right to continue existing as the subject of experiences and other mental states against b at time t; the right to do or be X, where being positively instrumental in the right-holder's not doing or being X is to be positively instrumental in his ill-being, against b at time t; and the right to be self-directing with respect
to doing X against b at time t and place p.

For the finest individuation of rights, the time and, where applicable, place, will be measured in the smallest possible units, and b will be an individual moral creature. However, we will usually not be interested in such fine discriminations, but rather with fairly large sets of such individual rights.

If no limiting conditions are in effect for a creature's natural right to X, then his set of rights to X will consist of all possible individual rights of the appropriate form. But if a limiting condition is in effect, then certain individual rights or sets of individual rights will be excluded so that his set of rights to X will contain a subset of all possible individual rights to X.

We can now see that the analysans for an analysis of rights should read: A has a right to (do or be) X at time t (and place p for autonomy rights) against b; and the analysandum should read: In virtue of certain natural characteristics of A (either consciousness or self-consciousness, depending on what X is), and in the absence of both limiting and certain other conditions, it is prima facie seriously wrong for b to be positively instrumental in A's not having X at time t (and place p for autonomy rights).

I shall start this discussion on limiting conditions with the right to autonomy, as the limiting conditions with
respect to that general right are the most numerous.

We saw in Section 2 that in order for a creature to have a right to X he had to have the concept of X. This meant that in order for a creature to have a right to be self-directing he had to have a self-concept. It also means that in order for him to have a right to be self-directing with respect to doing X he must have a concept of 'doing X'. If he does not have such a concept, then the right to be self-directing with respect to doing X cannot be a member of his set of autonomy rights. So, the concepts one possesses will form one of the limiting conditions on one's set of autonomy rights. What concepts one possesses will vary from time to time, so the right to $x_1$ at time $t_1$ might not be included in one's set of autonomy rights because one lacks the concept of doing $x_1$ at $t_1$; while the right to do $x_1$ at time $t_2$ might well be included in that set of rights because at $t_2$ one has the concept of doing $x_1$. (In order to simplify the prose, in the remaining discussion of autonomy rights I shall refer to the right to do certain things, rather than the right to be self-directing with respect to doing certain things. In each case the longer statement is to be understood.)

A person's autonomy rights are also limited by the more important natural rights of others. For example, if by pulling the trigger on my gun at time $t_1$ and place $p_1$, I would gratuitously kill another creature who has a right
to life at time $t_1$, then I do not have a right to pull the trigger at time $t_1$ and place $p_1$. Of course, I might well have the right to pull the trigger at time $t_1$ and place $p_2$, or at time $t_2$ and place $p_1$. It depends on whether there are limiting conditions which will exclude those particular rights from my set of autonomy rights. Similarly, if I harm another by smoking in an elevator at time $t_1$, then I do not have the right to smoke in the elevator at that time, although I might have the right to do so at some other time, or in some other place.

One’s set of autonomy rights can also be limited by one's doing something which constitutes renunciation of a particular right or set of particular rights. This renunciation might be made by previous consent to someone's interference with one's action, by taking on an obligation, or by taking part in a fair competition. I shall consider each of these in detail, starting with consent.

Say A has resolved to refrain from buying cigarettes, but knowing that once tempted, he will probably break his resolve, he informs B that he would appreciate being prevented from making such a purchase. Subsequently, B does interfere in the envisaged circumstances. Because A has consented to B's interference with his buying cigarettes, he has in effect renounced his right against B to be self-directing with respect to buying cigarettes. So all such rights are thereby excluded from his set of rights to
autonomy. Thus, when B interferes with his action he does not violate A's right to autonomy, because the relevant right is not included in A's set. However, his rights to buy cigarettes against everyone else remain intact, so that anyone else's interference with A's purchase will constitute a violation of his right. It is important though that consent not result from brainwashing, an abnormal mental state (such as depression) or misinformation. For if it does, it will not serve as a limiting condition, the relevant right(s) will remain intact, and any interference with its object will be a violation of the right. These same conditions come up again in Section 5. I deal with them in more detail in that section, and so refer the reader to that section for a fuller discussion of them.

Another way that the set of autonomy rights can be limited, which is in a way related to the above, is by a person taking on an obligation. If A promises B that he will take him to the movies on the coming Friday night, then A does not have the particular rights against B to do anything which is incompatible with his keeping his promise. He has, by taking on the obligation to take B to the movies, in effect renounced all the rights against B which are incompatible with his fulfilling that obligation, so they are excluded from his set of autonomy rights. This means that B would not be violating any of A's rights
by coercing him to keep his promise. I should point out that A still has rights against everyone else to do whatever he wants on Friday night, so that interference by anyone other than B, or someone acting on B's behalf, would constitute a violation of his right to autonomy.

I think it is this fact—that obligations can limit one's natural rights—which provides the only plausible explanation for why the laws of one's country do not necessarily violate one's rights to autonomy. I think it must be the case that there is something like an implicit contract, a convention, a principle of mutuality of restrictions, or some such thing, which gives rise to obligations to obey the laws of one's own country and of those one visits. This is why laws requiring that one drive on the right, pay income tax, etc., do not violate one's right to autonomy. The set of rights has been limited by our obligation to obey those laws.

Working out the details of this proposal would take a great deal of time, and belongs in another project. All I want to do here is point out that given my theory, legal requirements do not necessarily constitute violations of natural rights (although some may well). A theory which implied that they did would be in trouble.

Now let us consider competitions. I think that when a person takes part in a fair competition he, in effect, renounces his right to whatever he is competing for
conditional on his losing the competition. We need this sort of mechanism when there is a conflict between two rights of equal importance, as when two persons both want to do the same thing, where one can succeed only by preventing the other from succeeding. For example, in order for one boy to get the $10 bill lying on the sidewalk, he must prevent the other boy from getting it. Now I assume that they both have, at the time of discovering the $10 bill, a right to pick it up. Say the time is $t_1$. If either boy picks the bill up, he does so at the expense of the other's right to pick up the bill, and so violates it. But if they take part in a fair competition, say they draw straws, flip coins, or race to it, then the loser of the competition no longer has a right to the bill and so the winner is free to pick it up. More specifically, if the competition occurs at $t_2$, A has no rights against B to pick up the bill after that time. But note, the rights against others are not excluded. If C were to swoop down and snatch the bill, he would violate not only B's right to it, but A's as well.9

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9H.L.A. Hart says in 'Are There Any Natural Rights?' (Philosophical Review, 65 (1955), 179) that what we have in this case are two 'liberty-rights'; that what we mean when we say that each boy has a right to pick up the $10 bill is that he does nothing wrong in doing so, but that we say nothing about its being wrong for the other boy to interfere with him. Obviously I do not think this is the correct analysis of the situation. See the Conclusion for a defense of this position.
The second kind of conflict situation is one in which two persons both want to do different but incompatible things. For example, A wants to bathe and B wants to wash clothes, and there is not enough hot water to allow both of them to do what they want. So, if A batters he prevents B from washing, and vice versa. Unless a fair means is used to settle the conflict, one or the other's right will be violated. The most appropriate means in the circumstances would be generated by the first-come-first-served principle. If A gets started first, then B's rights against A to wash from the time A starts to bathe until he is finished, are excluded from B's set of action rights. And vice versa.

There is a complication here, though: A might see that B is planning to wash, and so rush into the bathroom and turn on the water for his bath, thereby beating B to the punch. In such circumstances, the first-come-first-served principle has obviously been abused. The competition has therefore not been resolved fairly, and thus A is guilty of violating B's right to wash.

We are now in a position to explain why someone's using a particular piece of property, P, does not necessarily violate the rights of others to use and dispose of that piece of property. It will not when the conflict among all the rights has been resolved by some fair means. This might be done on the basis of who bought P, who made it, who it
was given to, who needs it most, etc., depending on the precise circumstances of the case. Whoever the results of the fair means assigns $P$ to has the right to use $P$ included in his set of action rights, while the right to use $P$ is excluded from everyone else's. This explains why I have an exclusive right to the use of my car, saddle, typewriter, etc.

Finally, the status of other beings involved in an act puts constraints on what particular rights are included in one's set of rights to autonomy. Nothing of the form: 'A has a right at time $t$ and place $p$ to be self-directing with respect to doing $x$ to $b$' will be included when $b$ is a creature with a right to autonomy, and A's doing $x$ to $b$ requires that $b$ do $y$, so long as $b$ has not done something which commits him to doing $y$. For example, it is false that 'A has a right to marry $B$' where $B$ is an autonomous creature, unless $B$ has promised to do so because A's marrying $B$ requires that $B$ marry A. It will surely be agreed that, providing $B$ has not promised to marry $A$, there is nothing prima facie wrong with $B$ refusing to do so. And similarly, it is false that A has a right to hire the best butler in town, because the best butler, having a right to autonomy, can work for whom he pleases, and thus does nothing wrong by refusing to work for A. I shall examine in the conclusion the question as to whether A might have a right to marry $B$ or hire the best butler in
some weaker sense of 'right'.

In summary, the following conditions and situations put limits on the rights included in anyone's set of rights to autonomy: his abilities; others' more important rights; previous consent; taking on obligations; losing fair competitions; and the status of other beings involved in an act.

Although the following remarks do not concern a limiting condition, I think this is the most appropriate place to make them because they are relevant to what rights are included in a creature's set of autonomy rights.

If A has a right to do X, then he must have a right to do everything entailed by his doing X. For example, if A has a right to swim from Pt. Atkinson to Bowen Island, then he must have a right to swim, because his swimming from P. Atkinson to Bowen Island entails his swimming. But it does not follow that he has a right to swim from Military Zone A to Military Zone B, because swimming from A to B is not entailed by swimming from Pt. Atkinson to Bowen Island. Similarly, although A has a right to amputate B's leg (B has gangrene), he does not have a right to amputate B's leg with a rusty knife. This is because his amputating B's leg with a rusty knife is not entailed by his amputating B's leg, and would be excluded from his set of rights by B's right to well-being.

Because of the differences between the right to
autonomy, the right to life and the right to well-being, we cannot assume that all of the limiting conditions relevant to one will be relevant to the others. So, I shall now consider what limits there are for the right to life, and then consider the same problem with respect to the right to well-being.

We have seen that whether a particular right to do X is included in a creature's set of autonomy rights depends on whether that creature has the concept of doing X. His abilities, then, are relevant not only to whether he has the general right to autonomy, but also to what particular rights are found in that set. There is nothing comparable to this for the right to life. Once we have ascertained that a creature has a self-concept, his abilities will not again be relevant. So one's abilities will not put any limits on one's right to life.

Because only acts can interfere with the object of a right, living, not being in itself an act cannot interfere with others' rights. This means that the second limiting condition—when an act would interfere with a more important right—will not have any counterpart for the right to life.

And, because living, per se, cannot involve any other individual in the way that doing can (e.g. marrying) the status of other creatures also will not be relevant to what particular rights are included in anyone's set of
Finally, I do not think (although I am not sure about this) that one can take on an obligation which will make living, per se, wrong, as one can take on an obligation which will make doing something wrong. So obligations, too, fail to be relevant to the limits of the right to life.

This leaves the other two conditions of renunciation --consent and losing a fair competition--as the only candidates for limiting the right to life. And indeed, they do.

If one explicitly consents to being killed, providing of course that such consent does not result from some abnormal condition such as that induced by indoctrination, brainwashing or depression or from either the lack of, or misleading information, then one has in effect renounced his particular rights to life against whomever he has given the consent. So, if a patient, who is suffering from severe pain and for whom there is no hope of being cured of the condition causing it, consents to his doctor's killing him, then his particular rights to life against the doctor after that time are excluded from his set of rights to life.

Losing a fair competition has the same effect. Say, for example, that there are two men in a one-man life raft. Because it is overloaded, unless one of the men gets out, it will be over-turned by the high seas and both
men will drown. If either one throws the other overboard without their having first used a fair means for deciding who should go, he will thereby violate the other's right to life. However, if they use a fair means--say drawing straws, flipping coins, or some such--to decide who should leave the raft, then the winner's throwing out the loser will not violate the loser's right to life, because by losing the competition his set of rights to life has been limited so as to exclude all the particular rights to life against the winner after the time of the competition. However, because his set of rights to life still includes all the particular rights against everyone else, if anyone other than the winner of the competition kills him, that act will violate his right to life.

I would like to point out that we now have the theoretical underpinnings for a judge's opinion in a famous case in which a life raft was overloaded. Those in charge, in order to prevent the capsizing of the boat, and the subsequent drowning of all its passengers, threw a number of men (no women or children) overboard, while they slept. They were subsequently charged with murder. I do not remember the outcome of the case, but I do remember that the judge held that if they had all drawn straws, and only losers had been thrown overboard, then no offense would have been committed. I believe I have shown why this should be the case.
With the exception of the remarks directed towards the question of how the individuation of the particular rights to life differs from the individuation of the particular rights to freedom of action, all of the above remarks about the limits on the right to life apply, mutatis mutandis, to the right to well-being.

As was the case for the right to autonomy, because the right to well-being consists of particular rights of the form, 'A has a right to do or be X, where being positively instrumental in his not doing or being X constitutes being positively instrumental in his ill-being', a creature's abilities are relevant not only to the question of whether or not he has the right to well-being, but also to what particular rights are included in that set. That is, A must have the concept of doing or being X, if the right to do or be X is to be included in his set of rights to well-being. This means that unless A has the concept, poison, he will not have the right to be not-poisoned. However, if A can desire not to feel horrible, then he has a right to not feel horrible, and any positive instrumentality in his feeling horrible, such as poisoning him will violate that right. It seems to me likely that all conscious creatures are capable of desiring that certain kinds of sensations cease, sensations which we would call pain sensations. This means that all conscious creatures have a right to be pain-free, and therefore any
positive instrumentality in their having pain will violate their right to well-being.

Although the following remarks do not deal, strictly speaking, with a limiting condition, they do concern what particular rights can be included in any creature's set of rights to well-being. For this reason it seems appropriate to make them here. What I want to point out is that what constitutes harm for one creature might well not constitute harm for another. And what does constitute harm will obviously be relevant to what particular rights a creature can have in his set of rights to well-being.

For example, because a wolf would suffer psychological and physical harm by being kept in even a fairly large cage, its set of rights to well-being will include rights not to be kept in a cage. On the other hand, because a bird would likely not suffer either psychological or physical harm by being kept in even a fairly small cage, its set of rights to well-being will not include rights not to be kept in a cage.

In this discussion of the right to well-being I have been operating with a very rough intuitive notion of what it is that constitutes harming. It is difficult to make this notion precise, but there are some things which can be said. First, causing sufficient physical pain even if only briefly, will constitute harming physically. And causing sufficient mental distress or discomfort even if
only briefly, will constitute harming mentally. I am afraid I am unable to say what will be "sufficient". Perhaps this is a fairly subjective matter. In addition to these fairly straightforward ways of harming an individual, I think we will also want to include as harmful acts those which will cause one to lead a less happy life than one would otherwise have led, where those acts do not at the time constitute physical or mental harm.

This concludes my discussion of the limits of natural rights.

Section 4. Conditions of violation and non-violation

Under normal conditions, if some particular right does indeed belong to one of a creature's sets of natural rights, then being positively instrumental in that creature's not having the object of the right will constitute a violation of that right. This means that such things as killing someone by pulling a trigger while pointing a gun at his head, snatching a life jacket away from someone who is using it to stay afloat, retrieving a loaf of bread when doing so results in the thief's starvation, unplugging a kidney machine which is keeping someone alive, etc., etc., will all constitute violations of the associated rights.

But it is not only present positive instrumentality in a creature's not having the object of a right which will violate that right. Having been positively instrumental in a creature's not having something which he now
has a right to, even though he did not at the time of the interference have a right to it, will also constitute a violation of the present right. For instance, if one in the past painlessly cut the legs off an infant, one did not violate any rights that the infant had at that time. This is because the infant was incapable at that time of desiring that he not be mutilated in that way, and so the right not to have his legs cut off was not included in his set of rights to well-being. However, he is capable at present of desiring that his legs not have been cut off, and so he has a right to the state of affairs in which his legs were not cut off. The act in the past of cutting off his legs constitutes a violation of this present right. I would like to emphasize that I am not modifying the conditions I presented earlier as those necessary and sufficient for the possession of a right. I am merely specifying what is to count as a violation of that right. And I am saying that not only present positive instrumentality in the creature's not having the object of that right, but also past positive instrumentality can constitute a violation of that right.

I should now like to consider those special conditions under which one's being positively instrumental in a creature's not having something he has a right to will not constitute a violation of his right. When these conditions
hold the positive instrumentality will not be even prima facie wrong. (In the following material I shall frequently refer to 'interference with the object of a right' rather than 'positive instrumentality in a creature's not having the object of a right'. Although these phrases are not in fact equivalent in meaning, I shall treat them as such in this work in order to avoid annoying repetitiveness.)

The first condition concerns situations in which it is physically impossible for a person to avoid preventing a creature from having the object of a right. Because the person cannot avoid his interference, it is inappropriate to morally censor him for it, and thus it will be inappropriate to accuse him of violating a right. For example, if a person accidentally falls off a balcony and kills someone upon landing on the ground below, we would not accuse him of violating that person's right to life.

The next condition concerns the relationship between desires and the violation of rights. I argued in Section 2 that only if a creature was capable of desiring something, could he have a right to that something. And I based that argument on a relationship which I alleged to exist between desires and the violation of rights; viz, that only if someone desires X, or would under certain conditions desire X, could his right to X be violated. I should now like to defend that claim. Consideration of a few examples should be sufficient to do so.
It is surely true that if A is a masochist involved in a masochistic-sadistic relationship with B, that B does not violate A's right not to be harmed by beating him. And it seems right that if B locks A in his room he does not violate A's right to leave so long as he prefers not to. And if B destroys something belonging to A, he will not have violated his right to it if A did not want it. I could go on, but the pattern should be clear. In each of these cases, A does not desire the existence of a certain state of affairs (e.g. in which he is not beaten by B); and so, although A does indeed have a right to that state of affairs because he is capable of desiring it, B does not violate his right to the existence of that state of affairs by preventing or interfering with it. This suggests the general principle: The right A has to X will not be violated by someone's preventing him from having X if A does not desire X. This principle, I should point out, is not qualifying the condition for having a natural right, but merely indicating, given that someone has a right, when that right is not violated by someone's interfering with it.

But things are not quite as simple as this principle suggests. There are three conditions under which, although one does not in fact desire X, interference with X will nonetheless constitute a violation of one's right to X. (The subject does indeed have a right to X. What is in
question is whether preventing him from having X constitutes a violation of that right, in the absence of an active desire.)

Distorted desires comprise one of these conditions. Distortion of desires might result from a temporarily altered state of consciousness, such as that which can be brought about by deep depressions. While in a depressed state one could, for example, fail to desire to continue living, or for that matter, actually desire death. But it would hardly be a sufficient defense for someone who kills another while he is in such a state to point out that his victim did not at the time desire to live.

Desires might also be distorted by such processes as brainwashing, indoctrination or conditioning. If the only reason someone does not desire X is because he has been brainwashed, conditioned, or indoctrinated so as to desire the absence of X, then preventing X from being the case, or interfering with X, will violate his right to X, nonetheless. For example, if a slave does not desire freedom because he has been conditioned not to do so, his right to autonomy is, nonetheless, violated by his state of slavery, even in the absence of the desire for freedom.

These observations suggest that if someone would desire that X be the case were it not for the fact that his desires have been distorted by either an altered state of consciousness, or conditioning, brainwashing, or
indoctrination, then interfering with X will, even in the absence of desire, constitute a violation of his right to X.

There is a problem here in distinguishing between educating and indoctrinating or conditioning. These processes are perhaps really two ends of a continuum, with education at one end and indoctrination and conditioning at the other. We are able to categorize any process which falls clearly on one end or the other. But it is much more difficult to do so when they fall in the fuzzy middle area. We need criteria for making these finer distinctions. Unfortunately, at present, I do not have any to offer. Because of this, it will not always be clear when a right has been violated, because it will not always be clear whether education or indoctrination has occurred.

The other condition has to do with the possession of information. Surely, if someone fails to desire X because he either fails to acquire relevant information, or has misleading or false information, then others' interfering with X will violate his right to it.

Given the above considerations about the presence and absence of desires, I suggest that if a creature does not desire to live, to be free from some particular harm, or to do some particular thing (y) then, providing none of the following hold, his right to those states of affairs is not violated by someone's being positively instrumental
in his death, harm, or inability to do that particular thing:

1. he would desire to live, be free from that particular harm, or do y, were it not for the fact that his desires have been distorted by his being in a temporarily altered state of consciousness (e.g. depression), or by his having been brainwashed, conditioned or indoctrinated into not desiring to live, be free from that harm, or do y.

2. he would desire to live, be free from that particular harm, or do y, were it not for the fact that he either lacks relevant information, or has misleading information.

There is one more condition under which interference with something a person has a right to does not violate that right. It will apply, I think, only to those rights included in the set of rights to autonomy. It involves a kind of conflict situation, but unlike those which could be resolved by a fair means, thus avoiding the violation of any rights by one or the other's set of action rights being limited so as to exclude that particular right, it would be inappropriate to resolve the conflict by any of the possible fair means used in limiting rights. For example, it seems to me that it would be inappropriate to flip a coin to resolve a conflict between A's studying and B's mowing his lawn. Nor do we want to say that, because A started to study before B got ready to mow, B's right to
mow has been excluded from his set of action rights.

I suggest that either one's acting in a conflict such as this will not violate the other's right because of the existence of some kind of tacit understanding which allows certain reasonable interferences in return for permission to make comparable interferences. So, although A does interfere with B's studying by mowing the lawn, he does not violate B's right to study, because the permission to mow one's lawn would be included in any reasonable agreement about allowable interferences. Only when someone oversteps the extent of the tacit agreement, say by mowing his lawn at 4:00 a.m., thereby preventing others from sleeping, is there a violation of rights.

In summary, if one of the following conditions holds, then someone's being positively instrumental in a creature's not having the object of one of his rights will not constitute a violation of that creature's rights:

1. the interference is unavoidable;
2. the subject of the interference does not desire the object of the right;
3. the interference is such that it would be covered by a tacit understanding about what constitutes acceptable interference.

When none of these conditions hold, positive instrumentality in someone's not having the object of one of his rights will constitute a violation of that right. Except
under the special circumstances to be considered in the
next section, such an act will be morally impermissible.

Section 5. Permissible violations of natural rights

I plan in this section, to show under what conditions
it is permissible to violate someone's right to life;
well-being and autonomy.

(In this and subsequent sections whenever I use
'killing' I shall mean 'being positively instrumental in
a creature's death'. And whenever I use 'letting die',
or 'not saving' I shall mean 'being negatively instrumental
in a creature's death'. These equivalences do not quite
fit common usage, but it simplifies the text to use them.
That they do not can be illustrated by the following pro­
positions taken from Bennett's, 'Positive and Negative
Instrumentality' (op. cit.):

1. A vehicle stands, unbraked, on a slope; John
pushes it; and it rolls to its destruction.

2. A vehicle is already rolling; John kicks away a
rock which would otherwise have stopped it; and it rolls
to its destruction.

3. A vehicle is already rolling; John could, but
does not interpose a rock which would have stopped it if
it had been interposed; and it rolls to its destruction.

Given the equivalences stated above, we would have to
say that in 1 and 2, John destroyed the vehicle, while in
3 he let it be destroyed. For 1 and 3 this fits our common
usage. But, we would not normally say that in 2 John destroyed the vehicle, but rather that he let it be destroyed by removing the rock. However, I do not think this is cause for concern. I agree with Bennett's view that 'letting' is not a theoretically tough enough notion to support any theorizing, while 'negative instrumentality' and 'positive instrumentality' are.)

If utilities promoted or disutilities prevented are large enough, they will override a person's right and thus make a violation of that right permissible. But there is a problem in determining when large is large enough. One of the important factors to be taken into account is what I call the morality of self-interest. It seems clear that if promoting some good or preventing some evil will require a great deal of personal sacrifice, then unless that good or evil is overwhelming, one is not required to do the promoting or preventing. Unfortunately, we do not at present have a developed theory of the morality of self-interest, so we must rely on our intuitions as to when some desirable act will require too much personal sacrifice.

I suggest that if, after having taken into account considerations of utilities or disutilities and considerations of self-interest, it turns out that a person would be morally required to give up his life, well-being, or part or all of his autonomy, then it will be permissible
to force that person to make the relevant sacrifice. The violation of his right to life, his right to well-being, or right to autonomy, respectively, would be morally permissible.

Consider the following case.

A madman has demanded that I be killed, and has threatened to blow up Great Britain if I am not. We all know that he will do as he says, and that there is no way of stopping him. What am I required to do in such a case? It seems to me that in such circumstances, where the disutilities which would result from my refusing to sacrifice myself are so overwhelming, I would be morally required to sacrifice my life. In that case, the disutilities are large enough to make killing me against my will, and thus violating my right to life, morally permissible.

But let us also consider the following case. I discover that my death could save the lives of two people, A and B. Surely I am not required to sacrifice my life in this case—merely to save two people. The utility of doing so, it seems to me, simply is not sufficient to override the considerations of self-interest. And this means that if someone else takes it upon himself to kill me in order to save the lives of A and B, he will impermissibly violate my right to life.

If these claims are correct, then we have the tools for solving some puzzling cases which are current in the
literature on killing and letting die.

Let us consider a case envisaged by Judith Jarvis Thomson in 'Killing, Letting Die, and the Trolley Problem'.

A doctor has five patients all of whom are dying of various ailments. And he has one patient who for various reasons would be a perfect donor of the needed parts. If he kills this patient and distributes his parts to the other five he will save their lives. Ought he to kill the one in order to save the five, or should he refrain from killing the one and let the others die? The answer to this depends, if the above principles are correct, on whether or not the one would be morally required to sacrifice himself to save the five. Intuitions here may well vary, but personally I think it would be quite beyond moral requirements to make such a sacrifice. If this is the case, then the doctor's killing the one to save the five would be an impermissible violations of the one's right to life.

The above does not commit me to the position that killing is worse than letting die. I can still admit, and indeed do admit, that it is as wrong to fail to save a child from drowning when one can easily do so as it is to gratuitously kill a child. Of course, the reasons are different. The first is wrong because it impermissibly violates the child's right to life, and the second, because it breaks a moral rule generated by considerations of charity. What the above examples show, and all that they

10 The Monist, 59 (1976), 204-217.
show, is that it is impermissible to be positively instrumental in another's death even to save others, unless that person would be required to sacrifice himself.

The next kind of situation to be considered is one in which a person has the choice between sacrificing himself in some way, or violating another's right(s).

Consider the following case. Say A has been hurled down a mine shaft by some villain and will kill B upon landing, through no fault of his own, who is at the bottom. We shall assume that A is in full crash gear so he will not be killed by the fall. What we want to know is: Is it permissible for B to take his ray gun and with it disintegrate A, thus killing him, in order to save his own life?\(^\text{11}\)

Were A a non-innocent threat (i.e. an aggressor) we would have no hesitation in saying that killing him would be all right. Precisely why it is all right is a question I take up in the next section. But because the threat is innocent, it is not so clear what ought to be done. I should point out that if it were possible for A and B to use some fair means of resolving this conflict between their respective rights to life, it should be used. (See Section

\(\text{11}\) This example was inspired by a similar one envisaged by Nozick in *Anarchy, State and Utopia* (New York, N.Y.: Basic Books, Inc., 1974) when he considers problems to do with innocent threats. See pp. 34f.
3 for a discussion of this.) But, since there is no opportunity to do so, we have to consider whether B is required to sacrifice his life rather than kill A. Again, because I lack a theory of the morality of self-interest, I have to rely on my intuitions. It seems to me that B is not required to sacrifice his life in order to avoid killing A. Nor would A be required to sacrifice himself in order to avoid killing B, were he able to do so. But because one or the other has to die, either one's killing the other will constitute a permissible violation of the other's right to life.

This conclusion has implications for other situations. Say A, instead of being hurled down the mineshaft, has been ordered to shoot B, where failure to do so will result in his own death. I see no way in which this situation is relevantly different from the above, so we will have to conclude that it is permissible for A to shoot B. Of course, in either of these situations, if we make the number of people to be shot or crushed great enough, A will indeed be required to sacrifice his own life, rather than kill those people. Killing them will, in those circumstances, constitute an impermissible violation of their rights to life.

Parallel cases could be constructed for the rights to well-being and autonomy, but I do not think there is any point in doing so.
I would like to consider how one's special obligations might be relevant here. Say a trolley car driver has promised A that he will meet with no catastrophes if he goes for a walk along the right hand track. But when the driver arrives at a junction, he finds that there are two people--B and C--walking on the left hand track, and A on the right hand track. If he turns left he will kill them, but if he turns right he will kill A. Normally, the driver should choose the lesser of the two evils, but this case is altered by the fact that he has a special obligation to A. I think this might be a sufficiently strong consideration to make his killing A impermissible, and thus his only other course of action--killing B and C--permissible. I expect though that this obligation can be fairly easily overridden, so that if the number of people on the left track is increased somewhat, he will be required to break his promise and turn the trolley to the right. The violation of A's right to life will be permissible.

A quite different condition which will render a violation permissible has to do with the consent of the person whose right has been violated. We saw earlier, in Section 3, in the discussion of the limits of rights, that prior consent could exclude certain particular rights from one of a creature's set of natural rights. We are concerned here with subsequent consent. My basic claim is that if the subject of a violation subsequently consents to the
interference then that consent renders the violation permissible. Consider the following example.

A is positively instrumental in B's not being self-directing by preventing him from committing suicide. Subsequently B explicitly consents to the intervention by expressing his appreciation for A's action. This subsequent consent makes the violation of his right permissible. So although it was prima facie seriously wrong for A to interfere with B in the way he did, this prima facie wrongness is cancelled by his subsequent consent.

But there are certain complications. Consider again the suicide case, but suppose that, instead of A receiving explicit consent, there is behavioural evidence indicating that were he asked, B would consent to the interference, i.e. he is disposed to consent. Consider also a case where the only reason for failing to obtain subsequent consent for one's interference is that the subject fails to obtain a relevant piece of information, e.g. that the water is poisonous, that taking the drug has highly dangerous consequences, that 99% of the people who swim here get eaten by alligators, that the sign said 'Quicksand'. Given his other dispositions, beliefs, intellectual abilities, values, and life style, the receipt of this information would have led him to reassess the relevant situation, and to consent to the interference. Death soon after the intervention, or simply an odd set of circumstances, might
prevent the subject's acquiring this information. I should point out though, that the information must not be misleading, eliciting consent when it would not have been given were the subject aware of its nature.

These examples indicate that subsequent consent, or the disposition to consent either upon request or upon the receipt of a non-misleading piece of information will render interference with something the subject has a right to a permissible violation of his right.

There are some conditions, however, under which consent will not be sufficient to make a violation permissible. Here is an example of the first kind of case. Someone in full possession of his reason and will is subjected against his expressed wishes to a process of brainwashing aimed at changing a certain set of his beliefs. As a direct result of the brainwashing he comes to conscientiously accept a new set of beliefs, and as a result of accepting those beliefs, consents to the brainwashing which brought them about. Clearly, any interference which is causally sufficient for eliciting subsequent consent will not be rendered permissible by that consent.

The cases which belong in the second class in which

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This is an adaptation of a case envisaged by John Rawls in A Theory of Justice (Cambridge, Massachusetts: Harvard University Press, 1971), when he considers the problem of paternalism. See pp. 249f.
subsequent consent will not render a violation permissible are those in which the consent results from a distortion in the subject's values, beliefs, or desires. Interference with children is the source of most of these sorts of cases because of the fact that the interference which a child comes to approve of, will depend in part on what beliefs and attitudes his parents attempted to instil, and on how successful they were in doing so. If they have been very successful he might not dissent from certain kinds of treatment which have impaired his ability to lead a full and happy life, or which were undesirable for other reasons. He might, for instance, come to approve of the pressures used to force him into the mold of a narrow religious sect which forbids the development of certain artistic or intellectual skills, because he now accepts the tenets of the religion, and has been trained to be the kind of person who does not value those things. His beliefs, desires and preferences have been distorted by his upbringing and it is because of this that he consents to his parent's interference. Consent which results from such distortion will not make a violation permissible.

And finally, consent does not make a violation permissible if it would have been withheld or would be withdrawn upon the receipt of a relevant, non-misleading information.

In summary, a violation of a creature's right to well-
being or autonomy will be permissible if the subject subsequently consents or would subsequently consent upon request or upon the receipt of relevant information, providing none of the following hold:

1. the interference was causally sufficient for subsequent consent;

2. the consent is the result of distortion of desires, beliefs, or values;

3. the consent is the result of the absence of relevant information.

This condition is very similar to one which I offered in my paper 'Justifying Paternalism' as rendering a paternalistic interference justified. However, I saw the relationship between consent and rights in a slightly different way. I saw both prior and subsequent consent as being conditions under which a right was alienated. Or, putting that claim in terms of this paper, I saw both prior and subsequent consent as conditions under which a creature could exclude a particular right or rights from one of his set of natural rights. I think the way I have handled these conditions in this thesis is to be preferred, with prior consent being a condition which limits one's set of rights, while subsequent consent is a condition which renders a violation permissible. It seems to me to be a much

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\textsuperscript{13}The Canadian Journal of Philosophy, VII (1977), 137f.
more plausible position to hold that by interfering with the object of someone's right that one does indeed violate that right, but that the violation can be rendered permissible by subsequent consent from the subject of the interference.

In summary the following conditions will make the violation of a right permissible:

1. when the utilities gained or the disutilities prevented are sufficiently great;
2. when avoiding the violation would require one to make too great a personal sacrifice;
3. when one's obligations override the violated right;
4. when the right-holder gives his subsequent consent for the violation.

Section 6. Some special problems

a) Guilty threats

A guilty threat is one who aggresses against another in such a way as to violate one or more of his rights. A looter violates his victim's right to the use of his property, and if the looting is thorough enough, probably violates his right not to be harmed, as well; a kidnapper violates his hostage's right to freedom and usually threatens his life and well-being; torturers violate their victims' right to freedom from harm. Obviously none of these guilty threats have a right to do what they are doing.
Their set of rights to autonomy is limited by their victim's rights, so as to exclude the right to do those things. Therefore, preventing them from doing what they are doing will not violate any of their autonomy rights. But what if we kill a kidnapper or torturer in order to free his victim; or shoot looters on sight? Presumably, in many circumstances, such actions are morally permissible. What I need to show, then, is how my theory of natural rights allows for them. There are two possible ways.

First, such acts could constitute permissible violations of the guilty threat's right to life on the grounds of the overwhelming utilities of taking such measures. Even if short-term utilities would not be sufficient to justify the violation, it seems likely that the utilities taken over the long run would often be quite sufficient to counteract the wrong of violating the threat's right to life. For example, in some circumstances, if looters were not shot on sight there would be insufficient deterrence to prevent mass looting. The cost to others in lost property, destroyed business, and the emotional strain of being bankrupt would add up to sufficiently large disutilities to justify the killing. This doesn't mean, of course, that killing such people will always be justified by considerations of utility; sometimes they will be insufficient. And when they are, violating their rights
to life will be impermissible.

There is another way of explaining how killing a looter, torturer or kidnapper could be permissible. It might be that by taking up the stance of a guilty threat, one's rights to life at that time are excluded from one's set of rights to life; that is, that being a guilty threat is another limiting condition on the general right to life and right to freedom from harm. And if that is the case, then killing the looter, kidnapper or torturer will not violate their respective rights to life. This, perhaps, more closely fits our intuitions on the matter—that we do not really have to worry about whether killing a guilty threat is a permissible violation of his right to life because he does not have a particular right to life at such times. Of course, before he is a threat and after he ceases to be a threat, killing him would indeed violate one of his particular rights to life. And that, surely, is how it should be. It is because this is true that it would not be permissible, after capturing a kidnapper, to hand him over to a vigilante group for disposal.

But, if a looter does not at the time of looting, have a particular right to life, why is it morally wrong, as I think it is, to kill a looter when issuing a warning would be sufficient to stop him? I think the solution to this and many similar problems will be found by looking to one of the other areas of morality—utility in the case
at hand. It is because the net utilities of simply issuing a warning would far exceed the utilities of killing, that it would be wrong to kill.

But this solution will not handle all the problems. Consider the following case. A child, A, is threatening to slap another child, B. An adult see this, but is unable to reach the children in time to prevent the assault. However, he does have a gun with which he could shoot A. Now, I think it is not only because shooting A would be counter to utilitarian considerations that it would be morally impermissible, but also because it would wrong A, i.e. it would violate his right to life. But how can that be? I suggest that the limiting condition is really a much more complex one that I suggested above. It is not just being a guilty threat which limits the rights to life and freedom from harm, but rather being a guilty threat where the threat is of a certain serious nature. The limits on the rights will be in direct relation to the seriousness of the threatened act.

I do not propose to develop these proposals any further. I merely wanted to indicate here how my theory of rights could allow for various measures being taken against guilty threats, which it seems we must allow for. I have indicated two ways in which this could be done.
b) Punishment

Similarly, if my theory is to have any initial plausibility, it must be possible to reconcile it with at least some forms of punishment. I think the only real possibility for reconciliation, and one which fits our intuitions fairly closely, is that by having committed a crime against someone's life, well-being or autonomy, the offender has limited his natural rights so that certain forms of punishment will not violate any of them. This will be a theoretically difficult position to develop because of the difficulty in determining to what extent the offender's rights are limited. Presumably this will be related to the seriousness of his crime, just as above the measures permissibly taken against guilty threats were related to the seriousness of the threat. The idea is that minor crimes, say an isolated case of stealing something of relatively little value, will result in relatively few particular rights being excluded from the offender's sets of rights. No particular rights to life will be excluded from the relevant set; and no particular rights to freedom from harm will be excluded from their relevant set. But some of his particular rights to autonomy will be excluded from his set of rights to autonomy. Serious crimes, on the other hand, such as those against life, will result in the exclusion of a great number of particular rights from their respective sets. I should point out though that even
murderers and practising sadists retain some of their rights. For example, nothing they do will limit their rights so as to exclude the right not to be tortured. So even when many other forms of punishment are permissible, torture will never be.

As I do not wish to attempt a theory of punishment here, I shall not pursue this matter any further.

c) Redistribution

Concern is frequently expressed about whether a theory of natural rights will permit the re-distribution of property. I shall show that fears that it will not be permissible are unfounded.

First, I should remind the reader that the right to property is simply a subset of the rights contained in the set of autonomy rights. This sub-set will contain particular rights of the form: A has a right to use and dispose of article a at time t against b. The redistribution of A's property will be permissible if either one of the following holds: (1) there is in operation some condition which excludes some particular rights from A's more general right to property; (2) the utility of redistribution is sufficiently large to override some of those particular rights.

Regarding (1): We saw in the discussion on the limitations on rights that when there was competition between two people to do some particular thing, this had to be
resolved by some fair means. There is always at least covert competition for the use of property. The resolution of the conflicts should probably usually be made on such grounds as who made it, who paid for it, who earned it, who worked for it, who it was given to, etc. But such principles for resolving a competition are not exhaustive. In some circumstances, say when the owner of some property has in excess of what he needs, it might be that the fair way to decide who ought to get to use that property is on the basis of who needs it most. The owner will thus lose the competition for the goods. His right to them will thereby be excluded from his sub-set of property rights, and thus forcible redistribution will not violate his right to property.

Regarding (2): We saw in the discussion of permissible violations that if the utilities gained or disutilities prevented were sufficiently large then the violation of a right could be rendered permissible. This principle is applicable here. If the redistribution of a certain amount of property will result in very large utilities, then it will be morally permissible to violate the relevant particular rights to property in order to bring about those utilities.

I conclude, therefore, that my theory of natural rights does not preclude the possibility of permissibly redistributing property.
Part II. Special Rights

In this part of the thesis I offer an analysis of what I call special rights. The concept of obligation is used in a very central way in the analysis, and it is for this reason that I devote the following several sections to its analysis.

Section 1. Duties, Obligations, and Ought

a) The case for distinguishing 'duties', 'obligations', and 'ought'

Although it has been common in the philosophical literature to assume that the three statements: 'A has an obligation to do X', 'A has a duty to do X', and 'A ought to do X' all mean the same thing, there have been several relatively recent articles which challenge the legitimacy of one or more of these assumed equivalences. I have found the evidence in favour of the view that the three propositions do differ in meaning quite compelling. Before presenting what I believe to be the correct analysis of those statements, I should like to present some of the evidence which makes this view a plausible one. In doing

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so I rely heavily on Beran.

I maintain three theses: 1. that 'A ought to do X' and 'A has an obligation to do X' are not equivalent in meaning; 2. that 'A ought to do X' and 'A has a duty to do X' are not equivalent in meaning; and 3. that 'A has an obligation to do X' is not equivalent in meaning to 'A has a duty to do X'.

Part of the evidence for the first of these theses consists of the fact that we frequently get a change in truth value when we substitute 'obligation' for 'ought' in an ought-statement, or 'ought' for 'obligation' in an obligation-statement. As an example of the first consider the following. Say I have an obligation to someone to pay him $5. This might be true on the grounds that I borrowed $5 from him. Nonetheless, it might be false, that I ought to pay him the $5 because of the existence of overriding moral considerations, e.g. that my baby will die unless I spend that money on some medicine for it.

Here are some examples of truth value change where 'obligation' is substituted for 'ought' in an ought-statement:

1. It might well be true on technical grounds that an artist ought to colour a certain area in his painting

blue. But he won't on those grounds have an obligation to colour that area blue. So in technical ought-statements, 'obligation' cannot be substituted for 'ought'.

2. It is true on prudential grounds that I ought to brush my teeth, but I do not, on those grounds, have an obligation to do so. 'Obligation' cannot be substituted for 'ought' in prudential ought-statements.

3. Say I have a ticket to an opera which I cannot use, and I know a music student who would benefit greatly from seeing the opera, but who cannot afford a ticket. Plausibly I ought to give her my ticket, but I don't have an obligation to do so. This provides evidence that at least for some moral ought-statements, 'obligation' cannot be substituted for 'ought'.

Furthermore, the logical relations among obligation-statements are different from those among ought-statements. Consider, on the one hand, the statements 'A has an obligation to do X' and 'A has an obligation not to do X'. These statements can both be true. For example, a man might have an obligation to his wife to tell her what work he does, but he might also have an obligation to his employer (the Secret Service) not to tell his wife what work he does (espionage). On the other hand, the statements 'A ought to do X' and 'A ought not to do X' are either contraries or contradictories.

Finally, with respect to obligation statements, it is
always appropriate to ask, to whom does the obliged have the obligation. But no such question is appropriate when the statement is an ought-judgment.\textsuperscript{15}

Much of the above evidence can be adapted to support the second thesis—that 'duty' and 'ought' statements are not equivalent in meaning. It might be my duty to give a lecture at 3 p.m., but there might be overriding moral considerations such that I ought not to give that lecture. And it might be the case that as a policeman, it is my duty to arrest my son for smoking marijuana, but it might be my duty as a parent to protect him from getting a criminal record. Although it may well be the case that one ought to try to be happy, it would be at least peculiar to say that one has a duty to try to be happy. And finally, it might be the case that I ought to give the student the ticket to the opera, but surely I don't have a duty to give her the ticket.

And in support of the third thesis, consider the following points:

One does or performs one's duties while one meets or discharges one's obligations; one is under an obligation but not under a duty; one can be on and off duty but neither on nor off obligation. Firms advertize jobs in terms of duties, not

\textsuperscript{15}These points are ones which Beran makes in his article, 'Ought, Obligations and Duty', \textit{op. cit.} 207-209. I owe much to his insights.
obligations, and urge customers to inspect their wares without obligation, not without duty. One can speak of something being one's duty as a father or chairman or citizen, i.e. duties seem to be tied to roles in a way obligations are not. One might attempt to explain away some of this evidence in support of the three theses, on the grounds that there are two different senses of 'ought', the moral and the prudential; and one might try to explain away the rest by appealing to a distinction between prima facie and actual obligations and duties. But Beran (see pp. 210-216) has shown that there are decided disadvantages in doing so. We shall see that once we have arrived at adequate analyses of 'duty', 'obligation' and 'ought' we will be able to explain, rather than explain away, the facts of usage presented above.

b) Previous attempts at analysis

Beran has offered the following analysis of ought-statements: 'A ought to do X' means 'There are conclusive reasons for A's doing X'. Although I'm not sure whether one must have conclusive reasons for doing X, rather than simply have the balance of reasons in favour of doing X, in order for it to be the case that one ought to do X, it does seem clear that, whatever the particulars are, the analysis of ought-statements will be in terms of the reasons one has for acting. This is sufficient to distinguish ought-statements from duty and obligation-statements

16Beran, 209f.
and so is adequate for my present purposes. However, I do need a full and accurate analysis of 'duty' and of 'obligation', and the attempts to provide us with these have not been entirely successful. I shall consider two representative examples of such attempts.

Beran suggests that 'Obligations have their logical basis in certain things that people may do by way of commitment.' But we are not really sure what things do commit us. And furthermore, a certain important class of obligations has been left out—those which arise from injuring another, i.e. obligations of reparation.

Brandt has been somewhat more successful in providing truth conditions for obligation statements, although he does not see the conditions he offers in this way, but rather as conditions common to what he calls the 'paradigmatic use' of 'obligation'. (A use is 'paradigmatic' in the sense in which Brandt uses that term if (a) it would be an especially natural use of the term; and (b) if the term has come to suggest certain features of the situation in which it is used.)

They are as follows:

(a) A roughly specifiable service is 'required' of one person.

17 Beran, 216.

18 For details, see R.B. Brandt, op. cit., 384-389.
(b) Two parties are involved: the one who is required to perform a service, and the one for whom, or at the bidding of whom, the service is to be performed.

(c) A prior transaction, the promise or benefaction, is the cause of the relationship.\(^{19}\)

Taking these conditions as truth-conditions for obligation-statements, they leave us with a number of puzzles. We don't know, for example, what counts as a transaction, nor whether all kinds of transactions will give rise to obligations, nor whether transactions which are involuntary or accidental will do so. Because these puzzles are not resolved by the analysis offered, I do not find it satisfactory, and so propose to attempt an analysis of my own, which I present in Section 4(a).

As far as 'duties' are concerned, Beran has suggested that 'A person's duties are determined by the roles he has.'\(^{20}\) Before we can assess this statement we need to analyze the concept of 'role'. When we do so we shall see that it is not roles, but rather jobs and positions which give rise to duties. In addition, it seems to me that it is insufficient to state simply that a person's duties are determined by the roles he has without specifying how they are determined.

As he did for obligations, Brandt offers the conditions

\(^{19}\)Brandt, 387.

\(^{20}\)Beran, 216.
for the paradigmatic uses of 'duty':

(a) An individual occupies an office or station in an organization or some kind of system.
(b) A certain job is deemed of some value for the welfare of the organization.
(c) This job is associated, somehow or other, with the office, occupied by the individual.
(d) Performance is expected and 'required' of him.21

As we did with the conditions for the 'paradigmatic uses of 'obligation'' let us consider the merit of these as truth conditions for duty-statements. It seems to me that, as they stand, they are both too complex and too vague. Once we have adequate analyses of 'jobs' and 'positions', we shall find that we can do much better.

Other attempts to analyze 'duty' and 'obligation' have been no more successful than these two examples. So the task of providing adequate analyses lies before us. The route I take is through the logically more basic concept of 'being obliged'.

Section 2. Obligedness

Consider the following statements:

1. A was obliged by the change in wind direction to tack several times.
2. A was obliged by having promised to do X, to do X.
3. A was obliged by landing on the 'go-to-jail' square, to miss three turns.

21Brandt, 388.
4. A was obliged by the strength of the wind to reef his mainsail.

5. A was obliged by the airline's regulations to take the train to Vancouver.

In each of these A is obliged by something—either an event, circumstance, or regulation. Alan White contends that this is an essential feature of being obliged—that one is always obliged by something—and I concur with this judgment. I shall follow White, and use the label 'obliging factor' for whatever does the obliging.

What sorts of things can be obliging factors? I think that, strictly speaking, only events and circumstances (which will include rules and regulations) can be obliging factors. This means that it will never be correct, except as an ellipsis, to say, 'I was obliged by the Chairman to attend the meeting', or 'I was obliged by the gunman to give up my wallet'. But rather, one must specify what the Chairman or gunman did which obliged one. So, 'I was obliged by the Chairman's requesting my attendance, to attend the meeting' and 'I was obliged by the gunman's threatening me, to give up my wallet'.

(White's position on this matter is a little unclear. On the one hand he says: '...if I am obliged by the Vice-

Chancellor, a university regulation or the illness of a colleague, to attend a meeting, the Vice-Chancellor, a university regulation or the illness of a colleague, obliged me to attend a meeting.\(^23\) (My emphasis.) But he also says, 'Whether I am obliged to someone for what he has done or obliged by him by what he has done..., I am obliged by his doing of something.'\(^24\) (My emphasis.) I think, on the basis of the latter statement, that White would agree that were he being careful and non-elliptical, he would have identified the obliging factor in the first quote as being something the Vice-Chancellor did, such as requesting the attendance.)

What an obliging factor does is to close off various possible ways of acting. But it can do this only in the presence of what I shall call 'background conditions'. For example, in (1) above, A could only be obliged by the change in wind direction to tack, if he has some goal which he cannot, in the presence of the change in wind direction, realize without tacking. In (2), A could be obliged by having promised to do X, to do X, only if there is a rule which requires that promises be kept. And A in (3) could be obliged by having landed on the 'go-to-jail' square to miss three turns only if he is playing a game in which one of the rules says that this is what he must do in the

\(^{23}\)White, p. 124.

\(^{24}\)White, p. 125.
circumstances. If the sailor has no goal, he cannot be obliged by the change in wind direction to do anything in particular, and unless one is subject to a rule regarding landing on the 'go-to-jail' square, one cannot be obliged by doing so, to do anything in particular. These observations suggest the following truth conditions for a statement of obligedness: 'a is obliged by event e, or circumstance c to do o' (where o could be a disjunction) if and only if

i. a has goal g, or is subject to rule r;

ii. because e or c obtains, unless a does o he will fail to realize his goal, g, or act in accordance with rule r.

The background condition is either the goal or the rule. And the obliging factor is either e or c.

These are actually the truth conditions for prima facie obligedness, and thus they are to be understood as being subject to 'In the absence of overriding considerations'. This proviso will be discussed later when I distinguish overriding considerations from the excepting conditions found in the rule.

If the background condition is a goal, I shall call the necessity involved 'instrumental'. The following examples, with their truth conditions should provide ample illustration of this kind of obligedness.

1. A is obliged by the wind's changing direction to tack.
1. A has the goal, getting to port;
   ii. because the wind changed to the SE, unless A tacks he will fail to realize his goal.

2. A is obliged by the wind’s being too strong to reef his mainsail.
   i. A’s goal is to avoid capsizing;
   ii. because the wind is too strong, unless A reefs his mainsail he will capsize.

3. A is obliged by the airline regulations to take the train to Vancouver.
   i. A’s goal is to take his dog to Vancouver;
   ii. because there is a regulation forbidding dogs on planes, unless A takes the train to Vancouver, he will be unable to take his dog to Vancouver.

4. A is obliged by his father’s rules to go to bed at 10:00 p.m.
   i. A’s goal is to avoid punishment;
   ii. because his father has a rule requiring that A go to bed at 10:00 p.m., unless he goes to bed at 10:00 p.m., he will be punished.

5. A is obliged by his father’s rules to bed at 10:00 p.m.
   i. A’s goal is to obey his father’s rules;
   ii. because his father has a rule requiring that A go to bed at 10:00, unless A goes to bed at 10:00, he will
disobey one of his father's rules.

I should like to emphasize that it is the background condition, and not the obliging factor, which determines what kind of obligedness is involved. Note that both rules and regulations can be obliging factors for instrumental obligedness.

Rules can be divided into categories in various ways, depending on one's concerns. For my present purposes, it is most useful to divide them into two categories, with game rules appearing in one and all other kinds of rules, which I shall call normative rules, appearing in the other. The important difference between these two categories is that one can choose not to be subject to a game rule by choosing not to play the game, while one cannot (or at least cannot so easily) choose not to be subject to other kinds of rules (e.g. social rules, moral rules, legal rules).

If the background condition for a statement of obligedness is a game rule I shall call the necessity involved game-generated. By the general form of the truth conditions for obligedness laid out above, the truth conditions for a statement of game-generated necessity will be as follows: 'a is obliged by event e or circumstance c to do o', is true if and only if

i. a is subject to the rule of game g which says: if e or c obtains, then a is to do o, except under
conditions \( t_1 \rightarrow t_1 \):

ii. because \( e \) or \( c \) does obtain, unless \( a \) does \( o \) he will fail to act in accordance with the rules of \( g \), providing none of the exceptions hold.

iii. none of the exceptions to the rule hold.

Notice that from (i) and the fact that \( e \) or \( c \) obtains we can draw the conclusion that 'unless \( a \) does \( o \) he will fail to act in accordance with the rules of game \( g \)'. This means that there is some redundancy in the truth conditions as they are stated above. In order to remedy this situation I suggest that we amend them so they read as follows:

i. \( a \) is subject to the rule of game \( g \) which says:
if \( e \) or \( c \) obtains, then \( a \) is to do \( o \), except under conditions \( t_1 \rightarrow t_1 \);

ii. \( e \) or \( c \) does obtain;

iii. none of the exceptions to the rule hold.

Consider the following example.

1. \( A \) is obliged by having landed on the 'go-to-jail' square to miss three turns.

   i. \( A \) is subject to a rule of the game of monopoly which says: if a player's 'man' lands on the 'go-to-jail' square he is to miss three turns, except if he has a 'get-out-of-jail-free' card;

   ii. \( A \) lands on the 'go-to-jail' square;

   iii. \( A \) does not have a 'get-out-of-jail-free' card.
2. A is obliged by having been checked, to move his king.
   i. A is subject to the rule of chess which says: if a player cannot protect his king from check by moving another piece, then he must move his king;
   ii. A's king is checked, and he cannot legally protect it by moving another piece.

   If the background condition for a statement of obligedness is a normative rule, then I shall call the kind of necessity involved, normative. The truth conditions for a statement of normative obligedness are similar to those for game-generated necessity. They read as follows: a is obliged by event e or circumstance c to do o, if and only if
   i. a is subject to a normative rule which says: if e or c obtains, then a is to do o, unless conditions t₁-t_i obtain;
   ii. e or c does obtain;
   iii. none of the conditions t₁-t_i hold.

Before getting into the various intricacies of normative obligedness, let us look at some examples and their truth conditions.

1. A is obliged by having promised to do o, to do o.
   i. A is subject to a normative rule which says: if a promises to do o, then a is to do o, except when conditions t₁-t_i obtain;
   ii. A has promised to do o;
iii. none of the conditions \( t_1 - t_1 \) hold.

2. A is obliged by having accepted a dinner from B to invite B to dinner.
   
   i. A is subject to a normative rule which says: if a accepts a dinner from b, then a is to invite b to dinner, except under conditions \( t_1 - t_1 \):
   
   ii. A has accepted a dinner from B;
   
   iii. none of the exceptions to the rule hold.

3. A is obliged by being the grandparent of B to care for B.
   
   i. A is subject to a normative rule which says: if a is the grandparent of any children, then a is to care for those children except if conditions \( t_1 - t_1 \) hold;
   
   ii. A is the grandparent of B;
   
   iii. none of the exceptions to the rule hold.

4. A is obliged by being the only one capable of saving the man, to try to save him.
   
   i. A is subject to a normative rule which says: if a is the only one capable of saving b, then he is to try to save b, unless conditions \( t_1 - t_1 \) hold;
   
   ii. A is the only one capable of saving B;
   
   iii. none of the conditions \( t_1 - t_1 \) hold.

In all of these examples, the rule which appears as the background condition is a conditional rule, with its
antecedent being the obliging factor. In the first example, 'A is obliged by having promised to do 0, to do 0' the background condition is the rule 'if a promises to do 0, then a is to do 0, except when conditions t_{1-2} obtain', and the obliging factor is a's promising to do 0. If the obligedness is to be one of normative necessity the background condition must be a rule, and the obliging factor must be its antecedent. The obliging factor cannot itself be the rule. But why is this the case? Why cannot the following be statements of normative necessity?

1. A is obliged by the rule against lying to refrain from lying.
2. A is obliged by the rule against cruelty to refrain from torturing animals.
3. A is obliged by the rule about returning favours to return a favour to B.
4. A is obliged by the rule about promises to keep his promise to do X.
5. A is obliged by the rule requiring that one give to charity, to give to some charity.

To see why these, strictly speaking, are not well-formed statements of normative obligedness, we need to consider what the truth conditions would be for such statements. Take, as a representative example, 'A is obliged by the rule against lying to refrain from lying'. If this is a statement of normative necessity, the back-
ground condition must be a normative rule, viz: the rule against lying. But according to the statement of obligedness the rule about lying is the obliging factor. So the background condition and the obliging factor are identical. But surely that does not make sense—an obliging factor cannot be its own background condition. And if there is no background condition, then the obliging factor cannot be closing off optional ways of acting which would otherwise have been in accordance with the background condition. But that is just to say that we don't really have an obliging factor.

This is, of course, true of all well-formed obligedness statements: the background condition and the obliging factor can never be identical. Otherwise we don't have true obligedness. So a goal cannot be the obliging factor for instrumental necessity, and similarly the rule of a game can never be the obliging factor for game-generated necessity.25

I have taken the statements (1) - (5) as normative statements. And although I think they would usually be

25White makes the same point in Modal Thinking, pp. 136f with respect to obliging factors and goals, but he doesn't consider the cases of normative or game-generated necessity, where I think the temptation to use obligedness statements incorrectly is more prevalent. Furthermore, White does not really present any arguments for his position. I think it is important to point out, as I have done, that one does not get the needed separation between the obliging factor and the background condition if one takes
uttered with such intent, they would not have to be. They might actually be statements of instrumental necessity, with the goal of the subject being say, the desire to be known as a truth teller (for 1), a kind individual (for 2), a favour-returner (for 3), a promise-keeper (for 4), or a charity-giver (for 5). If this is the case, then we get the needed separation between the obliging factor (the unconditional rule as stated in each) and the goal (being known as a truth-teller, favour-returner, etc.). So as statements of instrumental necessity, they are well-formed, but very misleading in the absence of some indication that they are not to be taken as statements of normative necessity.

One does not always say what the obliging factor is when one makes a statement of obligedness. One might simply say, 'A is obliged to refrain from lying' or 'A is obliged to keep his promise' or 'A is obliged to return B's favour'. In order to determine whether these elliptical statements could be turned into well-formed statements of obligedness, we have to determine with what intent they were uttered, and what the utterer identifies as the obliging factor. For the latter two, if the utterer is making the goal for the obliging factor in instrumental necessity, or the rule for the obliging factor in normative or game-generated necessity.
assertions of normative necessity, and identifies the obliging factors as A's promising, and A's accepting a favour, respectively, then they could be rewritten as well-formed statements of normative obligedness as follows: 'A is obliged by having promised to do 0 to do 0'; and 'A is obliged by having accepted a favour from B to reciprocate with a favour.'

Section 3. Normative Obligedness

There are three intertwined problems connected with normative obligedness which I shall consider in this section: on what grounds we determine whether one is socially, legally, familially, or morally obliged to do something; when rules can be said to exist; and how we determine what the exceptions are to rules.

Part of the solution to the first problem—how we determine the kind of obligedness—requires that we determine what kind of rule it is which supports the obligedness statement. We find that there are a large number of different kinds of rules, among which are the following:

1. Legal rules. These rules are those which are embodied in any society's legal system. Although there are problems involved in specifying what a legal system is, and when a society has one, we do have a fairly good intuitive understanding of what is involved. This is all I require for my present purposes. An example in our own society of a
legal rule which supports a statement of normative obliged-
ness is the rule of contract.

2. Social rules. There are rules which regulate the
interaction between members of a society or fairly large
sub-section of a society. Examples are as follows: favours
are to be returned; promises are to be kept; dinners are
to be reciprocated; parents are to care for their children;
borrowed items are to be returned; and compensation is to
be paid to one you have injured.

3. Family rules. These are rules which regulate the con-
duct of members of a family which have their source in the
family itself. These rules will vary widely from one
family to another. 'Mother is to do the washing', 'Father
is to do the cooking', 'Children are to go to bed early
if they quarrel' could all be such rules.

4. School rules. Rules which have been adopted by those
in authority to govern the conduct of those involved in
the school system, or in a particular school are included
under 'school rules'. These could include the following:
'Principals are to maintain discipline in the school',
'Those who have not done their homework are to clean the
boards', 'Those who arrive late are to stay after school'.

5. Club rules. The rules which govern the operation of
any club are included here. 'The members are to attend
the Christmas party', 'Those who break rules are to pay a
fine', 'The president is to call the meetings', could all be rules of this kind.

6. Rules of organizations. Any organization, whether it be simply a club, or a business or sports corporation, will usually have rules governing the conduct of its members, of the kind which support statements of obligedness.

7. Rules between friends. These are rules which friends have adopted to regulate their conduct to one another. 'One is to stay over night with the other when the other's roommate is away' might be such a rule.

It is important to distinguish among these various kinds of rules, because, I contend, it is on this basis that we determine whether the obligedness which is involved in any obligedness statement is legal, social, or familial. How else could we determine that A is legally obliged to do O except on the basis of the fact that he is subject to a legal rule which says anyone who is in A's position is to do O? And how else could we determine that someone is socially obliged to do P, except on the grounds that he is subject to a social rule which says that anyone in A's position is to do P? I do not think that there is any alternative. (We do not have adjectives to describe the kind of obligedness which arises from the rules of a school, club, or any other kind of organization, or which exist between friends. That, I claim, is an accident of our language.) I should point out that it is possible for the rule
supporting a statement of obligedness to be of more than one kind at the same time, e.g. to be both a legal and social rule. Which adjective the speaker chooses to use in describing the obligedness will be determined by the aspect he wishes to emphasize.

Conspicuously missing from this discussion so far is how to determine whether an obligedness is moral or not. I have chosen to discuss this question separately, as there are some complications not present with other kinds of obligedness.

As is the case for all other kinds of obligedness, one is morally obliged to do something if the background rule is a moral one. I take a rule to be a moral one if it is one which morally ought to be universally adopted. Such a rule as the following I think, satisfies this condition: if one is a bystander at the scene of an accident, then one should do what one can to relieve the suffering of the victims. If this is a moral rule then the obligedness arising from being a bystander will be moral obligedness.

But what of such rules as 'If one is a father then one is to care for one's children'? This is not one which ought morally to be universally adopted: there would be nothing morally wrong with a society which had different kinship rules, e.g. ones which require that uncles care for their nieces and nephews, rather than ones which require
that fathers care for their children. And yet it seems right to say of fathers in a society which has the above rule about fathers caring for their children, that they are morally obliged to care for their children.

I think that this is in fact what one should say. And the reason is that the particular rules found in any society about caring for children will be supported by a moral principle, viz: 'All societies must provide for the care of their children in a fair and equitable way'. So although the rule itself is not a moral one, it is supported by a principle which is moral, and it is because this is so that the obligedness supported by the rule is moral obligedness.

If the above is correct, then statements of obligedness will be moral if one of the following is true:

i. the rule in the truth conditions is a moral rule;
or ii. the rule in the truth conditions, although not a moral rule, is supported by a moral principle or some general moral rule.

So far I have glossed over the question of how we determine whether A is subject to a rule. I shall deal with this now.

The answer is really very straightforward for game rules. A is subject to a game rule, r, if and only if he is playing the game in which r is one of the rules, and he satisfies any special conditions of application for that
rule. For example, A is subject to the rule of football which says that quarterbacks are to do X if and only if he is playing football and he is a quarterback.

Determining when A is subject to social, legal, club, organizational, family or friendship rules is a bit trickier, but I think the following gives us necessary and sufficient conditions.

A is subject to social, legal, club, organizational, family, or friendship rule, r, if and only if:

1. A is a member of the society, club, family or friendship, respectively, in which r is one of the following:

   (a) in force, i.e. acknowledged by the society, club, family or friends as a rule which they are to obey, and which they usually do obey. Disobedience to these rules will usually give rise to some unpleasant results—from the mild disapproval of other members of the society, club, etc., to physical punishment;

   (b) recorded in some document which applies to the society, club, family or friends and is acknowledged to do so. Such rules do not actually have to be in force. They might be 'on the books', but because they are obsolete, or inappropriate for some other reason, they are no longer obeyed, and disobedience is not punished. But, we might ask, if they are not in force, why should we say that they support a statement of obligedness? I think
because so long as they are 'on the books' someone could insist upon their obedience, and could make a claim against someone on their strength.

2. A satisfies any special conditions of application for the rule. For example, say the rule is 'If the children are noisy, they are to go to bed early'. A would have to be one of the children in the family which has this rule in order to be subject to it.

I think the only condition which a creature must satisfy in order to be subject to a moral rule is that it have a moral personality, i.e. that it be capable of distinguishing between morally right and morally wrong.

We should also consider what must be the case in order for there to be a moral rule r. If we determine that a rule is a moral one on the grounds that such a rule morally ought to be in force, as I suggested above that we should, then it obviously need not be in force in order to exist. It need only be morally sound. Some examples of moral rules are as follows: One is not to gratuitously kill another person; One is not to torture sentient beings; One is not to injure another sentient being; One is not to interfere with another's freedom of action. These rules support secondary rules which tell us what one is to do in the event of breaking any of the fundamental rules. "An injurer is to offer assistance (if appropriate) to one
he has injured' and 'An injurer is to compensate (when appropriate) one he has injured' are examples of such secondary rules. These secondary rules, being conditional and moral, will support statements of moral obligedness, regardless of whether or not they are actually in force in a society.

We are now prepared to tackle another problem: determining what the exceptions are to the rules which support statements of obligedness. There are really two connected problems here: 1. determining what the exceptions are to rules which do not have all of their exceptions explicitly built into them; and 2. determining when something is an exception to a rule as opposed to a condition which overrides the rule.

Basically, my suggestion is that we look to the reasons for the existence of a rule in order to determine what the exceptions will be to that rule. For all but moral rules this will amount to discovering why the rules are in force, and for those which are no longer in force, but still appear 'on the books' why they were in force. For moral rules, to look for the reason for their existence will be to determine why the rule is a morally sound one. (The reasons a moral rule is in force, when it is, might be different from why it is morally sound. But it is on the latter basis that we arrive at exceptions, since it is the fundamental condition for existence.)
Consider the following example. The rule is: If a accepts a dinner from b, then a is to invite b to dinner, except under conditions $t_1 - t_i$. Now, why is this rule in force? Well, there could be various reasons: it might be thought to enhance social solidarity; it might be to ensure that the cost of giving dinners is shared, so that no one person is over-burdened. Given these reasons for the existence of the rule, what might be found in the excepting conditions $t_1 - t_i$? Well, if A and B discover that they do not like each other at the dinner given by B, it will hardly enhance community feeling to arrange another dinner between those two parties. So we might have the following exception: Dinners are to be reciprocated except when the affected parties have found no pleasure in each other's company. Also, if A and B differ radically in income levels, so that B's giving a dinner is no burden, while A's reciprocating would be a burden, then reciprocating will not really be a fair way of sharing the burden of dinner-giving. So we might have the following: Dinners are to be reciprocated except where the parties involved have widely disparate incomes.

Consider the following example of a moral rule: If a injures b, then a is to pay b damages. What is it that makes this a morally sound rule? I suggest it is because by paying damages a in a way makes it up to b for having violated his natural right to well-being. Given that this
is the reason for its being a sound moral rule, what would the excepting conditions be? The following, I suggest, are among them: 1. B was injured in an area which he knew he entered at his own risk; and 2. A injured B in the act of self-defense. And the reason these are excepting conditions is because under the circumstances specified, A's injuring B will not constitute a violation of B's natural right to well-being, and so there is nothing to be made up for.

When an excepting condition to a rule does hold, then a person is not prima facie obliged by what would otherwise be an obliging factor. But overriding conditions are different. If A is prima facie obliged to do O, i.e. there are no excepting conditions to the rule supporting the obligedness, but there is something which is more important than his doing O, then although it is still true that he is prima facie obliged to do O, he will not be obliged, all things considered. For example, if A has injured B, and there are no excepting circumstances, then A is prima facie obliged to pay B damages. But it might be the case that in order to compensate B, he would have to give him the grocery money for the month, which would result in his family going hungry. Such circumstances would provide overriding considerations, and thus A would not be obliged, all things considered, to pay B damages.

I think it is appropriate to say something here about
the relationship between obligedness and obligations. I shall argue in Section 4(a) that obligations are a special kind of obligedness. What I want to emphasize here is that they are a special kind of *prima facie* obligedness. That is, under certain circumstances, if one is prima facie obliged to do 0, then one will have obligation to 0. But if one is not, all things considered, obliged to do, i.e. there are overriding considerations, then although one will still have the obligation to do 0, this obligation will be overridden. This fits with the way we generally think and talk about obligations, i.e. that we can have an obligation, and yet it will be morally right that we not fulfill it.

There might be some temptation to try to simplify matters by including all the overriding conditions in the excepting conditions. But this would have three unacceptable results. First, we would have to deny what I think is indisputably true, that we can have an obligation, but not be required to fulfill it because of more pressing moral, legal or social demands. Second, we would lose a perfectly good and useful distinction between breaking a rule for good reason, and coming under one of the rule's excepting conditions. And third, the rules could no longer serve the useful purpose of being guides to action, to be taken into account in deciding what the best thing to do is. This is because if we include under
the excepting conditions to our rules such provisions as those which I have termed overriding conditions, then we will have rules with unmanageably long lists of excepting conditions. And they will therefore be unable to help us in determining what ought to be done.

Section 4. Obligations

(a) Truth Conditions

Of the three kinds of obligedness—instrumental, game-generated and normative—only the last will yield statements of obligation. This claim should be consistent with one's intuitions on the matter. Normally we are not tempted to put game-generated or instrumental obligedness statements in terms of obligations. For instance, although someone is obliged in the game of monopoly, by having landed on the 'go-to-jail' square, to miss three turns, we are not in the least tempted to say that he has an obligation to miss three turns. And similarly, we would have no inclination to say that because A is obliged by the wind's having changed direction, to tack, he has an obligation to do so.

But not all judgments of normative obligedness yield obligations: there is an important sub-class of them which do not. I shall now give a list of examples of obligedness statements which can be written in terms of obligations, followed by a list of examples of obligedness
statements which cannot be so written.

List I.
1. A is obliged by having accepted a favour from B to do B a favour in return, if the opportunity arises.
2. A is obliged by having accepted a dinner from B to invite B to dinner in return.
3. A is obliged by having contracted with B to visit him when he is sick, to visit him now that he is sick.
4. A is obliged by having promised B that he would do 0, to do 0.
5. A is obliged by having borrowed a shovel from B, to return it to B.
6. A is obliged by having injured B to pay him damages.
7. A is obliged by having taken on the guardianship of B to care for him.
8. A is obliged by having (carelessly) injured the horse to ensure that it gets proper medical treatment.
9. A is obliged by having (carelessly) injured B to provide him with whatever assistance he needs.
10. A is obliged by having (carelessly) injured the mayor's horse to compensate the mayor.
11. A is obliged by having killed B to compensate his wife.
12. A is obliged by having joined the club, to obey the club rules.

List II.
1. A is obliged by his intending to turn right within the next block to signal now.
2. A is obliged by being in a 30 mph zone not to exceed 30 mph.
3. A is obliged by the light's turning red to refrain from going through the intersection.
4. A is obliged by having witnessed the crime to report it to the authorities.
5. A is obliged by having arrived at the scene of the accident to offer assistance.
6. A is obliged by being B's grandparent to care for him.
7. A is obliged by being the guardian of B to care for him.
8. A is obliged by being the only one capable of saving B to try to save him.
9. A is obliged by B's asking him for shelter, to provide B with shelter.
10. A is obliged by being a member of the club, to go to the Christmas party.
11. A is obliged by having not done his homework, to clean the blackboards.
12. A is obliged by being the eldest brother, to look after his sisters.

I think we should note first that among those examples which appear in the first list are ones which most people,
especially those who are sensitive to the difference between obligation, duty, and ought (Brandt, Feinberg, Hart, et al) will be inclined to rewrite in terms of obligations. People will, for instance, generally be quite happy with 'A has an obligation to return B's favour', 'A has an obligation to reciprocate B's dinner invitation', 'A has an obligation to do whatever he promised he would do', and 'A has an obligation to return the borrowed shovel'.

And among those examples which appear in the second list are ones which people will in general, be most disinclined to rewrite in terms of obligations. For example, we would not normally be tempted to rewrite the following in terms of obligations: 'A is obliged by his intending to turn right in the next block to signal'; 'A is obliged by being in a 30 mph zone, to go 30 mph', 'A is obliged by having not done his homework, to clean the blackboards'. There is, then some initial plausibility in the position that it is appropriate to rewrite those in List I in terms of obligations, and inappropriate for those in List II.

But more can be said about the differences between these two lists than what would be intuitively said about some of the members contained in them. Let us look closely at the examples contained in List I and II. We will notice that the members of List I have a number of features in
common with one another, at least one of which is not shared by each member of List II.

First, the obliging factor, for each member of I is an event—an accepting, a contracting, a borrowing, a promising, etc.—never simply a circumstance; while the obliging factors for many of the statements in II are circumstances—being in a 30 mph zone, being a grandparent, being the eldest brother.

Second, for every member of List I, one of the following holds: (a) A could have prevented the obliging event e by exercising due care; or (b) A could have prevented the obliging event e, by deciding not to act in an obligedness-creating way, i.e. he could have decided not to do e, and he knew e had (or would have) an obligedness-creating property. It would be quite natural for us to say, when either of these conditions are true, that the obliged brought his obligedness on himself, that his obligedness is his own fault.

Neither of these conditions holds for many of the members of List II. For example, in II3, the light's turning red is not something which A could have prevented in either way (a) or (b). (And certainly we would not say it was his fault that the light turned red.) And similarly, in II9, B's asking A for shelter is not something A could have prevented in either of the above ways.

The examples II4 and II5 are a bit more tricky, so
let's look at them more closely. II4 says that A is obliged by having witnessed the crime to report it to the authorities. Intuitively, we do not want to say that A brought his obligedness on himself, or that it is his fault that he is obliged. And so he should not. Although it is true that he could have prevented his witnessing the crime by deciding not to look north at Hastings and Carrol at 1:00 a.m. on Saturday, he could not have decided not to witness the crime, since he did not know his act would be one of witnessing a crime, i.e. he did not know it would have that obligedness-creating property. Nor of course could he have prevented his witnessing the crime by exercising due care. So neither (a) or (b) holds for II4.

Similar reasoning applies to II5.

Third, it is true of all the members of List I, but not of all the members of List II, that the obliging event involves both the obliged and either the 'intended beneficiary' or someone who has a special kind of relationship to the 'intended beneficiary', such that his loss, injury or damaged condition is also a loss or injury for the intended beneficiary. For example, the obliging event in II--A's accepting a favour from B--involves both the obliged, A, and the intended beneficiary, B; the obliging event in I4--A's promising B--involves both the obliged, A, and the intended beneficiary, B; the obliging event in I10--A's
injuring the horse—involve the obliged, A, and someone, the horse, who has a special kind of relationship to the intended beneficiary—i.e. he is owned by the intended beneficiary—such that his injury is the intended beneficiary's loss; and the obliging event in Ill--A's killing B—involves both the obliged, A, and someone, B, who has a special kind of relationship to the intended beneficiary—i.e. that of being the husband of—such that his death is the intended beneficiary's loss.

I shall now explain what I mean by an 'intended beneficiary'. First I shall indicate what kinds of things can be intended beneficiaries, and then I shall indicate how we identify who the intended beneficiary is.

In order for a creature to be capable of being an intended beneficiary it must have interests. It seems to me fairly obvious that only conscious creatures will satisfy this requirement. Although a house might well benefit from being painted (and be intended to do so), a plant from being fertilized, or a tree from being pruned, it cannot be in the house's interest to be painted, nor the plant's to be fertilized, nor the tree's to be pruned. And therefore, neither a house, nor a plant, nor a tree, nor any other unconscious thing can be an 'intended beneficiary' as I use that term here.

In order to determine who the intended beneficiary is, we must know what intentions are relevant. It seems
quite clear that it cannot be the actual intentions of the person with the obligation, because these might be quite perverse. For example, say A has an obligation to pay back the $4.00 he borrowed from B. A might intend not that B benefit from his returning the money, but rather that he go on an alcoholic binge, as he is inclined to do when he has any cash in his pocket, and make himself sick. But it is clear from the content of the rule which supports this obligation—that if A borrows money from B he is to return it—that B's interests are supposed to be served by the return of his money.

I suggest that the intended beneficiary is not the person who the obliged intends to benefit, but rather is the person who is intended by the rule to benefit. Of course a rule cannot literally intend to benefit anyone, not being the kind of thing which can have intentions. What I have offered is really a sort of metaphor which is to be unpacked in terms of what justifies the rule. The claim is that if the rule is at least in part justified by obedience to it benefitting a specific party, then that party is 'intended to benefit' by the rule. For example, if one of the things which justifies the rule about returning borrowed items is that it benefits lenders, then the lenders are 'intended by the rule' to benefit and so are the intended beneficiaries. Similarly, if one of the things which justifies the rule about promises is that the
recipient of a promise will be able to make plans for the future, or will be reassured about something which is important to him, or some such, then the recipient of the promise is 'intended by the rule' to benefit, and thus is the intended beneficiary. And, as a final example, if one of the things which justifies the rule that favours are to be returned is that the doer of the favour will be secured in the return of a favour, then the doer of a favour is 'intended by the rule' to benefit. It seems quite obvious in these examples that the rules are, at least in part, justified as suggested, and therefore lenders, recipients of promises, and doers of favours are indeed intended beneficiaries. I claim that, certainly for any of the examples which I have offered of obligations, and I suspect of all others, it will be abundantly clear who is intended by the rule to benefit, and thus who the intended beneficiary is.  

26

On the basis of the results obtained in the last few pages, I claim that the truth conditions for a statement of obligation are as follows: 'a has an obligation to do o.  

26I would like to acknowledge the help I received from David Lyons' article 'Rights, Claimants, and Beneficiaries' (American Philosophical Quarterly, 6 (1969), 173-185) in which he uses the concept of an 'intended beneficiary'. I think that the way I use that term here corresponds to the way Lyons intended it to be used. I should say, though, that I do not accept the analysis of rights in terms of intended beneficiaries which he offers in that article.
if and only if:

i. a is subject to a rule which says: if e occurs, then a is to do o, except under conditions \( t_1 - t_i \);

ii. e occurs;

iii. none of the conditions \( t_1 - t_i \) hold;

iv. The event e involves both the obliged and either the intended beneficiary or someone who is so related to the intended beneficiary that his loss is also a loss to the intended beneficiary;

v. one of the following is true:

(a) the obliged could have prevented the event e by exercising due care;

(b) the obliged could have prevented the obliging event e by deciding not to act in an obligedness-creating way; i.e. he could have decided not to do e, and he knew e had (or would have) an obligedness-creating property.

The conditions (i) through (iii) are the truth conditions for statements of prima facie obligedness. And (iv) and (v) are the additional ones needed for that statement to be correctly rewritten as an obligation statement. Taken altogether, the conditions (i) through (v) are both necessary and sufficient for the truth of obligation statements.

These conditions are consistent with all of the points that Beran makes in favour of his position that obligation
statements and ought statements are distinct in meaning. They are also consistent with some fairly strong intuitions. That one is in some sense responsible for the existence of one's obligations is one of these. This intuition is sometimes reflected in the claim that obligations arise from undertakings. However, this way of characterizing the kind of responsibility does not capture all of the kinds of events which give rise to obligations. It leaves out obligations of reparation and compensation.

The above truth conditions are also consistent with the intuition that one always has an obligation to someone. That someone is the person who is the intended beneficiary of the rule supporting the statement of obligation. (More will be said about this in Section 6.) This intuition is often reflected in the statement that obligations are always owed to someone. But this implies that there has arisen some kind of debt-like relationship between the obliged and the person whom the obligation is to. Now, although there is often this debt-like relationship between the obliged and the person to whom he has the obligation --e.g. when someone borrows something, injures another, accepts a dinner invitation, or receives a favour--there is not always this kind of relationship. A's promising B to do 0 does not result in a relationship of debt, no inequality arises as a result of that promise, A does not have to make anything up to B (as he would if he had
accepted a dinner or favour). So it would be inappropriate to say that A owes B anything. This shows, not only that obligation are not always owed to someone, but also that the concept of 'obligation' cannot be fully explicated in terms of the concept of 'owing'.

It has frequently been claimed that obligations arise out of certain kinds of relationships. As a criterion for determining when it is correct to say someone has an obligation, this is of no use, since it has never been specified what kinds of relationships qualify. Nonetheless, there is indeed always some kind of relationship established in the obliging event between the obliged and the person to whom he has the obligation. So it is true that when someone has an obligation he does stand in some kind of relationship to the person to whom he has the obligation. For example, the person who has the obligation and the person to whom he has the obligation might be related as the giver of a promise to its recipient, or as someone who has behaved injuriously to his victim, or as a debtor to his creditor, or as father to son and son to father.

(b) Resolving puzzling cases.

Given the criteria I have offered for determining when a statement of obligedness can be rewritten in terms of obligation, we can explain some peculiarities of the Lists I and II, and we can explain why some statements of obliged-
ness appear on II rather than I, where our intuitions in
the matter are unclear.

We notice that in List I we have the statement, 'A
is obliged by having taken on the guardianship of B to
care for him' and in List II we have the statement, 'A
is obliged by being B's guardian to care for him'. And
the question arises: why can we write the first but not
the second in terms of obligations? In order to answer
that we must first notice that these statements do not
say the same thing. The first tells us what A did in
order to establish himself as B's guardian; while the
second tells us merely that A is B's guardian. Now we
might assume that if A has such a relationship to B, he
must have done something to bring it about. But that is
not necessarily the case. Guardianship might be deter-
mined by some authoritative persons, and so be beyond the
will of the individual. Once this has been understood, I
do not think the fact that being a guardian does not in
itself give rise to obligations, while taking on guardian-
ship does, should strike us as an intolerably odd result.

Similar reasoning explains why 'being a member of a
club' does not necessarily give rise to obligations. It
is because it is possible for one to be a member of some
club without having joined it.

One might not have very clear intuitions as to whether
II8--'A is obliged by being the only one capable of saving
B, to try to save him* can be rewritten in terms of obligations, and the intuitions of different people might well be different. But we can now resolve any controversy in this matter. The statement does not support obligations for two reasons. First, the obliging factor is not an event; and second, A is not responsible in the required way for the obliging factor.

One might also be initially tempted to say that if A is obliged by being the eldest brother, to look after his sisters—is the case, then the brother has an obligation to look after his sisters. And this intuition could be fed by the belief that relationships give rise to obligations. But, because this relationship does not arise from A's doing anything, and therefore is not one for which he can be held responsible, it does not give rise to obligations. However, it may well be true that in virtue of his position as eldest brother, that it is A's duty to care for his sisters. This is because duties can arise from jobs and positions. (For details of an analysis of duties, see Section 5.)

I should like to point out here that any of the obliged actions in List II could be required by an obliging factor which satisfies all of the conditions for yielding obligations. For example, A might be obliged to signal now, because he promised B that he would always signal before turning. And A might be obliged to save B, because he
promised B that if ever he were in need of saving, and he could save him, he would do so. And so on.

(c) Some special problems.

I should like to consider some special problems concerning favours, borrowing and promising.

Favours. I have held that it is the accepting of a favour which is the obliging factor for the obligation to return a favour, not as others have suggested, simply being the recipient of a favour. I should like to provide some arguments in favour of my view. In order to do so, I think we need to analyze the phrase 'doing someone a favour'.

I suggest that an act (f) is the doing of a favour if and only if the following conditions hold: there is a person b such that: b wants f to be done; the person acting believes that the recipient wants f to be done, and is doing it because of that belief; f is not required by any moral, legal, social, or other kind of rule. This means that you cannot do another a favour by doing f, even if doing f would be a good for him, if the recipient does not want you to do f (whatever his reasons might be). You may of course try to do him a favour by doing f, but you will not succeed in doing so. This means, I think that accepting something intended as a favour is essential for its actually being a favour. So, one cannot actually be
the recipient of a favour without having accepted it. And that means that accepting a favour is the obliging factor for the obligation to return a favour.

**Borrowing.** The question is: Can there be such a thing as borrowing in a society in which one does not have an obligation to return borrowed items? Before we can answer that question we need to know what it is to borrow something. I suggest that it is to take something from someone with the intention of returning it. And of course, one can have that intention without one's being subject to a rule which says that borrowed items are to be returned. In the absence of such a rule it is doubtful that the members of a society would lend things to one another, but because one can borrow something without the permission of the owner this does not affect my conclusion that there can be borrowing in a society which does not have a rule about returning borrowed items.

**Promising.** First, I should like to point out that the truth conditions for a statement to the effect that 'A is obliged to do 0 by having promised B that he would do 0' are indeed the same as for any other statement of obligedness: it must be the case that (i) A is subject to a rule which says: if a promises to do o, then a is to do o, except under conditions t₁-tᵢ; (ii) A does indeed promise to do 0; and (iii) none of the exceptions to the
rule stated in (i) hold. And this statement of obligedness also satisfies the further conditions necessary for our being able to rewrite it in terms of obligation:

(iv) the event, the promising, involves both the obliged and the intended beneficiary of the rule stated in (i);
(v) the obliged could have intentionally prevented the obliging factor by deciding not to promise.

So we can say, A has an obligation to do 0, because he promised to do so. Promising, then, is logically the same as accepting a favour, borrowing some item, injuring someone, etc.

However, it seems to me, that until we resolve the controversies about what the concept of promising involves and what conditions must be fulfilled in order for one to have made a successful promise, we will not be able to say for sure what the exceptions are to the promising-rule, or whether the rule is a moral or non-moral one.

Section 5. Duties.

(a) An analysis

Duties have often been confused with obligations. In this section I shall give the truth conditions for duty-statements and exhibit their relationship to obligedness and obligations.

The concepts 'job', 'position', and 'role' have frequently been used in attempts to define duties. So I
shall start with an analysis of these concepts. I shall offer examples of what I think come under each of these concepts, and attempt to provide a rationale for the way in which I have chosen to classify.

jobs: teacher, typist, janitor, electrician, repairman, dishwashter, housekeeper, canvasser
positions: chairman, member of the board, director, president, treasurer, mother, father, eldest son, host, foreman, lover, friend, husband, bystander, driver, passenger
roles: 'older woman', 'big stud', group clown, group 'mother' or 'father', 'big brother', intellectual, fool.

Before I can offer a definition of a job, I need to make a distinction between what I call 'external benefits' and 'internal benefits'. When a person receives from an activity, benefits which are not directly connected with his own physical or mental well-being, those benefits are 'external'. If someone engages in an activity in order to earn money, or in order to help the poor, or in order to assist a political party or charitable organization, then the benefits are external—they consist, respectively, of the money he receives, the help the poor receive, and the assistance the political party or charitable organization receives. In contrast, when a person receives from an activity benefits which are directly connected with his
own physical or mental well-being, then those benefits are 'internal'. For example, playing a game of squash for fun and physical fitness has both mental and physical benefits for the player.

Given this distinction, I can now define a job: An activity is a job if and only if it satisfies the following conditions:

1. it requires for its proper disposition the doing of one or more tasks for which there are external benefits; and
2. one is required to perform those tasks either because of the position one holds, or because of an agreement one has made.

The position one has can be literally the physical place which one occupies (e.g. standing by the door); or one's situation in relation to some set of circumstances (e.g. being the bystander at a drowning); or one's place in some organization or other social group (e.g. president, mother).

And a role is the part one plays in a social group, as determined and defined by the characteristic ways one chooses to act, with these ways of acting being seen as partly indicative of character.

Admittedly, these words tend to be used in a fairly loose fashion, frequently being used interchangeably. This probably arose from the fact that one often has, for example, both the role of mother and the position of mother, or the
position of president and the job of president. But I think the analyses I have offered display both what is essential to each of these concepts, and what makes them distinct. This is what is needed if they are to be of any use in conceptual analysis.

I do not think, given this analysis of roles, that anyone will think that duties arise from them. We do not think, because someone plays the role of 'clown'—the person in a social group who is always fooling around, telling jokes, etc.—that he has a duty to fool around and tell jokes. Nor do we think that someone playing the role of 'big stud' has a duty to drive a big flashy car, nor that someone playing the role of 'big brother'—the group's confidant and protector—has a duty to be trustworthy and nurturing. And I think that the intuition that roles do not give rise to duties has its basis in the fact that there are never any rules governing the disposition of roles.

But the situation with respect to jobs and positions is different. Their disposition is frequently governed by rules stipulating what tasks are to be performed.

These remarks suggest the following definition for duties: duties are those tasks which are required for the proper disposition of one's job or position.

Given the definition offered for 'job', and this definition of 'duty', we can see that all jobs must have duties associated with them—because all jobs have tasks
required for their proper disposition, and these tasks fit the definition for being duties. What these duties are will depend on what the rules are. These can obviously vary from one group to another, so that a job in one might have different duties from those associated with the same job in another.

Like the duties associated with a job, and for the same reason—that the rules can vary from one society to another—duties associated with a position might vary from one group to another. A mother in one society might have different duties from a mother in another society; the president in one organization might have different duties from the president in another organization. However, unlike jobs, it is possible for a position to have no duties attached to it. In one social gathering, the person standing by the door might have the duty to direct those who have just arrived to the coat room; while in another social gathering the person standing by the door might have no duties at all. And while in some societies an eldest son might have duties arising from that position, in others that position will give rise to no duties. (By the way, most tasks assigned to children are not duties, because they do not arise from any position the child has. They are simply tasks. But, if the child's tasks do actually arise from some position held by the child, then those tasks will indeed be duties.)
'Mother' and 'father' appear in both the lists of positions and roles. This is because 'mother' and 'father' can be used to refer to the position someone has in a family group, or to the role someone is playing. (Someone playing the role of 'mother' will exhibit certain characteristics associated with being a good mother.) One can adopt the role without having the position, and one can have the position without adopting the role. A person who has the position of mother and plays the role of mother has duties in virtue of her position, not in virtue of her role.

(b) The relationship between duties, obligedness and obligation.

Holding or acquiring a position or job can serve as the obliging factor in a statement of obligedness. So we can have such statements as: a is obliged by holding position p, or job j, to do o, for which the truth conditions will be as follows:

i. a is subject to a rule which says: If a has or acquires p or j, then a is to do o;

ii. a has or acquires p or j.

Anything which satisfies o in the above satisfies my definition for being a duty. So a is obliged to do his duties.

Notice also that the obliging factor might be 'contracting to do job j' as in the following: A is obliged
by having contracted with B to do job J, to do J. This statement satisfies the criteria for being rewritten in terms of obligations. So we can say, 'A has an obligation to B to do J. Now, if J requires for its proper disposition the doing of tasks 1 - i, then it is A's duty to do task 1, and it is his duty to do task 2, etc. It is both A's obligation and A's duty to do tasks 1 through i. The fact that we can have both an obligation and a duty to do the same thing might explain why there has been a tendency to fail to distinguish between obligations and duties. But one must bear in mind that there are some positions which are thrust upon one. And then, while one will have the duties associated with such positions, one will have no obligations.

Although it is not common to indicate whether a duty is social, legal, or familial, one could do so. And the basis for the modifier will be the same as with obligations: if the rule is social, the duty will be a social duty, and if it is legal, the duty will be legal, and if the rule is familial, the duty will be familial.

There are also moral duties. As with obligations we determine whether a duty is moral by determining whether the rule requiring it is a moral rule, or is supported by a moral rule or principle. I submit that a bystander at the scene of a drowning has the duty to try to help the victim, if this can be done without great personal cost,
and that this duty is an amoral one because the rule requiring such assistance is a moral rule.

Section 6. Special rights.

(a) How special rights relate to obligations and duties.

If A has an obligation to do O, and B is the intended beneficiary of the rule which supports that obligation, then A has an obligation to B to do O. So, if A is obliged by having accepted a favour from B to do B a favour in return (if the opportunity arises), then A has an obligation to B to do him a favour; and if A is obliged by having promised B to do O, then A has an obligation to B to do O; if A is obliged by having carelessly killed C to provide B (his wife) with compensation, then A has an obligation to B to provide her with compensation, and so on.

In each of these examples, it would be perfectly natural to say of B that he/she has a right against A—to A's doing him a favour in the first, to A's doing O, in the second, and to A's compensation in the third. Notice that in each of these B satisfies the following two conditions: (a) he was either involved in the obliging event, or is so related to someone who was that loss to the latter is also loss to him; and (b) B is the intended beneficiary of the rule which supports the obligation statement. For every obligation-statement there is someone who satisfies
these conditions. And anyone who does will have a right against the person who is obliged, to his doing the obliged act. I shall call rights which arise in such a way special rights.

It should be quite clear that obligations and special rights arise in precisely the same circumstances; they merely state the moral relationship from two different viewpoints, the first from the point of view of the person who is obliged, and the second from the point of view of the person to whom the obligation is owed. They are then strictly 'correlative', i.e. if a has an obligation to b to do o, then b has a special right against a to his doing o, and vice versa.

Combining these results with the conditions under which obligation statements are true, we get the following truth conditions for special rights statements: b has a special right to a's doing o if and only if the following hold:

i. a is subject to a rule which says: If e occurs, then a is to do o for b, except if conditions t₁-t₄ hold;

ii. b is the intended beneficiary of the rule stated in (i) above;

iii. e occurs;

iv. none of the exceptions hold;

v. event e involves both a and either b or someone who is so related to b that the former's loss will also
be b’s loss;

vi. (a) a could have prevented e by exercising due care; or

(b) a could have prevented e by deciding not to act in an obligedness-creating way, i.e. he could have decided not to do e, and he knew e had (or would have) an obligedness-creating property.

The rule stated in (i) might be one which is grounded in a natural right. For example, the rule that a is to compensate b for having injured him, might well be grounded in b’s natural right to well-being. In such a case we would have a special right arising out of a natural right via the rule and the obliging event.

It is often assumed that duties and special rights also correlate. No such correlation follows from my explanation of duties. However, when one (A) has an obligation to another (B) to perform his duties, then in virtue of the correlativity of special rights and obligations, B will have a special right to A’s performing his duties. For example, if A has contracted with B to be his secretary, and the duties include answering the phone, typing correspondence, and filing, then A has an obligation to perform those duties. And B will have a special right to A’s answering the phone, typing correspondence, and filing. But if A’s duties arise from his holding a position which he did not acquire, then even when the duties concern
another party, that party will not have a special right to their performance. For example, a grandmother's duties might include caring for her grandchildren, but her grandchildren will not have a special right to her care.

(b) Simple and complex obligations and special rights

Compare the following two lists of special rights:

I. 1. the right to the return of a borrowed shovel
    2. the right to compensation in the amount of $1,000
    3. the right to be met for lunch as promised

II. 1. the right to the fulfillment of the contract (which requires the doing of x, y, and z.)
    2. the right of a young child to care from his parents
    3. the right of an injured person to help from the person who injured him

The rights in the first list require that the person with the corresponding obligation do one kind of act—return a shovel, pay $1,000, meet the promisee for lunch. There are, of course, different ways in which that act can be carried out. One might return the shovel with the left hand or with the right; one might pay the $1,000 by cheque, or in cash, in $1.00 bills or $100 bills; and one might meet the promisee for lunch in a good mood or in a bad one. But still, only one kind of act is required. I shall call such rights, simple.

The rights in the second list, on the other hand, are
ones which require the doing of several different kinds of acts. The statement of the first right specifies what particular acts are required—the doing of x, y, and z. Although the acts are not specified in the second, we have a fairly good idea what belongs under the care of a young child: making sure the child is properly fed, adequately clothed, educated, loved. And while the right to help will not always consist of a number of different acts, it often will. Whether it does or not will depend on what the injured party needs. If he only needs to be taken home, then the right to help will require that he be taken home. But if he needs first aid, an ambulance, and reassurance on the way to the hospital, then the person with the corresponding obligation will be required to give first aid, call an ambulance and accompany him to the hospital. I shall call rights which require the obliged person to do more than one kind of act, complex rights.

To say that the right to the fulfillment of the contract requires the doing of x, y, and z, is to say that the right-holder has a right to the obliged doing x, and a right to the obliged doing y, and a right to the obliged doing z. So the complex right consists of a number of simple rights. Similarly, to say that the right of a young child to care requires that the parents feed him, clothe him, educate and love him, is to say that the child has a right to be properly fed, to be adequately clothed,
etc. The complex right of care consists of those simple rights. And finally, to say that the right to help requires giving first aid, calling an ambulance, and accompanying the injured to the hospital, is to say that the complex right of help consists of the simple rights to be given first aid, etc. Of course, those simple rights might be discharged in any number of ways. Feeding one's child adequately can be done by following any number of different diets, and a child might be adequately clothed in any number of different ways.

If one has a complex obligation, say of care, but only succeeds in fulfilling some of the simple obligations, then one has only partially discharged his complex obligation, and thus the correlating right has been partially violated.

We cannot always tell what simple obligations make up a complex obligation. This means that it will not always be possible to say whether a complex obligation has been fulfilled, or whether the correlating complex special right has been partially violated. For example, say A agrees to look after his friend, B, when B gets out of the hospital. A thinks that he has agreed to do B's shopping, to cook his meals, and to tidy his house, because these are the things which A believes will need to be done. But, because B also needs someone to walk his dog, he thinks that the agreement includes such help from A. I really
do not see that there is any way of resolving this disagreement as to the content of the complex obligation of care. Because the simple obligations were not stipulated in the agreement between the friends, the complex obligation has been left indeterminate. Therefore, we will not be able to say conclusively whether the complex obligation has been fully discharged by A's doing B's shopping, etc., or whether, because he fails to walk B's dog, B's complex right is partially violated.

I noted above that simple obligations can be fulfilled in various ways, e.g. the borrowed shovel can be returned in either the left or right hand. This fact is important when it comes to such simple obligations as the obligation to make sure that one's child is fed properly.

Because a child can be properly nourished on many different diets, the obligation to feed a child does not imply an obligation nor even an entitlement to force a child to eat any particular diet. The judgment that an entitlement to force the diet on him is generated by his special right to be fed would have two inadmissible results: (1) that the possession of a special right can be a burden for the right-holder; and (2) that there can be conflicts between a person's special and natural rights. (In the case at hand the conflict would arise between the special right to be fed a particular diet and the natural right
to autonomy.)

But what of a child who, if not forced to eat certain things, simply would not eat enough of the right kind of food to remain well-nourished? Surely we can force such a child to eat? Indeed we can, as will be seen in my next sub-section.

(c) Waiving special rights.

When can someone waive, and when can someone not waive a special right? Before we can consider this question we must be clear about exactly what we mean by 'waive'. There are two fairly common meanings given to that term, and unless we are clear in what sense we are using it, confusion will result.

The Oxford English Dictionary (The Compact Edition, Oxford University Press, 1971) provides us with the following two definitions:

1. to relinquish (a right, claim, or contention) either by express declaration or by doing some intentional act which by law is equivalent to this. (I would add after 'by law', 'or by custom'.)

2. to refrain from insisting upon (a privilege, right, claim), to forebear to claim or demand.

I propose to use 'waive' in the first sense. So, if one waives his special right to 0, he no longer has that right. Nothing he can do will bring it back into his
possession. It ceases to exist. (Of course, he might well come to possess a similar right if the same kind of event which gave rise to the waived right happens again.) It will only be waived if the possessor explicitly says: 'I hereby relinquish my special right against B to O', or 'I hereby release B from his obligation to do O', or 'I desire that B not do O', or by doing something which is equivalent to any of these; for example, actively resisting the performance of the obligation. But he does not waive his right, in this sense of 'waive', if he simply fails to claim or insist on it. In a nutshell, someone's simply not insisting on the fulfilling of an obligation to him does not constitute waiving his correlative right, while someone's announcing that he is not insisting on the fulfilling of an obligation to him does constitute the waiving of his right.

Let us now consider the child who does not want to eat the things which are necessary for being well-nourished. We shall assume that he has expressed the desire in some manner or other that he not be fed foods $f_1$-$f_i$, and we shall assume that without eating at least some of those foods he will become malnourished. Do we want to say that he has released his parents from their obligation to feed him properly? Certainly not, but this is not because he is incapable of waiving special rights. If his parents have promised him that they will take him to the movies, and
then find that it will be very inconvenient to do so, the child might well release his parents from their obligation to him. What is it then which prevents him from waiving his right to this aspect of care?

It is because the child does not fully appreciate the consequences of not eating properly that he cannot succeed in releasing his parents from their obligation to make sure that he eats well. We met the same kind of situation in Part I when I considered the conditions under which a possessor of a natural right could and could not renounce a natural right. I argued there that if the possessor of a right would not want to renounce a right were he in possession of a piece of non-misleading information, then even if he does something which normally constitutes renunciation, he will not in fact lose that right. I think we can assume, in the case under consideration, that the child would not want to waive his special right were he actually in possession of the relevant information—that he will be unhealthy unless he eats the right foods. And because he would not, he will not succeed in waiving his special right, though he might try to. Furthermore, because he will in all probability subsequently consent to his parents' forcing him to eat properly, when he is an adult, the force will constitute a permissible violation of his natural right to autonomy.

The same sort of reasoning is applicable to adults.
Consider the following case. A has been injured by B. So B has an obligation to help A, and correlative, A has a special right against B to his help. A's injuries are serious but because he is in a state of shock, he is incapable of appreciating that fact. Under the illusion that he is really all right, A tells B that he need not bother taking him to the hospital. Under normal circumstances, A would have thereby waived his special right against B. But, because A does not possess information which would, were it in his possession, cause him not to try to waive his special right, he cannot waive that right. Therefore, B still has the obligation to help him. Furthermore, it is in all likelihood permissible for him to force his help upon A because A will probably consent to that interference once he recovers.

It is possible that B, too, is in ignorance of the extent of A's injuries. As a result, when A tries to release B from his obligation to help, B thinks he succeeds, and therefore does not take him to the hospital. But because of his lack of information, A does not succeed in releasing B from his obligation. So by not helping, B violates A's right to assistance. However, because this non-fulfillment is due to B's non-culpable ignorance, he is not blameworthy for his failure.

(d) Failures to fulfill obligations which are non-violations of special rights.
Say A has a special right against B to B's meeting him for lunch, because B promised to do so. Circumstances arise which make A desire that B not turn up for the engagement, but he has been unable to contact B to express these sentiments. B learns of the circumstances and realizes that they are such that A will desire that he not meet him for lunch, and so he does not keep the engagement. Although A has not released B from his obligation, surely B has not acted wrongly in failing to turn up for the luncheon date. I would say that the failure to fulfill an obligation in such circumstances will not constitute a violation of the correlating special right.

Say, to alter the case slightly, that B learns, not that A desires that he not turn up for lunch, but rather that A has no desires one way or the other. B would, for some reason, prefer not to meet A for lunch, but is unable to reach A to get his release. If he decides not to turn up, does he thereby violate A's right against him? Again, I would say, because A does not have the appropriate desire --i.e. that B meet him for lunch--that B's not doing so will not violate his special right. It will be another case where non-fulfillment of an obligation will not constitute a violation of the correlating special right.

We saw with respect to natural rights that desires were relevant in the same way in determining whether an interference with a natural right constituted a violation
of that right. There were a number of other conditions under which interference would not constitute a violation. But none of them are relevant to special rights. So we have the following results: When A fails to fulfill his obligation to B, this constitutes a violation of B's correlating special right unless the following condition holds: the right holder does not desire that o be done, where this desire has not been expressed (otherwise the right would have been waived). This condition includes two species: (a) the right-holder desires that o not be done; and (b) the right-holder does not care whether or not o is done.

Of course we must build into these conditions the requirement that the right-holder is not lacking relevant information, which would, were it in his possession, cause him to desire the doing of O by B. If this were the case, then the lack of desire will not render the non-fulfillment of the obligation a non-violation of his right.

(e) Permissible violations of special rights

Under certain circumstances the right thing to do will be to violate someone's special right, as has been frequently illustrated by the following example. Say A has promised to meet B for lunch, but on the way to that rendezvous A comes upon an accident, the victims of which are seriously injured. A stops to administer first aid,
and consequently is unable to keep his date with B. In such circumstances, the non-fulfillment of the obligation and thus the violation of B's special right is not only permissible, but is actually required. The special right has been overridden by a more important moral concern.

The same would be the case if A's fulfilling his obligation would be seriously in conflict with considerations of justice. An illustration of the latter kind of case might be as follows. Congressman A promises congressman B to support him on Bill 22 providing congressman B supports him on Bill 21. B fulfills his part of the bargain. But then A reads an economic analysis which provides evidence that the passing of Bill 22 will result in higher taxes for the poor and lower taxes for the rich. He believes, rightly we shall assume, that such a result is unjust. Because it is, he decides to break his promise to B, and to vote against Bill 22, thereby contributing to its defeat. I suggest that this violation of B's right is permissible because the injustice it prevents is of more importance than the right it violates.

We must also take into account with respect to the question of the permissibility of violating a special right, the influence of the morality of self-interest. Just how does the personal sacrifice required to fulfill an obligation bear on the question of the permissibility of non-fulfillment? Of course I am unable to give a very precise
answer to that question because, as I pointed out in Part I, I do not have a developed theory of the morality of self-interest. However, there are some points worth making.

First, the situation with respect to obligations is a bit different from other moral requirements in the sense that one could have prevented them either by deciding not to act in an obligedness-creating way, or by being more careful. Let us consider these two different kinds of situation.

I submit, that when one acquires an obligation by doing something he could have decided not to do, when he knows it is an obligedness-creating act, one thereby accepts responsibility for all of the foreseen cost in fulfilling that obligation. The size of the foreseen cost will never justify violating the right-holder's corresponding special right. The obliged must also, I think, accept some of the unforeseen cost, but there are limits. If the obliged act is really of relatively little importance, and the unforeseen sacrifice is really quite large, then the obliged will be justified in failing to fulfill his obligation, and the violation of the correlative special right will be permissible.

If the obligation is acquired through carelessness, none of the sacrifice of fulfilling it will be foreseen. But obviously, if his having a moral obligation is to have any moral force at all, the obliged must be required to
fulfill it even if this requires some sacrifice—as indeed it usually will. However, if the sacrifice is sufficiently great, the obliged will be justified in failing to fulfill his obligation. I do think, though, because it is his own fault that he has an obligation, that the sacrifice required of the obliged will be greater than it would be were he simply the victim of some unconditional moral rule.

(f) **Special rights and third party beneficiaries.**

Consider the following promise. A promises B that he will do O to or for C. What we want to know is whether C has a special right against A arising from this promise.

I argued earlier (p. 105) that the intended beneficiary of an obligation is identified by determining who the rule is intended to benefit, and that we could discover this by considering what justifies the rules. Now consider the rule governing promises: 'If a promises b to do o, then a is to do o'. It does not even mention a third party, so on what grounds could we claim that a third party's benefit is what partly justifies the rule? We are no better off if we amend the rule to read: 'If a promises b to do o to or for c, he is to do o to or for c', since we cannot tell what doing o is. Doing o for c might involve killing him (before he commits further rape-murders), or it might involve caring for him until he is well. And of course such details cannot be included in a
general rule. Thus we can hardly claim that what partly justifies this rule about promises is that it benefits third parties. I conclude therefore, that third parties to promises cannot be intended beneficiaries in the technical sense used here. And so they cannot have special rights arising from promises. Thus C in the above example cannot have a special right against A.

However, a third party to a promise might have a special right arising from some other obliging factor. For example, A might encourage C to rely on his doing O for him. Encouraging someone to rely on one's doing something probably constitutes an obliging factor. And it satisfies the conditions for giving rise to obligations and special rights. Therefore, if A promises B to do O for C, encourages C to rely on his doing O, and fails to do O, he violates not only B's right, but C's right as well.

(g) The needy and special rights.

It has been argued that the government of a country enters into an implicit contract with the citizens of that country to do and refrain from doing certain things. If there is such a contract, then the government will have obligations to the citizens arising from it, and the citizens will have special rights against the government. These obligations might well include the obligation to provide facilities for caring for the needy; the obligation
to try to run the economy so that all have the opportunity to work; the obligation to establish a medical programme; and the obligation to provide educational facilities. Then, if these obligations are not fulfilled, the citizens' special rights will be violated.

Even if there is no such implicit contract between the governed and the governors, one might argue that there ought to be, on the grounds of considerations of justice and/or utility, and thus that the government ought to have those obligations and the citizens those special rights.

The needy might also have special rights arising from considerations of reparation. We have already seen that when one person injures another in certain circumstances, the injuror acquires the obligation to compensate and/or assist the injured. The rule which supports this obligation is a moral rule, and so applies to everyone. So, if some group is responsible for another's being in a state of need, then the former have an obligation of assistance to the latter, who have a special right against them.

It does not follow from this position that if former members of a group are responsible for wrongfully causing the members of another group to be in need, then the present members of the first group have an obligation to try to help the members of the injured group. In order for this to be the case obligations would have to be inheritable. I doubt that they are, on the grounds that one of the most
essential features of obligations is the element of responsibility, and one cannot be responsible for what one's ancestors did. This, of course, does not mean that the first group is not morally required to help the second, but just that this requirement will not be one of obligation, but rather would rest on unconditional rules of utility or perhaps justice.

(h) What is special about obligations and special rights?
Since obligations and special rights can be marked off as special cases of moral requirements and claims, presumably there is some point in doing so. The point is illustrated by the following features of these moral concepts (some of which we have already met).

1. We can indicate the source of the moral requirement or claim by using the language of obligation and special right, when it is appropriate to do so. This is important to know because of the next feature of special rights.

2. The sacrifice required in order to make a violation of a special right permissible must have been unforeseen and larger than would be required in order to justify the failure to obey some other moral requirement. This is because one is responsible for acquiring one's obligations, and thus for the existence of the corresponding special right.
3. Obligations share with all cases of obligedness the feature that they extend moral requirements. This is because there must be an obliging factor present in order for the rule supporting the obligedness or obligation statement to come into effect. Without the obliging factor, the rule will be of no relevance to one's actions because its antecedent will be unfulfilled. The person who has promised to do $0$, the person who has injured another, and the person who has been asked for shelter all have thereby had their moral requirements extended.

4. Many (but not all) rules supporting obligedness and obligation statements are ones which the community has adopted in order to distribute benefits and burdens among its members. If someone does not do what he is obliged to do, the burden will fall on someone else, while he continues with his benefits. So there is often an element of unfairness involved in failing to fulfill an obligation or not doing what one is obliged to do.
Conclusion

I have argued in this thesis that there are two different kinds of rights: natural and special. And I offered the following analysis of natural rights: A has a natural right to (do or be) X against B at time t (and place p for autonomy rights) if and only if it is the case that in virtue of certain natural characteristics of A, and in the absence of both limiting and certain other (specified) conditions, it is prima facie seriously wrong for B to be positively instrumental in A's not having X at t (and p). And I offered the following analysis of special rights: B has a special right to A's doing 0 if and only if the following hold:

i. A is subject to a rule which says: if e occurs, then a is to do o for b, except if conditions $t_1-t_2$ hold;

ii. B is the intended beneficiary of the rule stated in (i) above;

iii. e occurs;

iv. none of the exceptions hold;

v. event e involves both A and either B or someone who is so related to B that the former's loss is also B's loss;

vi. (a) A could have prevented e by exercising due care; or

(b) A could have prevented e by deciding not to
act in an obligedness-creating way, i.e. he could have decided not to do e, and he knew e had (or would have) an obligedness-creating property.

These analyses display the differences between these two kinds of rights. But they also display a fundamental similarity: both kinds have the wrongness of conduct of agents other than the right-bearer as part of their analysis. We have also seen from the preceding discussions of renunciation, conditions of violation and non-violation, and permissible violations, that their roles in our moral thinking and decision-making have much in common. It is also true of both kinds of rights that they entitle the right-holder to something—a certain kind of treatment or good—and that if either a special or natural right is violated, the right-holder has been wronged, he has grounds for complaint, and reparation will be appropriate. I think it is because natural and special rights have all of these various features in common, that they are both 'rights'.

I have contended that these are the only two kinds of rights. I should now like to defend that claim against arguments that there are other senses of 'right'. In particular I shall argue that 'A has a right to do X' cannot be analyzed simply as 'It is not wrong for A to do X' or as 'A has permission to do X'. I shall call the rights which occur in statements which are supposed to be analyzable in either of these two ways 'weak rights' as opposed to
the two 'strong rights' which I have analyzed.

I shall begin by considering a couple of examples in which 'A has a right to do X' is supposed to mean 'It is not wrong for A to do X'. The first comes from Hart:

Two people walking along both see a ten-dollar bill on 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. I contend that it cannot be true here that it is permissible for either one to pick up the bill because, before a competition which resolves the conflict between them, they both have a natural right (a 'strong right') to pick up the bill, and thus either one picking it up will violate the other's right to do so. And, after a fair competition, it is not wrong for the winner to pick up the bill, but it is wrong for the loser to do so. So the winner has a strong right to pick up the bill after a competition, while the loser has no right at all, weak or strong. So this case fails to provide us with an example of the 'weak' since of 'right'.

The following passage comes from an article by Dworkin:

...we say that the captured soldier has a "right" to try to escape when we mean, not that we do wrong to stop him, but that he has no duty not to make the attempt. We also use "right" this way when we speak of someone having the "right"

to act on his own principles, or the "right to follow his own conscience." We mean that he does no wrong to proceed on his honest convictions, even though we disagree with these convictions, and even though, for policy or other reasons, we must force him to act contrary to them.

It seems to me that if the soldier's captors have been waging an unjust aggressive war, then the soldier has a strong right to escape. His captors really do act wrongly by preventing his escape just as they acted wrongly in capturing him in the first place. On the other hand, if the allies of the soldier have been waging an unjust aggressive war, then it might well be true that the soldier does wrong by escaping, and so does not have a strong or weak right to escape. I suspect that these two possibilities are exhaustive. And if that is the case, then the soldier's 'right to escape' will be either a strong right, or non-existent.

As for the 'right to follow one's own conscience', if it is in fact true that an individual, A, does nothing wrong in following his own conscience with respect to his doing X—that is, he breaks no moral rules, violates no rights, neglects no obligations, etc.—then it must indeed be prima facie seriously wrong for others to prevent his doing X. In that case, he has a strong right to do X, and so a strong right to act on his own conscience with

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respect to doing X. A similar line of reasoning will show that if one does nothing wrong by acting on his own principles with respect to X, then he has a strong right to do X, and thus a strong right to act on his own principles with respect to X.

I conclude, therefore, that Dworkin, too has failed to provide us with any examples of 'right to do X' where 'right' is being used in a weak sense.

It has also been claimed that the statements 'A has a right to marry the woman of his choice' and 'A has a right to hire the best butler in town' are examples of statements in which 'right' is being used in this weaker sense. But that too is wrong. As I argued in Section 3, in the absence of any special agreement between A and the woman of his choice or the best butler, because there would be nothing prima facie wrong with the woman refusing to marry A or with the butler refusing to work for A, the above statements would be false if 'right' were being used in a strong sense. But they would be false too in the weak sense if the woman has not agreed to marry A or if the butler does not wish to work for A. And if the woman has promised to marry A, or the butler promised to work for him, then A has a special right to marry the woman or to hire the butler. In addition, because the woman has promised to marry him, and the butler to work for him, A's set of rights to autonomy has not been limited as it would
otherwise be by their status as right-holders. This means that A has the natural right to marry the woman and hire the butler, and so it would be prima facie seriously wrong for anyone to interfere with his doing so.

So none of the examples offered as statement in which 'right' is supposedly being used in the weak sense of 'not wrong to' have proven successful. I contend that this will be a perfectly general phenomenon, i.e. that whenever someone claims that someone has a right in the sense that it would not be wrong for him to do something, that he will turn out either to have no right at all, or to have a strong right.

The other 'weak' sense of 'right' which is supposed to mean 'permission' fairs no better. If someone has permission to do X, then his set of rights to autonomy has not been limited by whatever conditions would normally limit it so as to exclude his right to do X. And so he has a natural right to do X, and it would therefore be prima facie seriously wrong for others to interfere with his doing X. Of course, the permission can be withdrawn. In that case the conditions which would normally limit his natural right to autonomy so as to exclude that particular right will come into affect, and he will have no right to do X. This means that there is no distinct sense of 'right' meaning 'permission'.
A similar sort of reasoning applies to the claim that there is a sense of 'right' meaning 'privilege'. And to my knowledge there are no other likely candidates for further senses of 'right'.

This completes the defense of my claim that there are only two kinds of rights: natural and special.
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