

SECURITY AND SUBSISTENCE

RIGHTS

A moral right provides ① the rational basis for a justified demand ② that the actual enjoyment of a substance be ③ socially guaranteed against standard threats. Since this is a somewhat complicated account of rights, each of its elements deserves a brief introductory explanation.¹ The significance of the general structure of a moral right is, however, best seen in concrete cases of rights, to which we will quickly turn.²

A right provides the rational basis for a justified demand. If a person has a particular right, the demand that the enjoyment of the substance of the right be socially guaranteed is justified by good reasons, and the guarantees ought, therefore, to be provided. I do not know how to characterize in general and in the abstract what counts as a rational basis or an adequate justification. I could say that a demand for social guarantees has been justified when good enough reasons have been given for it, but this simply transfers the focus to what count as good enough reasons. This problem pervades philosophy, and I could not say anything very useful about it without saying a lot. But to have a right is to be in a position to make demands of others, and to be in such a position is, among other things, for one's situation to fall under general principles that are good reasons why one's demands ought to be granted. A person who has a right has especially compelling reasons—especially deep principles—on his or her side. People can of course have rights without being able to explain them—

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without being able to articulate the principles that apply to their cases and serve as the reasons for their demands. This book as a whole is intended to express a set of reasons that are good enough to justify the demands defended here. If the book is adequate, the principles it articulates are at least one specific example of how some particular demands can be justified. For now, I think, an example would be more useful than an abstract characterization.

The significance of being justified is very clear. Because a right is the basis for a justified demand, people not only may, but ought to, insist. Those who deny rights do so at their own peril. This does not mean that efforts to secure the fulfillment of the demand constituting a right ought not to observe certain constraints. It does mean that those who deny rights can have no complaint when their denial, especially if it is part of a systematic pattern of deprivation, is resisted. Exactly which countermeasures are justified by which sorts of deprivations of rights would require a separate discussion.

A right is the rational basis, then, for a justified demand. Rights do not justify merely requests, pleas, petitions. It is only because rights may lead to demands and not something weaker that having rights is tied as closely as it is to human dignity. Joel Feinberg has put this eloquently for the case of legal rights, or, in his Hohfeldian terminology, claim-rights:

Legal claim-rights are indispensably valuable possessions. A world without claim-rights, no matter how full of benevolence and devotion to duty, would suffer an immense moral impoverishment. Persons would no longer hope for decent treatment from others on the ground of desert or rightful claim. Indeed, they would come to think of themselves as having no special claim to kindness or consideration from others, so that whenever even minimally decent treatment is forthcoming they would think themselves lucky rather than inherently deserving, and their benefactors extraordinarily virtuous and worthy of great gratitude. The harm to individual self-esteem and character development would be incalculable.

A claim-right, on the other hand, can be urged, pressed, or rightly demanded against other persons. In appropriate

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circumstances the right-holder can “urgently, peremptorily, or insistently” call for his rights, or assert them authoritatively, confidently, unabashedly. Rights are not mere gifts or favors, motivated by love or pity, for which gratitude is the sole fitting response. A right is something that can be demanded or insisted upon without embarrassment or shame. When that to which one has a right is not forthcoming, the appropriate reaction is indignation; when it is duly given there is no reason for gratitude, since it is simply one’s own or one’s due that one received. A world with claim-rights is one in which all persons, as actual or potential claimants, are dignified objects of respect, both in their own eyes and in the view of others. No amount of love and compassion, or obedience to higher authority, or noblesse oblige, can substitute for those values.³

At least as much can be said for basic moral rights, including those that ought to, but do not yet, have legal protection.

That a right provides the rational basis for a justified demand for actual enjoyment is the most neglected element of many rights. A right does not yield a demand that it should be said that people are entitled to enjoy something, or that people should be promised that they will enjoy something. A proclamation of a right is not the fulfillment of a right, any more than an airplane schedule is a flight. A proclamation may or may not be an initial step toward the fulfillment of the rights listed. It is frequently the substitute of the promise in the place of the fulfillment.

The substance of a right is whatever the right is a right to. A right is not a right to enjoy a right—it is a right to enjoy something else, like food or liberty. We do sometimes speak simply of someone’s “enjoying a right,” but I take this to be an elliptical way of saying that the person is enjoying something or other, which is the substance of a right, and, probably, enjoying it as a right. Enjoying a right to, for example, liberty normally means enjoying liberty. It may also mean enjoying liberty in the consciousness that liberty is a right. Being a right is a status that various subjects of enjoyment have. Simply to enjoy the right itself, the status, rather than to enjoy the subject of the right would have to mean something like taking satisfaction that there is such a status and

that something has that status. But ordinarily when we say someone is enjoying a right, we mean the person is enjoying the substance of the right.

Being socially guaranteed is probably the single most important aspect of a standard right, because it is the aspect that necessitates correlative duties.⁴ A right is ordinarily a justified demand that some other people make some arrangements so that one will still be able to enjoy the substance of the right even if—actually, *especially* if—it is not within one's own power to arrange on one's own to enjoy the substance of the right. Suppose people have a right to physical security. Some of them may nevertheless choose to hire their own private guards, as if they had no right to social guarantees. But they would be justified, and everyone else is justified, in demanding that somebody somewhere make some effective arrangements to establish and maintain security. Whether the arrangements should be governmental or non-governmental; local, national, or international; participatory or non-participatory, are all difficult questions to which I may or may not be able to give definitive or conclusive answers here. But it is essential to a right that it is a demand upon others, however difficult it is to specify exactly which others.

And a right has been guaranteed only when arrangements have been made for people with the right to enjoy it. It is not enough that at the moment it happens that no one is violating the right.⁵ Just as a proclamation of a right is not the fulfillment of a right and may in fact be either a step toward or away from actually fulfilling the right, an undertaking to create social guarantees for the enjoyment of various subjects of rights is by no means itself the guaranteeing and may or may not lead to real guarantees. But a right has not been fulfilled until arrangements are in fact in place for people to enjoy whatever it is to which they have the right. Usually, perhaps, the arrangements will take the form of law, making the rights legal as well as moral ones. But in other cases well-entrenched customs, backed by taboos, might serve better than laws—certainly better than unenforced laws.

The vague term “arrangements” is used in order to keep this general introductory explanation neutral on some controversial questions of interpretation. If the “arrangements” for fulfilling, for example, the duty to protect security are to be that every citi-

zen is to be furnished a handgun and local neighborhoods are to elect residents to night patrols, then the right to security has not been socially guaranteed until the handguns have been distributed, the patrols elected, etc. (The right has still not been guaranteed if this arrangement will usually not work, as I would certainly assume would be the case.) On the other hand, if the “arrangements” are to have well-trained, tax-supported, professional police in adequate numbers, then the right has not been socially guaranteed until the police candidates have in fact been well-trained, enough public funds budgeted to hire an adequate force, etc.

I am not suggesting the absurd standard that a right has been fulfilled only if it is impossible for anyone to be deprived of it or only if no one is ever deprived of it. The standard can only be some reasonable level of guarantee. But if people who walk alone after dark are likely to be assaulted, or if infant mortality is 60 per 1000 live births, we would hardly say that enjoyment of, respectively, security or subsistence had yet been socially guaranteed. It is for the more precise specification of the reasonable level of social guarantees that we need the final element in the general structure of moral rights: the notion of a standard threat. This notion can be explained satisfactorily only after we look at some cases in detail, and I will take it up in the final section of this chapter.

That a right involves a rationally justified demand for social guarantees against standard threats means, in effect, that the relevant other people have a duty to create, if they do not exist, or, if they do, to preserve effective institutions for the enjoyment of what people have rights to enjoy.⁶ From no theory like the present one is it possible to deduce precisely what sort of institutions are needed, and I have no reason to think that the same institutions would be most effective in all places and at all times. On its face, such universality of social institutions is most improbable, although some threats are indeed standard. What is universal, however, is a duty to make and keep effective arrangements, and my later threefold analysis of correlative duties will suggest that these arrangements must serve at least the functions of avoiding depriving people of the substances of their rights, protecting them against deprivation, and aiding them if they are nevertheless deprived of rights.⁷ What I am now calling the duty to develop and

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preserve effective institutions for the fulfillment of rights is a summary of much of what is involved in performing all three of the duties correlative to typical rights, but to discuss duties now would be to jump ahead of the story.

BASIC RIGHTS

Nietzsche, who holds strong title to being the most misunderstood and most underrated philosopher of the last century, considered much of conventional morality—and not conceptions of rights only—to be an attempt by the powerless to restrain the powerful: an enormous net of fine mesh busily woven around the strong by the masses of the weak.⁸ And he was disgusted by it, as if fleas were pestering a magnificent leopard or ordinary ivy were weighing down a soaring oak. In recoiling from Nietzsche's *assessment* of morality, many have dismissed too quickly his insightful *analysis* of morality. Moral systems obviously serve more than one purpose, and different specific systems serve some purposes more fully or better than others, as of course Nietzsche himself also recognized. But one of the chief purposes of morality in general, and certainly of conceptions of rights, and of basic rights above all, is indeed to provide some minimal protection against utter helplessness to those too weak to protect themselves. Basic rights are a shield for the defenseless against at least some of the more devastating and more common of life's threats, which include, as we shall see, loss of security and loss of subsistence. Basic rights are a restraint upon economic and political forces that would otherwise be too strong to be resisted. They are social guarantees against actual and threatened deprivations of at least some basic needs. Basic rights are an attempt to give to the powerless a veto over some of the forces that would otherwise harm them the most.

Basic rights are the morality of the depths. They specify the line beneath which no one is to be allowed to sink. This is part of the reason that basic rights are tied as closely to self-respect as Feinberg indicates legal claim-rights are.⁹ And this helps to explain why Nietzsche found moral rights repugnant. His eye was on the heights, and he wanted to talk about how far some might soar, not

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about how to prevent the rest from sinking lower. It is not clear that we cannot do both.¹⁰

And it is not surprising that what is in an important respect the essentially negative goal of preventing or alleviating helplessness is a central purpose of something as important as conceptions of basic rights. For everyone healthy adulthood is bordered on each side by helplessness, and it is vulnerable to interruption by helplessness, temporary or permanent, at any time. And many of the people in the world now have very little control over their fates, even over such urgent matters as whether their own children live through infancy.¹¹ Nor is it surprising that although the goal is negative, the duties correlative to rights will turn out to include positive actions. The infant and the aged do not need to be assaulted in order to be deprived of health, life, or the capacity to enjoy active rights. The classic liberal's main prescription for the good life—do not interfere with thy neighbor—is the only poison they need. To be helpless they need only to be left alone. This is why avoiding the infliction of deprivation will turn out in chapter 2 not to be the only kind of duty correlative to basic rights.

Basic rights, then, are everyone's minimum reasonable demands upon the rest of humanity.¹² They are the rational basis for justified demands the denial of which no self-respecting person can reasonably be expected to accept. Why should anything be so important? The reason is that rights are basic in the sense used here only if enjoyment of them is essential to the enjoyment of all other rights. This is what is distinctive about a basic right. When a right is genuinely basic, any attempt to enjoy any other right by sacrificing the basic right would be quite literally self-defeating, cutting the ground from beneath itself. Therefore, if a right is basic, other, non-basic rights may be sacrificed, if necessary, in order to secure the basic right. But the protection of a basic right may not be sacrificed in order to secure the enjoyment of a non-basic right. It may not be sacrificed because it cannot be sacrificed successfully. If the right sacrificed is indeed basic, then no right for which it might be sacrificed can actually be enjoyed in the absence of the basic right. The sacrifice would have proven self-defeating.¹³

In practice, what this priority for basic rights usually means is

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that basic rights need to be established securely before other rights can be secured. The point is that people should be able to *enjoy*, or *exercise*, their other rights. The point is simple but vital. It is not merely that people should "have" their other rights in some merely legalistic or otherwise abstract sense compatible with being unable to make any use of the substance of the right. For example, if people have rights to free association, they ought not merely to "have" the rights to free association but also to enjoy their free association itself. Their freedom of association ought to be provided for by the relevant social institutions. This distinction between merely having a right and actually enjoying a right may seem a fine point, but it turns out later to be critical.

What is not meant by saying that a right is basic is that the right is more valuable or intrinsically more satisfying to enjoy than some other rights. For example, I shall soon suggest that rights to physical security, such as the right not to be assaulted, are basic, and I shall not include the right to publicly supported education as basic. But I do not mean by this to deny that enjoyment of the right to education is much greater and richer—more distinctively human, perhaps—than merely going through life without ever being assaulted. I mean only that, if a choice must be made, the prevention of assault ought to supersede the provision of education. Whether a right is basic is independent of whether its enjoyment is also valuable in itself. Intrinsically valuable rights may or may not also be basic rights, but intrinsically valuable rights can be enjoyed only when basic rights are enjoyed. Clearly few rights could be basic in this precise sense.

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Our first project will be to see why people have a basic right to physical security—a right that is basic not to be subjected to murder, torture, mayhem, rape, or assault. The purpose in raising the questions why there are rights to physical security and why they are basic is not that very many people would seriously doubt either that there are rights to physical security or that they are basic. Although it is not unusual in practice for members of at least one ethnic group in a society to be physically insecure—to be, for example, much more likely than other people to be beaten by the

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police if arrested—few, if any, people would be prepared to defend in principle the contention that anyone lacks a basic right to physical security. Nevertheless, it can be valuable to formulate explicitly the presuppositions of even one's most firmly held beliefs, especially because these presuppositions may turn out to be general principles that will provide guidance in other areas where convictions are less firm. Precisely because we have no real doubt that rights to physical security are basic, it can be useful to see why we may properly think so.¹⁴

If we had to justify our belief that people have a basic right to physical security to someone who challenged this fundamental conviction, we could in fact give a strong argument that shows that if there are any rights (basic or not basic) at all, there are basic rights to physical security:

No one can fully enjoy any right that is supposedly protected by society if someone can credibly threaten him or her with murder, rape, beating, etc., when he or she tries to enjoy the alleged right. Such threats to physical security are among the most serious and—in much of the world—the most widespread hindrances to the enjoyment of any right. If any right is to be exercised except at great risk, physical security must be protected. In the absence of physical security people are unable to use any other rights that society may be said to be protecting without being liable to encounter many of the worst dangers they would encounter if society were not protecting the rights.

A right to full physical security belongs, then, among the basic rights—not because the enjoyment of it would be more satisfying to someone who was also enjoying a full range of other rights, but because its absence would leave available extremely effective means for others, including the government, to interfere with or prevent the actual exercise of any other rights that were supposedly protected. Regardless of whether the enjoyment of physical security is also desirable for its own sake, it is desirable as part of the enjoyment of every other right. No rights other than a right to physical security can in fact be enjoyed if a right to physical security is not protected. Being physically secure is a necessary condi-

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tion for the exercise of any other right, and guaranteeing physical security must be part of guaranteeing anything else as a right.

A person could, of course, always try to enjoy some other right even if no social provision were made to protect his or her physical safety during attempts to exercise the right. Suppose there is a right to peaceful assembly but it is not unusual for peaceful assemblies to be broken up and some of the participants beaten. Whether any given assembly is actually broken up depends largely on whether anyone else (in or out of government) is sufficiently opposed to it to bother to arrange an attack. People could still try to assemble, and they might sometimes assemble safely. But it would obviously be misleading to say that they are protected in their right to assemble if they are as vulnerable as ever to one of the most serious and general threats to enjoyment of the right, namely physical violence by other people. If they are as helpless against physical threats with the right "protected" as they would have been without the supposed protection, society is not actually protecting their exercise of the right to assembly.

So anyone who is entitled to anything as a right must be entitled to physical security as a basic right so that threats to his or her physical security cannot be used to thwart the enjoyment of the other right. This argument has two critical premises. The first is that everyone is entitled to enjoy something as a right.¹⁵ The second, which further explains the first, is that everyone is entitled to the removal of the most serious and general conditions that would prevent or severely interfere with the exercise of whatever rights the person has. I take this second premise to be part of what is meant in saying that everyone is entitled to enjoy something as a right, as explained in the opening section of this chapter. Since this argument applies to everyone, it establishes a right that is universal.

SUBSISTENCE RIGHTS

The main reason for discussing security rights, which are not very controversial, was to make explicit the basic assumptions that support the usual judgment that security rights are basic rights. Now that we have available an argument that supports them, we

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are in a position to consider whether matters other than physical security should, according to the same argument, also be basic rights. It will emerge that subsistence, or minimal economic security, which is more controversial than physical security, can also be shown to be as well justified for treatment as a basic right as physical security is—and for the same reasons.

By minimal economic security, or subsistence, I mean unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, and minimal preventive public health care. Many complications about exactly how to specify the boundaries of what is necessary for subsistence would be interesting to explore. But the basic idea is to have available for consumption what is needed for a decent chance at a reasonably healthy and active life of more or less normal length, barring tragic interventions. This central idea is clear enough to work with, even though disputes can occur over exactly where to draw its outer boundaries. A right to subsistence would not mean, at one extreme, that every baby born with a need for open-heart surgery has a right to have it, but it also would not count as adequate food a diet that produces a life expectancy of 35 years of fever-laden, parasite-ridden listlessness.

By a "right to subsistence" I shall always mean a right to at least subsistence. People may or may not have economic rights that go beyond subsistence rights, and I do not want to prejudge that question here. But people may have rights to subsistence even if they do not have any strict rights to economic well-being extending beyond subsistence. Subsistence rights and broader economic rights are separate questions, and I want to focus here on subsistence.

I also do not want to prejudge the issue of whether healthy adults are entitled to be provided with subsistence *only* if they cannot provide subsistence for themselves. Most of the world's malnourished, for example, are probably also diseased, since malnutrition lowers resistance to disease, and hunger and infestation normally form a tight vicious circle. Hundreds of millions of the malnourished are very young children. A large percentage of the adults, besides being ill and hungry, are also chronically unemployed, so the issue of policy toward healthy adults who refuse to work is largely irrelevant. By a "right to subsistence," then, I

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shall mean a right to subsistence that includes the provision of subsistence at least to those who cannot provide for themselves. I do not assume that no one else is also entitled to receive subsistence—I simply do not discuss cases of healthy adults who could support themselves but refuse to do so. If there is a right to subsistence in the sense discussed here, at least the people who cannot provide for themselves, including the children, are entitled to receive at least subsistence. Nothing follows one way or the other about anyone else.

It makes no difference whether the legally enforced system of property where a given person lives is private, state, communal, or one of the many more typical mixtures and variants. Under all systems of property people are prohibited from simply taking even what they need for survival. Whatever the property institutions and the economic system are, the question about rights to subsistence remains: if persons are forbidden by law from taking what they need to survive and they are unable within existing economic institutions and policies to provide for their own survival (and the survival of dependents for whose welfare they are responsible), are they entitled, as a last resort, to receive the essentials for survival from the remainder of humanity whose lives are not threatened?

The same considerations that support the conclusion that physical security is a basic right support the conclusion that subsistence is a basic right. Since the argument is now familiar, it can be given fairly briefly.

It is quite obvious why, if we still assume that there are some rights that society ought to protect and still mean by this the removal of the most serious and general hindrances to the actual enjoyment of the rights, subsistence ought to be protected as a basic right:

No one can fully, if at all, enjoy any right that is supposedly protected by society if he or she lacks the essentials for a reasonably healthy and active life. Deficiencies in the means of subsistence can be just as fatal, incapacitating, or painful as violations of physical security. The resulting damage or death can at least as decisively prevent the enjoyment of any right as can the effects of security violations. Any form of malnutrition, or fever due to exposure, that causes severe

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and irreversible brain damage, for example, can effectively prevent the exercise of any right requiring clear thought and may, like brain injuries caused by assault, profoundly disturb personality. And, obviously, any fatal deficiencies end all possibility of the enjoyment of rights as firmly as an arbitrary execution.

Indeed, prevention of deficiencies in the essentials for survival is, if anything, more basic than prevention of violations of physical security. People who lack protection against violations of their physical security can, if they are free, fight back against their attackers or flee, but people who lack essentials, such as food, because of forces beyond their control, often can do nothing and are on their own utterly helpless.¹⁶

The scope of subsistence rights must not be taken to be broader than it is. In particular, this step of the argument does not make the following absurd claim: since death and serious illness prevent or interfere with the enjoyment of rights, everyone has a basic right not to be allowed to die or to be seriously ill. Many causes of death and illness are outside the control of society, and many deaths and illnesses are the result of very particular conjunctions of circumstances that general social policies cannot control. But it is not impractical to expect some level of social organization to protect the minimal cleanliness of air and water and to oversee the adequate production, or import, and the proper distribution of minimal food, clothing, shelter, and elementary health care. It is not impractical, in short, to expect effective management, when necessary, of the supplies of the essentials of life. So the argument is: when death and serious illness could be prevented by different social policies regarding the essentials of life, the protection of any human right involves avoidance of fatal or debilitating deficiencies in these essential commodities. And this means fulfilling subsistence rights as basic rights. This is society's business because the problems are serious and general. This is a basic right because failure to deal with it would hinder the enjoyment of all other rights.

Thus, the same considerations that establish that security rights are basic for everyone also support the conclusion that subsistence rights are basic for everyone. It is not being claimed or assumed

that security and subsistence are parallel in all, or even very many, respects. The only parallel being relied upon is that guarantees of security and guarantees of subsistence are equally essential to providing for the actual exercise of any other rights. As long as security and subsistence are parallel in this respect, the argument applies equally to both cases, and other respects in which security and subsistence are not parallel are irrelevant.

It is not enough that people merely happen to be secure or happen to be subsisting. They must have a right to security and a right to subsistence—the continued enjoyment of the security and the subsistence must be socially guaranteed. Otherwise a person is readily open to coercion and intimidation through threats of the deprivation of one or the other, and credible threats can paralyze a person and prevent the exercise of any other right as surely as actual beatings and actual protein/calorie deficiencies can.¹⁷ Credible threats can be reduced only by the actual establishment of social arrangements that will bring assistance to those confronted by forces that they themselves cannot handle.

Consequently the guaranteed security and guaranteed subsistence are what we might initially be tempted to call “simultaneous necessities” for the exercise of any other right. They must be present at any time that any other right is to be exercised, or people can be prevented from enjoying the other right by deprivations or threatened deprivations of security or of subsistence. But to think in terms of simultaneity would be largely to miss the point. A better label, if any is needed, would be “inherent necessities.” For it is not that security from beatings, for instance, is separate from freedom of peaceful assembly but that it always needs to accompany it. Being secure from beatings if one chooses to hold a meeting is part of being free to assemble. If one cannot safely assemble, one is not free to assemble. One is, on the contrary, being coerced not to assemble by the threat of the beatings.

The same is true if taking part in the meeting would lead to dismissal by the only available employer when employment is the only source of income for the purchase of food. Guarantees of security and subsistence are not added advantages over and above enjoyment of the right to assemble. They are essential parts of it. For this reason it would be misleading to construe security or subsistence—or the substance of any other basic right—merely as

“means” to the enjoyment of all other rights. The enjoyment of security and subsistence is an essential part of the enjoyment of all other rights. Part of what it means to enjoy any other right is to be able to exercise that right without, as a consequence, suffering the actual or threatened loss of one’s physical security or one’s subsistence. And part of what it means to be able to enjoy any other right is not to be prevented from exercising it by lack of security or of subsistence. To claim to guarantee people a right that they are in fact unable to exercise is fraudulent, like furnishing people with meal tickets but providing no food.

What is being described as an “inherent necessity” needs to be distinguished carefully from a mere means to an end. If A is a means to end B and it is impossible to reach the end B without using the means A, it is perfectly correct to say that A is necessary for B. But when I describe the enjoyment of physical security, for example, as necessary for the enjoyment of a right to assemble, I do not intend to say merely that enjoying security is a means to enjoying assembly. I intend to say that part of the meaning of the enjoyment of a right of assembly is that one can assemble in physical security. Being secure is an essential component of enjoying a right of assembly, so that there is no such thing as a situation in which people do have social guarantees for assembly and do not have social guarantees for security. If they do not have guarantees that they can assemble in security, they have not been provided with assembly as a right. They must assemble and merely hope for the best, because a standard threat to assembling securely has not been dealt with. The fundamental argument is that when one fully grasps what an ordinary right is, and especially which duties are correlative to a right, one can see that the guarantee of certain things (as basic rights) is part of—is a constituent of—is an essential component of—the establishment of the conditions in which the right can actually be enjoyed. These conditions include the prevention of the thwarting of the enjoyment of the right by any “standard threat,” at the explanation of which we must soon look.

A final observation about the idea of subsistence rights is, however, worth making here: subsistence rights are in no way an original, new, or advanced idea. If subsistence rights seem strange, this is more than likely because Western liberalism has had a blind spot for severe economic need.¹⁸ Far from being new or ad-

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vanced, subsistence rights are found in traditional societies that are often treated by modern societies as generally backward or primitive.

James C. Scott has shown that some of the traditional economic arrangements in Southeast Asia that were in other respects highly exploitative nevertheless were understood by both patrons and clients—to use Scott's terminology—to include rights to subsistence on the part of clients and duties on the part of patrons not only to forbear from depriving clients of subsistence but to provide assistance to any clients who were for any reason deprived:

If the need for a guaranteed minimum is a powerful motive in peasant life, one would expect to find institutionalized patterns in peasant communities which provide for this need. And, in fact, it is above all within the village—in the patterns of social control and reciprocity that structure daily conduct—where the subsistence ethic finds social expression. The principle which appears to unify a wide array of behavior is this: "All village families will be guaranteed a minimal subsistence niche insofar as the resources controlled by villagers make this possible." Village egalitarianism in this sense is conservative not radical; it claims that all should have a place, a living, not that all should be equal. . . . Few village studies of Southeast Asia fail to remark on the informal social controls which act to provide for the minimal needs of the village poor. The position of the better-off appears to be legitimized only to the extent that their resources are employed in ways which meet the broadly defined welfare needs of villagers.¹⁹

As Benedict J. Kerkvliet, also writing about an Asian society, put it: "A strong patron-client relationship was a kind of all-encompassing insurance policy whose coverage, although not total and infinitely reliable, was as comprehensive as a poor family could get."²⁰

Many reasons weigh in favor of the elimination of the kind of patron-client relationships that Scott and Kerkvliet have described—no one is suggesting that they should be, or could be, preserved. The point here is only that the institutionalization of

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subsistence rights is in no way tied to some utopian future "advanced" society. On the contrary, the real question is whether modern nations can be as humane as, in *this* regard, many traditional villages are. If we manage, we may to a considerable extent merely have restored something of value that has for some time been lost in our theory and our practice.

STANDARD THREATS

Before we turn over the coin of basic rights and consider the side with the duties, we need to establish two interrelated points about the rights side. One point concerns the final element in the account of the general structure of all rights, basic and non-basic, which is the notion of standard threats as the targets of the social guarantees for the enjoyment of the substance of a right. The other point specifically concerns basic rights and the question whether the reasoning in favor of treating security and subsistence as the substances of basic rights does not generate an impractically and implausibly long list of things to which people will be said to have basic rights. The two points are interrelated because the clearest manner by which to establish that the list of basic rights must, on the contrary, be quite short is to invoke the fact that the social guarantees required by the structure of a right are guarantees, not against all possible threats, but only against what I will call standard threats. In the end we will find a supportive coherence between the account of basic rights and the account of the general structure of most moral rights. We may begin by reviewing the reasons for taking security and subsistence to be basic rights and considering whether the same reasons would support treating many other things as basic rights. Answering that question will lead us to see the role and importance of a conception of standard threats.

Why, then, according to the argument so far, are security and subsistence basic rights? Each is essential to a normal healthy life. Because the actual deprivation of either can be so very serious—potentially incapacitating, crippling, or fatal—even the threatened deprivation of either can be a powerful weapon against anyone whose security or subsistence is not in fact socially guaranteed. People who cannot provide for their own security and sub-

sistence and who lack social guarantees for both are very weak, and possibly helpless, against any individual or institution in a position to deprive them of anything else they value by means of threatening their security or subsistence. A fundamental purpose of acknowledging any basic rights at all is to prevent, or to eliminate, insofar as possible the degree of vulnerability that leaves people at the mercy of others. Social guarantees of security and subsistence would go a long way toward accomplishing this purpose.

Security and subsistence are basic rights, then, because of the roles they play in both the enjoyment and the protection of all other rights. Other rights could not be enjoyed in the absence of security or subsistence, even if the other rights were somehow miraculously protected in such a situation. And other rights could in any case not be protected if security or subsistence could credibly be threatened. The enjoyment of the other rights requires a certain degree of physical integrity, which is temporarily undermined, or eliminated, by deprivations of security or of subsistence. Someone who has suffered exposure or a beating is incapable of enjoying the substances of other rights, although only temporarily, provided he or she receives good enough care to recover the use of all essential faculties.

But as our earlier discussion of helplessness made clear, either the actual or the credibly threatened loss of security or subsistence leaves a person vulnerable to any other deprivations the source of the threat has in mind. Without security or subsistence one is helpless, and consequently one may also be helpless to protect whatever can be protected only at the risk of security or subsistence. Therefore, security and subsistence must be socially guaranteed, if any rights are to be enjoyed. This makes them basic rights.

In the construction of any philosophical argument, a principal challenge is to establish what needs to be established without slipping into the assertion of too much. By "too much" I mean a conclusion so inflated that, even if it is not a reduction to absurdity in the strict sense, it nevertheless strains credulity. The argument for security rights and subsistence rights may seem to suffer this malady, which might be called the weakness of too much strength. Specifically, the argument may be feared to have im-

PLICIT implications that people have rights to an unlimited number of things, in addition to security and subsistence, that it is difficult to believe that people actually could justifiably demand of others.

Now it is true that we have no reason to believe that security and subsistence are the only basic rights, and chapter 3 is devoted to the question of whether some kinds of liberties are also basic rights. But as we shall see in that chapter, it is quite difficult to extend the list of basic rights, and we face little danger that the catalogue of basic rights will turn out to be excessively long. Before it becomes perhaps painfully obvious from the case of liberty, it may be helpful to see why in the abstract the list of basic rights is sharply limited even if it may have some members not considered here.

The structure of the argument that a specific right is basic may be outlined as follows, provided we are careful about what is meant by "necessary":

1. Everyone has a right to something.
2. Some other things are necessary for enjoying the first thing as a right, whatever the first thing is.
3. Therefore, everyone also has rights to the other things that are necessary for enjoying the first as a right.

Since this argument abstracts from the substance of the right assumed in the first premise, it is based upon what it normally means for anything to be a right or, in other words, upon the concept of a right. So, if the argument to establish the substances of basic rights is summarized by saying that these substances are the "other things . . . necessary" for enjoying any other right, it is essential to interpret "necessary" in the restricted sense of "made essential by the very concept of a right." The "other things" include not whatever would be convenient or useful, but only what is indispensable to anything else's being enjoyed as a right. Nothing will turn out to be necessary, in this sense, for the enjoyment of any right unless it is also necessary for the enjoyment of every right and is, for precisely this reason, qualified to be the substance of a basic right.

Since the concept of a right is a profoundly Janus-faced concept, this conceptual necessity can be explained both from the side of the bearer of the right and, as we will see more fully in

chapter 2, from the side of the bearers of the correlative duties. The content of the basic rights is such that for the bearer of any right (basic or non-basic) to pursue its fulfillment by means of the trade-off of the fulfillment of a basic right is self-defeating, and such that for the bearer of duties to claim to be fulfilling the duties correlative to any right in spite of not fulfilling the duties correlative to a basic right is fraudulent. But both perspectives can be captured more concretely by the notion of common, or ordinary, and serious but remediable threats or "standard threats," which was introduced earlier as the final element in the explanation of the structure of a right.²¹ Certainly from the viewpoint of the bearer of a right it would be false or misleading to assert that a right had been fulfilled unless in the enjoyment of the substance of that right, a person also enjoyed protection against the threats that could ordinarily be expected to prevent, or hinder to a major degree, the enjoyment of the initial right assumed. And certainly from the viewpoint of the bearers of the correlative duties it would be false or misleading to assert that a right had been honored unless social guarantees had been established that would prevent the most common and serious threats from preventing or acutely hindering the enjoyment of the substance of the right. On the side of duties this places especially heavy emphasis upon preventing standard threats, which, as we will see in chapter 2, is the joint function of the fulfillment of duties to avoid depriving and duties to protect against deprivation.

But the measure of successful prevention of thwarting by ordinary and serious but remediable threats is not utopian. People are neither entitled to social guarantees against every conceivable threat, nor entitled to guarantees against ineradicable threats like eventual serious illness, accident, or death. Another way to indicate the restricted scope of the argument, then, is as follows. The argument rests upon what might be called a transitivity principle for rights: If everyone has a right to *y*, and the enjoyment of *x* is necessary for the enjoyment of *y*, then everyone also has a right to *x*. But the necessity in question is analytic. People also have rights—according to this argument—only to the additional substances made necessary by the paired concepts of a right and its correlative duties. It is analytically necessary that if people are to be provided with a right, their enjoyment of the substance of the

right must be protected against the typical major threats. If people are as helpless against ordinary threats as they would be on their own, duties correlative to a right are not being performed. Precisely what those threats are, and which it is feasible to counter, are of course largely empirical questions, and the answers to both questions will change as the situation changes.²² In the argument for acknowledging security and subsistence as basic rights I have taken it to be fairly evident that the erosion of the enjoyment of any assumed right by deficiencies in subsistence is as common, as serious, and as remediable at present as the destruction of the enjoyment of any assumed right by assaults upon security.

What is, for example, eradicable changes, of course, over time. Today, we have very little excuse for allowing so many poor people to die of malaria and more excuse probably for allowing people to die of cancer. Later perhaps we will have equally little excuse to allow deaths by many kinds of cancer, or perhaps not. In any case, the measure is a realistic, not a utopian, one, and what is realistic can change. Chapter 4 returns to the question of what is realistic now in the realm of subsistence, and consideration of this concrete case will probably also provide the clearest understanding of what constitutes an ordinary and serious but remediable threat.

We noticed in an earlier section that one fundamental purpose served by acknowledging basic rights at all is, in Camus' phrase, that we "take the victim's side," and the side of the potential victims. The honoring of basic rights is an active alliance with those who would otherwise be helpless against natural and social forces too strong for them. A basic right has, accordingly, not been honored until people have been provided rather firm protection—what I am calling "social guarantees"—for enjoying the substance of their basic rights. What I am now stressing is that this protection need neither be ironclad nor include the prevention of every imaginable threat.

But the opposite extreme is to offer such weak social guarantees that people are virtually as vulnerable with their basic rights "fulfilled" as they are without them. The social guarantees that are part of any typical right need not provide impregnable protection against every imaginable threat, but they must provide effective defenses against predictable remediable threats. To try to

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count a situation of unrelieved vulnerability to standard threats as the enjoyment of basic rights by their bearers or the fulfillment of these rights by the bearers of the correlative duties is to engage in double-speak, or to try to behave as if concepts have no boundaries at all. To allow such practices to continue is to acquiesce in not only the violation of rights but also the destruction of the concept of rights.

Insofar as it is true that moral rights generally, and not basic rights only, include justified demands for social guarantees against standard threats, we have an interesting theoretical result. The fulfillment of both basic and non-basic moral rights consists of effective, but not infallible, social arrangements to guard against standard threats like threats to physical security and threats to economic security or subsistence. One way to characterize the substances of basic rights, which ties the account of basic rights tightly to the account of the structure of moral rights generally, is this: the substance of a basic right is something the deprivation of which is one standard threat to rights generally. The fulfillment of a basic right is a successful defense against a standard threat to rights generally. This is precisely why basic rights are basic. That to which they are rights is needed for the fulfillment of all other rights. If the substance of a basic right is not socially guaranteed, attempts actually to enjoy the substance of other rights remain open to a standard threat like the deprivation of security or subsistence. The social guarantees against standard threats that are part of moral rights generally *are the same as* the fulfillment of basic rights.²³ This is why giving less priority to any basic right than to normal non-basic rights is literally impossible.

• 2 •

CORRELATIVE DUTIES

“NEGATIVE” RIGHTS AND “POSITIVE” RIGHTS

Many Americans would probably be initially inclined to think that rights to subsistence are at least slightly less important than rights to physical security, even though subsistence is at least as essential to survival as security is and even though questions of security do not even arise when subsistence fails. Much official U.S. government rhetoric routinely treats all “economic rights,” among which basic subsistence rights are buried amidst many non-basic rights, as secondary and deferrable, although the fundamental enunciation of policy concerning human rights by the then Secretary of State did appear to represent an attempt to correct the habitual imbalance.¹ Now that the same argument in favor of basic rights to both aspects of personal survival, subsistence and security, is before us, we can examine critically some of the reasons why it sometimes appears that although people have basic security rights, the right, if any, to even the physical necessities of existence like minimal health care, food, clothing, shelter, unpolluted water, and unpolluted air is somehow less urgent or less basic.

Frequently it is asserted or assumed that a highly significant difference between rights to physical security and rights to subsistence is that they are respectively “negative” rights and “positive” rights.² This position, which I will now try to refute, is considerably more complex than it at first appears. I will sometimes refer to it as the position that subsistence rights are *positive* and *therefore*

secondary. Obviously taking the position involves holding that subsistence rights are positive in some respect in which security rights are negative and further claiming that this difference concerning positive/negative is a good enough reason to assign priority to negative rights over positive rights. I will turn shortly to the explanation of this assumed positive/negative distinction. But first I want to lay out all the premises actually needed by the position that subsistence rights are positive and therefore secondary, although I need to undercut only some—strictly speaking, only one—of them in order to cast serious doubt upon the position's conclusions.

The alleged lack of priority for subsistence rights compared to security rights assumes:

1. The distinction between subsistence rights and security rights is (a) sharp and (b) significant.³
2. The distinction between positive rights and negative rights is (a) sharp and (b) significant.
3. Subsistence rights are positive.
4. Security rights are negative.

I am not suggesting that anyone has ever laid out this argument in all the steps it actually needs. On the contrary, a full statement of the argument is the beginning of its refutation—this is an example of the philosophical analogue of the principle that sunlight is the best antiseptic.⁴

In this chapter I will concentrate on establishing that premises 3 and 4 are both misleading. Then I will suggest a set of distinctions among duties that accurately transmits the insight distorted by 3 and 4. Insofar as 3 and 4 are inaccurate, considerable doubt is cast upon 2, although it remains possible that someone can specify some sharply contrasting pair of rights that actually are examples of 2.⁵ I will not directly attack premise 1.⁶

Now the basic idea behind the general suggestion that there are positive rights and negative rights seems to have been that one kind of rights (the positive ones) require other people to act positively—to “do something”—whereas another kind of rights (the negative ones) require other people merely to refrain from acting in certain ways—to do nothing that violates the rights. For example, according to this picture, a right to subsistence would be posi-

tive because it would require other people, in the last resort, to supply food or clean air to those unable to find, produce, or buy their own; a right to security would be negative because it would require other people merely to refrain from murdering or otherwise assaulting those with the right. The underlying distinction, then, is between acting and refraining from acting; and positive rights are those with correlative duties to act in certain ways and negative rights are those with correlative duties to refrain from acting in certain ways. Therefore, the moral significance, if any, of the distinction between positive rights and negative rights depends upon the moral significance, if any, of the distinction between action and omission of action.⁷

The ordinarily implicit argument for considering rights to subsistence to be secondary would, then, appear to be basically this. Since subsistence rights are positive and require other people to do more than negative rights require—perhaps more than people can actually do—negative rights, such as those to security, should be fully guaranteed first. Then, any remaining resources could be devoted, as long as they lasted, to the positive—and perhaps impossible—task of providing for subsistence. Unfortunately for this argument, neither rights to physical security nor rights to subsistence fit neatly into their assigned sides of the simplistic positive/negative dichotomy. We must consider whether security rights are purely negative and then whether subsistence rights are purely positive. I will try to show (1) that security rights are more “positive” than they are often said to be, (2) that subsistence rights are more “negative” than they are often said to be, and, given (1) and (2), (3) that the distinctions between security rights and subsistence rights, though not entirely illusory, are too fine to support any weighty conclusions, especially the very weighty conclusion that security rights are basic and subsistence rights are not.

In the case of rights to physical security, it may be possible to *avoid violating* someone's rights to physical security yourself by merely refraining from acting in any of the ways that would constitute violations. But it is impossible to *protect* anyone's rights to physical security without taking, or making payments toward the taking of, a wide range of positive actions. For example, at the very least the protection of rights to physical security necessitates police forces; criminal courts; penitentiaries; schools for training

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police, lawyers, and guards; and taxes to support an enormous system for the prevention, detection, and punishment of violations of personal security.⁸ All these activities and institutions are attempts at providing social guarantees for individuals' security so that they are not left to face alone forces that they cannot handle on their own. How much more than these expenditures one thinks would be necessary in order for people actually to be reasonably secure (as distinguished from merely having the cold comfort of knowing that the occasional criminal is punished after someone's security has already been violated) depends on one's theory of violent crime, but it is not unreasonable to believe that it would involve extremely expensive, "positive" programs. Probably no one knows how much positive action would have to be taken in a contemporary society like the United States significantly to reduce the levels of muggings, rapes, murders, and other assaults that violate personal security, and in fact to make people reasonably secure.

Someone might suggest that this blurs rights to physical security with some other type of rights, which might be called rights-to-be-protected-against-assaults-upon-physical-security. According to this distinction, rights to physical security are negative, requiring others only to refrain from assaults, while rights-to-be-protected-against-assaults-upon-physical-security are positive, requiring others to take positive steps to prevent assaults.

Perhaps if one were dealing with some wilderness situation in which individuals' encounters with each other were infrequent and irregular, there might be some point in noting to someone: I am not asking you to cooperate with a system of guarantees to protect me from third parties, but only to refrain from attacking me yourself. But in an organized society, insofar as there were any such things as rights to physical security that were distinguishable from some other rights-to-be-protected-from-assaults-upon-physical-security, no one would have much interest in the bare rights to physical security. What people want and need, as even Mill partly recognized, is the protection of their rights.⁹ Insofar as this frail distinction holds up, it is the rights-to-be-protected-against-assaults that any reasonable person would demand from society. A demand for physical security is not normally a demand simply to be left alone, but a demand to be protected against

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harm.¹⁰ It is a demand for positive action, or, in the words of our initial account of a right, a demand for social guarantees against at least the standard threats.

So it would be very misleading to say simply that physical security is a negative matter of other people's refraining from violations. Ordinarily it is instead a matter of some people refraining from violations and of third parties being prevented from violations by the positive steps taken by first and second parties. The "negative" refraining may in a given case be less significant than the "positive" preventing—it is almost never the whole story. The end-result of the positive preventative steps taken is of course an enforced refraining from violations, not the performance of any positive action. The central core of the right is a right that others not act in certain ways. But the mere core of the right indicates little about the social institutions needed to secure it, and the core of the right does not contain its whole structure. The protection of "negative rights" requires positive measures, and therefore their actual enjoyment requires positive measures. In any imperfect society enjoyment of a right will depend to some extent upon protection against those who do not choose not to violate it.

Rights to subsistence too are in their own way considerably more complex than simply labeling them "positive" begins to indicate. In fact, their fulfillment involves at least two significantly different types of action. On the one hand, rights to subsistence sometimes do involve correlative duties on the part of others to provide the needed commodities when those in need are helpless to secure a supply for themselves, as, for example, the affluent may have a duty to finance food supplies and transportation and distribution facilities in the case of famine. Even the satisfaction of subsistence rights by such positive action, however, need not be any more expensive or involve any more complex governmental programs than the effective protection of security rights would. A food stamp program, for example, could be cheaper or more expensive than, say, an anti-drug program aimed at reducing muggings and murders by addicts. Which program was more costly or more complicated would depend upon the relative dimensions of the respective problems and would be unaffected by any respect in which security is "negative" and subsistence is "positive." Insofar as any argument for giving priority to the fulfillment of "nega-

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tive rights" rests on the assumption that actually securing "negative rights" is usually cheaper or simpler than securing "positive rights," the argument rests on an empirical speculation of dubious generality.

The other type of action needed to fulfill subsistence rights is even more difficult to distinguish sharply from the action needed to fulfill security rights. Rights to physical subsistence often can be completely satisfied without the provision by others of any commodities to those whose rights are in question. All that is sometimes necessary is to protect the persons whose subsistence is threatened from the individuals and institutions that will otherwise intentionally or unintentionally harm them. A demand for the fulfillment of rights to subsistence may involve not a demand to be provided with grants of commodities but merely a demand to be provided some opportunity for supporting oneself.¹¹ The request is not to be supported but to be allowed to be self-supporting on the basis of one's own hard work.

What is striking is the similarity between protection against the destruction of the basis for supporting oneself and protection against assaults upon one's physical security. We can turn now to some examples that clearly illustrate that the honoring of subsistence rights sometimes involves action no more positive than the honoring of security rights does. Some cases in which all that is asked is protection from harm that would destroy the capacity to be self-supporting involve threats to subsistence of a complexity that is not usually noticed with regard to security, although the adequate protection of security would involve analyses and measures more complex than a preoccupation with police and prisons. The complexity of the circumstances of subsistence should not, however, be allowed to obscure the basic fact that essentially all that is being asked in the name of subsistence rights in these examples is protection from destructive acts by other people.

SUBSISTENCE RIGHTS AND SCARCITY

The choice of examples for use in an essentially theoretical discussion that does nevertheless have implications for public policy presents an intractable dilemma. Hypothetical cases and actual cases each have advantages and disadvantages that are mirror im-

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ages of each other's. A description of an actual case has the obvious advantage that it is less susceptible to being tailored to suit the theoretical point it is adduced to support, especially if the description is taken from the work of someone other than the proponent of the theoretical point. Its disadvantage is that if the description is in fact an inaccurate account of the case in question, the mistake about what is happening in that case may appear to undercut the theoretical point that is actually independent of what is happening in any single case. Thus the argument about the theoretical point may become entangled in arguments about an individual instance that was at most only one supposed illustration of the more general point.

Hypothetical cases are immune to disputes about whether they accurately depict an independent event, since, being explicitly hypothetical, they are not asserted to correspond to any one real case. But precisely because they are not constrained by the need to remain close to an independent event, they may be open to the suspicion of having been streamlined precisely in order to fit the theoretical point they illustrate and having thereby become atypical of actual cases.

The only solution I can see is to offer, when a point is crucial, an example of each kind. It is vital to the argument of this book to establish that many people's lack of the substance of their subsistence rights—of, that is, the means of subsistence like food—is a deprivation caused by standard kinds of threats that could be controlled by some combination of the mere restraint of second parties and the maintenance of protective institutions by first and third parties, just as the standard threats that deprive people of their physical security could be controlled by restraint and protection against non-restraint. So I will start with a hypothetical case in order to clarify the theoretical point before introducing the partly extraneous complexity of actual events, and then I will quote a description of some actual current economic policies that deprive people of subsistence. The hypothetical case is at the level of a single peasant village, and the actual case concerns long-term national economic strategies. Anyone familiar with the causes of malnutrition in underdeveloped countries today will recognize that the following hypothetical case is in no way unusual.¹²

Suppose the largest tract of land in the village was the property

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of the descendant of a family that had held title to the land for as many generations back as anyone could remember. By absolute standards this peasant was by no means rich, but his land was the richest in the small area that constituted the universe for the inhabitants of this village. He grew, as his father and grandfather had, mainly the black beans that are the staple (and chief—and adequate—source of protein) in the regional diet. His crop usually constituted about a quarter of the black beans marketed in the village. Practically every family grew part of what they needed, and the six men he hired during the seasons requiring extra labor held the only paid jobs in the village—everyone else just worked his own little plot.

One day a man from the capital offered this peasant a contract that not only guaranteed him annual payments for a 10-year lease on his land but also guaranteed him a salary (regardless of how the weather, and therefore the crops, turned out—a great increase in his financial security) to be the foreman for a new kind of production on his land. The contract required him to grow flowers for export and also offered him the opportunity, which was highly recommended, to purchase through the company, with payments in installments, equipment that would enable him to need to hire only two men. The same contract was offered to, and accepted by, most of the other larger landowners in the general region to which the village belonged.

Soon, with the sharp reduction in supply, the price of black beans soared. Some people could grow all they needed (in years of good weather) on their own land, but the families that needed to supplement their own crop with purchases had to cut back their consumption. In particular, the children in the four families headed by the laborers who lost their seasonal employment suffered severe malnutrition, especially since the parents had originally worked as laborers only because their own land was too poor or too small to feed their families.

Now, the story contains no implication that the man from the capital or the peasants-turned-foremen were malicious or intended to do anything worse than single-mindedly pursue their own respective interests. But the outsider's offer of the contract was one causal factor, and the peasant's acceptance of the contract was another causal factor, in producing the malnutrition that

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would probably persist, barring protective intervention, for at least the decade the contract was to be honored. If the families in the village had rights to subsistence, their rights were being violated. Society, acting presumably by way of the government, ought to protect them from a severe type of active harm that eliminates their ability even to feed themselves.

But was anyone actually harming the villagers, or were they simply suffering a regrettable decline in their fortunes? If someone was violating their rights, who exactly was the violator? Against whom specifically should the government be protecting them? For, we normally make a distinction between violating someone's rights and allowing someone's rights to be violated while simply minding our own business. It makes a considerable difference—to take an example from another set of basic rights—whether I myself assault someone or I merely carry on with my own affairs while allowing a third person to assault someone when I could protect the victim and end the assault. Now, I may have a duty not to allow assaults that I can without great danger to myself prevent or stop, as well as a duty not to assault people myself, but there are clearly two separable issues here. And it is perfectly conceivable that I might have the one duty (to avoid harming) and not the other (to protect from harm by third parties), because they involve two different types of action.¹³

The switch in land-use within the story might then be described as follows. Even if one were willing to grant tentatively that the villagers all seemed to have rights to subsistence, some of which were violated by the malnutrition that some suffered after the switch in crops, no individual or organization can be identified as the violator: not the peasant-turned-foreman, for example, because—let us assume—he did not foresee the “systemic” effects of his individual choice; not the business representative from the capital because—let us assume—although he was knowledgeable enough to know what would probably happen, it would be unrealistically moralistic to expect him to forgo honest gains for himself and the company he represented because the gains had undesired, even perhaps regretted, “side-effects”; not any particular member of the governmental bureaucracy because—let us assume—no one had been assigned responsibility for maintaining adequate nutrition in this particular village. The

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local peasant and the business representative were both minding their own business in the village, and no one in the government had any business with this village. The peasant and the representative may have attended to their own affairs while harm befell less fortunate villagers, but allowing harm to occur without preventing it is not the same as directly inflicting it yourself. The malnutrition was just, literally, unfortunate: bad luck, for which no one could fairly be blamed. The malnutrition was, in effect, a natural disaster—was, in the obnoxious language of insurance law, an act of God. Perhaps the village was, after all, becoming overpopulated.¹⁴

But, of course, the malnutrition resulting from the new choice of crop was not a natural disaster. The comforting analogy does not hold. The malnutrition was a social disaster. The malnutrition was the product of specific human decisions permitted by the presence of specific social institutions and the absence of others, in the context of the natural circumstances, especially the scarcity of land upon which to grow food, that were already given before the decisions were made. The harm in question, the malnutrition, was not merely allowed to happen by the parties to the flower-growing contract. The harm was partly caused by the requirement in the contract for a switch away from food, by the legality of the contract, and by the performance of the required switch in crops. If there had been no contract or if the contract had not required a switch away from food for local consumption, there would have been no malnutrition as things were going.¹⁵ In general, when persons take an action that is sufficient in some given natural and social circumstances to bring about an undesirable effect, especially one that there is no particular reason to think would otherwise have occurred, it is perfectly normal to consider their action to be one active cause of the harm. The parties to the contract partly caused the malnutrition.

But the society could have protected the villagers by countering the initiative of the contracting parties in any one of a number of ways that altered the circumstances, and the absence of the appropriate social guarantees is another cause of the malnutrition. Such contracts could, for example, have already been made illegal. Or they could have been allowed but managed or taxed in order to compensate those who would otherwise predictably be

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damaged by them. Exactly what was done would be, *for the most part*, an economic and political question.¹⁶ But it is possible to have social guarantees against the malnutrition that is repeatedly caused in such standard, predictable ways.

Is a right to subsistence in such a case, then, a positive right in any important ways that a right to security is not? Do we actually find a contrast of major significance? No. As in the cases of the threats to physical security that we normally consider, the threat to subsistence is human activity with largely predictable effects.¹⁷ Even if, as we tend to assume, the motives for deprivations of security tend to be vicious while the motives for deprivations of subsistence tend to be callous, the people affected usually need protection all the same. The design, building, and maintenance of institutions and practices that protect people's subsistence against the callous—and even the merely over-energetic—is no more and no less positive than the conception and execution of programs to control violent crimes against the person. It is not obvious which, if either, it is more realistic to hope for or more economical to pursue. It is conceivable, although I doubt if anyone really knows, that the two are more effectively and efficiently pursued together. Neither looks simple, cheap, or "negative."

This example of the flower contract is important in part because, at a very simple level, it is in fact typical of much of what is happening today among the majority of the people in the world, who are poor and rural, and are threatened by forms of "economic development" that lower their own standard of living.¹⁸ But it is also important because, once again in a very simple way, it illustrates the single most critical fact about rights to subsistence; where subsistence depends upon tight supplies of essential commodities (like food), a change in supply can have, often by way of intermediate price effects, an indirect but predictable and devastating effect on people's ability to survive. A change in supply can transport self-supporting people into helplessness and, if no protection against the change is provided, into malnutrition or death. Severe harm to some people's ability to maintain themselves can be caused by changes in the use to which other people put vital resources (like land) they control. In such cases even someone who denied that individuals or organizations have duties to supply commodities to people who are helpless to obtain them for them-

selves, might grant that the government ought to execute the society's duty of protecting people from having their ability to maintain their own survival destroyed by the actions of others. If this protection is provided, there will be much less need later to provide commodities themselves to compensate for deprivations.

What transmits the effect in such cases is the local scarcity of the vital commodity. Someone might switch thousands of acres from food to flowers without having any effect on the diet of anyone else where the supply of food was adequate to prevent a significant price rise in response to the cut in supply. And it goes without saying that the price rises are vitally important only if the income and wealth of at least some people is severely limited, as of course it is in every society, often for the rural majority. It is as if an abundant supply sometimes functions as a sponge to absorb the otherwise significant effect on other people, but a tight supply (against a background of limited income and wealth) sometimes functions as a conductor to transmit effects to others, who feel them sharply.

It is extremely difficult merely to mind one's own business amidst a scarcity of vital commodities. It is illusory to think that this first commandment of liberalism can always be obeyed. The very scarcity draws people into contact with each other, destroys almost all area for individual maneuver, and forces people to elbow each other in order to move forward. The tragedy of scarcity, beyond the deprivations necessitated by the scarcity itself, is that scarcity tends to make each one's gain someone else's loss. One can act for oneself only by acting against others, since there is not enough for all. Amidst abundance of food a decision to grow flowers can be at worst a harmless act and quite likely a socially beneficial one. But amidst a scarcity of food, due partly to a scarcity of fertile land, an unmalicious decision to grow flowers can cause death—unless there are social guarantees for adequate nutrition. A call for social guarantees for subsistence in situations of scarcity is not a call for intervention in what were formerly private affairs.

TWO THESES ABOUT ECONOMIC DEPRIVATION

Our actual case is an economic strategy now being followed in a considerable number of Latin American nations. As already men-

tioned, it also differs from the hypothetical, but very typical, example of the flower contract by being a matter of macro-economic strategy. And the actual case differs as well in a respect that is crucial to some of the policy recommendations in chapter 7: the precise relation between the economic decisions and the resulting deprivations of subsistence. In order to be able to characterize this relation accurately we need to draw an important distinction before we look at the description of the case.

"Systemic" deprivation—deprivation resulting from the confluence of many contributing factors—of the kind already seen in the case of the flower contract may or may not be systematic. That is, deprivations that are the result of the interaction of many factors may be (a) accidental—even unpredictable—and relatively easily remediable coincidences in an economic system for which there is no plan or for which the plan does not include the deprivations; or the deprivations may be (b) inherent—perhaps predictable—and acceptable, whether or not positively desirable, elements in a consciously adopted or endorsed economic plan or policy. In the former case they are not systematic but, as I will call them, *accidental*, and in the latter case they are systematic or, I will say, *essential*: essential elements in the strategy that produces them. Essential deprivations can be eliminated only by eliminating the strategy that requires them. Accidental deprivations can be eliminated by making less fundamental changes while retaining the basic strategy, since they are not inherent in the strategy.

The thesis that particular deprivations are accidental often seems to be the explanation recommended by common sense, although we may not ordinarily think explicitly in terms of this distinction. Well-informed people are aware, for example, that the "Brazilian miracle" has left large numbers of the poorest Brazilians worse off than ever, that the Shah's "White Revolution" made relatively small inroads upon malnutrition and infant mortality, that President and Prime Minister Marcos's "New Society" is a similar failure, etc.¹⁹ But, especially if one assumes that those who dictate economic strategy are reasonable and well-intentioned people, one may infer that these repeated failures to deal with the basic needs of the most powerless are, in spite of the regularity with which they recur, unfortunate but unpredictable by-products of fundamentally benevolent, or anyhow enlightened, economic plans.

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brutal measures used in countries such as Brazil, Uruguay, Argentina, Bolivia and Chile to establish and maintain control over the labor movement and hold wages well below the inflationary spiral. Some may even take comfort in the fact that, once the most extreme measures have been used, a partial relaxation of control seems possible at a later date. But minimal honesty requires that the repression in both its physical and financial dimensions be seen as an organic aspect of what is now the prevailing mode of economic development in Latin America. Social and economic human rights do not fare well in such an environment. . . .

What has evolved in Latin America (and by implication in some other areas of the Third World) is a political-economic model that has *no* historical precedent in the now more developed capitalist world. For lack of a more concise phrase, this model can be called illiberal state capitalism, a situation in which state intervention in the economy is substantial, but governmental policies tend to reinforce rather than soften or ameliorate income inequalities, class distinctions, and regional disequilibria.²⁰

I take it to be evident that in various countries throughout the world deprivation is sometimes accidental and sometimes essential, and that one has no reason at all to expect that either thesis is applicable to all cases. Each continent, or rather each country, and often each regime, must be analyzed on its own. But it is fairly clear that current regimes include a number of instances of what Fagen calls "illiberal state capitalism" and that in these cases people are deprived of subsistence (and liberty) by their own government's choice of economic strategy.

In this brief theoretical work I obviously cannot attempt to establish under which governments deprivations of subsistence are essential and under which they are accidental, although I have already mentioned some cases I take to be strikingly evident. Illiberal state capitalism is only one prominent source of strategies of essential deprivation, and for us here the main point is the distinction between essential and accidental deprivation, whatever the detailed explanation for which one occurs. Especially when we come in chapter 7 to look at specific recommendations for U.S. foreign policy, it will be crucial to keep this underlying distinction between these two explanations of deprivation in mind. In most

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cases the formulation of policy must take the source of deprivations into account. A government that engages in essential deprivation—that follows an economic strategy in which deprivations of subsistence are inherent in the strategy—fails to fulfill even any duty merely to avoid depriving. Such systematic violation of subsistence rights is surely intolerable. Such a government is a direct and immediate threat to its own people, and they are entitled to resist it in order to defend themselves. But I am getting ahead of the theoretical story.

We turned to the actual case of illiberal state capitalism in Latin America with its macroeconomic strategies of essential deprivation, as well as to the hypothetical case of the village flower contract, which is a kind of contract encouraged by—but not dependent upon—strategies of essential deprivation, in order to see some illustrations of the inaccuracy of the philosophical doctrine that subsistence rights, like all economic rights, are positive, because their fulfillment consists largely of actively providing people with commodities like food. From these cases it is now, I hope, quite clear that the honoring of subsistence rights may often in no way involve transferring commodities to people, but may instead involve preventing people's being deprived of the commodities or the means to grow, make, or buy the commodities. Preventing such deprivations will indeed require what can be called positive actions, especially protective and self-protective actions. But such protection against the deprivation of subsistence is in all major respects like protection against deprivations of physical security or of other rights that are placed on the negative side of the conventional negative/positive dichotomy. I believe the whole notion that there is a morally significant dichotomy between negative rights and positive rights is intellectually bankrupt—that premise 2, as stated in the first section of this chapter, is mistaken. The cases we have considered establish at the very least that the dichotomy distorts when it is applied to security rights and subsistence rights—that premises 3 and 4 were mistaken. The latter is all that needed to be shown.

AVOIDANCE, PROTECTION, AND AID

Still, it is true that sometimes fulfilling a right does involve transferring commodities to the person with the right and sometimes it

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merely involves not taking commodities away. Is there not some grain of truth obscured by the dichotomy between negative and positive rights? Are there not distinctions here that it is useful to make?

The answer, I believe, is: yes, there are distinctions, but they are not distinctions between rights. The useful distinctions are among duties, and there are no one-to-one pairings between kinds of duties and kinds of rights. The complete fulfillment of each kind of right involves the performance of multiple kinds of duties. This conceptual change has, I believe, important practical implications, although it will be only in chapter 7 that the implications can begin to be illustrated. In the remainder of this chapter I would like to tender a very simple tripartite typology of duties. For all its own simplicity, it goes considerably beyond the usual assumption that for every right there is a single correlative duty, and suggests instead that for every basic right—and many other rights as well—there are three types of duties, all of which must be performed if the basic right is to be fully honored but not all of which must necessarily be performed by the same individuals or institutions. This latter point opens the possibility of distributing each of the three kinds of duty somewhat differently and perhaps confining any difficulties about the correlativity of subsistence rights and their accompanying duties to fewer than all three kinds of duties.

So I want to suggest that with every basic right, three types of duties correlate:

- I. Duties to *avoid* depriving.
- II. Duties to *protect* from deprivation.
- III. Duties to *aid* the deprived.

This may be easier to see in the case of the more familiar basic right, the right to physical security (the right not to be tortured, executed, raped, assaulted, etc.). For every person's right to physical security, there are three correlative duties:

- I. Duties not to eliminate a person's security—duties to *avoid* depriving.
- II. Duties to protect people against deprivation of security by other people—duties to *protect* from deprivation.

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- III. Duties to provide for the security of those unable to provide for their own—duties to *aid* the deprived.

Similarly, for every right to subsistence there are:

- I. Duties not to eliminate a person's only available means of subsistence—duties to *avoid* depriving.
- II. Duties to protect people against deprivation of the only available means of subsistence by other people—duties to *protect* from deprivation.
- III. Duties to provide for the subsistence of those unable to provide for their own—duties to *aid* the deprived.

If this suggestion is correct, the common notion that *rights* can be divided into rights to forbearance (so-called negative rights), as if some rights have correlative duties only to avoid depriving, and rights to aid (so-called positive rights), as if some rights have correlative duties only to aid, is thoroughly misguided. This misdirected simplification is virtually ubiquitous among contemporary North Atlantic theorists and is, I think, all the more pernicious for the degree of unquestioning acceptance it has now attained. It is duties, not rights, that can be divided among avoidance and aid, and protection. And—this is what matters—every basic right entails duties of all three types. Consequently the attempted division of rights, rather than duties, into forbearance and aid (and protection, which is often understandably but unhelpfully blurred into avoidance, since protection is partly, but only partly, the enforcement of avoidance) can only breed confusion.

It is impossible for any basic right—however “negative” it has come to seem—to be fully guaranteed unless all three types of duties are fulfilled. The very most “negative”-seeming right to liberty, for example, requires positive action by society to protect it and positive action by society to restore it when avoidance and protection both fail. This by no means implies, as I have already mentioned, that all three types of duties fall upon everyone else or even fall equally upon everyone upon whom they do fall. Although this tripartite analysis of duties is, I believe, perfectly general, I will focus here upon the duties correlative to subsistence rights: subsistence duties.

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THE GENERALITY OF THE TRIPARTITE ANALYSIS

However, perhaps a brief word on the general issue is useful before turning to a fairly detailed analysis of the threefold duties correlative to the rights that most concern us: subsistence rights. Obviously theses of three ascending degrees of generality might be advanced:

All subsistence rights involve threefold correlative duties.

All basic rights involve threefold correlative duties.

Most moral rights involve threefold correlative duties.

I subscribe to all three theses, and I believe that the remainder of this book offers significant support for all three. But naturally the support will be most thorough for the first thesis and least thorough for the last. For the most part I am content to leave matters at that, because the only point that I am concerned fully to establish is the priority of subsistence rights, that is, their equal priority with all other basic rights. Consequently, the arguments need, strictly speaking, to be thorough only for subsistence rights. But a contrasting pair of observations are also in order.

On the one hand, the argument here is from the particular to the general, not the converse. It is not because I assumed that normal rights involve some, or threefold, duties that I concluded that subsistence rights involve some, and threefold, duties. I explored subsistence rights, as we are about to do, and found that they can be fully accounted for only by means of admitting three kinds of correlated duties. I looked at the same time at security rights and, as we will do in chapter 3, at rights to liberty and found again that an adequate explanation involves all three kinds of multiply interrelated duties, thus coming to suspect that all basic rights, at the very least, require the same tripartite analysis of the duty side of the coin.

On the other hand, on the basis of these detailed examinations of these three rights I am indeed tempted to recommend that the most general thesis be made analytically true, that is, that any right not involving the threefold duties be acknowledged to be an exceptional case. If the account of a right given at the beginning of chapter 1 were made a strict definition, then it would do just this. If a right provides the rational basis for a justified demand

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that the actual enjoyment of the substance of the right be socially guaranteed against standard threats, then a right provides the rational basis for insisting upon the performance, as needed, of duties to avoid, duties to protect, and duties to aid, as they will shortly be explained. This picture does seem to me to fit all the standard cases of moral rights.²¹ If, however, someone can give clear counter-examples to the final step of generalization (the move from duties for basic rights to duties for moral rights generally), I can see little cause for concern, provided the admission of rights that lack some kinds of correlative duties, to the realm of non-basic rights, is not allowed to devalue the coinage of rights generally.

SUBSISTENCE DUTIES

The first type of subsistence duty is neither a duty to provide help nor a duty to protect against harm by third parties but is the most nearly "negative" or passive kind of duty that is possible: a duty simply not to take actions that deprive others of a means that, but for one's own harmful actions, would have satisfied their subsistence rights or enabled them to satisfy their own subsistence rights, where the actions are not necessary to the satisfaction of one's own basic rights and where the threatened means is the only realistic one.²² Duties to avoid depriving require merely that one refrain from making an unnecessary gain for oneself by a means that is destructive for others.

Part of the relation between these subsistence duties to avoid depriving (type I) and subsistence duties to protect from deprivation (type II) is quite straightforward. If everyone could be counted upon voluntarily to fulfill duties to avoid, duties to protect would be unnecessary. But since it would be naive to expect everyone to fulfill his or her duties to avoid and since other people's very survival is at stake, it is clearly necessary that some individuals or institution have the duty of enforcing the duty to avoid. The duty to protect is, then, in part a secondary duty of enforcing the primary duty of avoiding the destruction of people's means of subsistence. In this respect it is analogous to, for example, the duty of the police to enforce the duty of parents not to starve their children.

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The natural institution in many societies to have the task of enforcing those primary duties that need enforcement is the executive branch of some level of government, acting on behalf of the members of society other than the offending individuals or institutions. Which level of government takes operating responsibility is largely a practical matter and might vary among societies. Where the source of harm is, for example, a transnational corporation, protection may need to be provided by the home government or even by multilateral government action.²³ But clearly if duties to avoid depriving people of their last means of subsistence are to be taken seriously, some provision must be made for enforcing this duty on behalf of the rest of humanity upon those who would not otherwise fulfill it. Perhaps it would be worth considering non-governmental enforcement institutions as the bearers in some cases of the secondary duty to protect, but the primary institution would normally appear to be the government of the threatened person's own nation. It is normally taken to be a central function of government to prevent irreparable harm from being inflicted upon some members of society by other individual members, by institutions, or by interactions of the two. It is difficult to imagine why anyone should pay much attention to the demands of any government that failed to perform this function, if it were safe to ignore its demands.

Duties to aid (type III) are in themselves fairly complicated, and only one kind will be discussed here. At least three sub-categories of duties to aid need to be recognized. What they have in common is the requirement that resources be transferred to those who cannot provide for their own survival. First are duties to aid (III-1) that are attached to certain roles or relationships and rest therefore upon only those who are in a particular role or relationship and are borne toward only those other persons directly involved. Some central cases are the duties of parents toward their own young children and the duties of grown children toward their own aged parents. Naturally, important issues can arise even with regard to such relatively clear duties as the duty to provide food to the helplessly young and to the helplessly old, but I have nothing to add here regarding these duties, which are not universal. By their not being universal I mean that although all parents may normally have certain duties toward their own children, no child can jus-

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tifiably hold that all people, or even all parents, have *this* sort of duty toward it. All people may of course have other duties toward the child, including universal ones, and possibly including one of the other two sub-categories of duties to aid that are to be mentioned next.

The only difference between the second and third sub-categories of duties to aid is the source of the deprivation because of which aid is needed. In the second case (III-2) the deprivation is the result of failures to fulfill duties to avoid depriving and duties to protect from deprivation—some people have acted in such a way as to eliminate the last available means of subsistence for other people and the responsible government has failed to protect the victims. Thus, the need for assistance is the result of a prior twofold failure to perform duties, and the victims have been harmed by both actions and omissions of actions by other people.

In the third case (III-3) the deprivation is not the result of failures in duty and, in just this sense, the deprivation is "natural," that is, the deprivation suffered is not a case of harm primarily caused by other people. The clearest case of a natural deprivation calling for aid is a natural disaster like a hurricane or an earthquake. As always, questions arise at the borderline between cases—for example, was the death toll increased because the weather bureau or civil defense organization failed to protect with timely warnings? But uncontroversial central cases in which no human beings are much to blame are perfectly familiar, even if not so frequent as we might like to believe.

Where supplies of the necessities of life, or of the resources needed to grow or make the necessities, are scarce, duties of types I and II take on increased importance. The results of the fulfillment only of I and II would already be dramatic in the poorer areas of the world, in which most of the earth's inhabitants eke out their existences. It is easy to underestimate the importance of these two kinds of subsistence duties, which together are intended to prevent deprivation. But to eliminate the only realistic means a person has for obtaining food or other physical necessities is to cause that person, for example, the physical harm of malnutrition or of death by starvation. When physical harm but not death is caused, the effect of eliminating the only means of support can be every degree as serious as the effect of a violation of physical secu-

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prohibition and complete tolerance of an action are possible, such as tax laws that create disincentives of various strengths against the kind of action that would contribute to the deprivation of subsistence from others and create alternative sources of increased economic security for oneself. Social institutions must, at the very least, be designed to enable ordinary human beings, who are neither saints nor geniuses, to do each other a minimum of serious harm.

In sum, then, we find that the fulfillment of a basic right to subsistence involves at least the following kinds of duties:

- I. To avoid depriving.
- II. To protect from deprivation
 1. By enforcing duty (I) and
 2. By designing institutions that avoid the creation of strong incentives to violate duty (I).
- III. To aid the deprived
 1. Who are one's special responsibility,
 2. Who are victims of social failures in the performance of duties (I), (II-1), (II-2) and
 3. Who are victims of natural disasters.

THE SYSTEMATIC INTERDEPENDENCE OF DUTIES

Fulfillment of a basic right (and, I think, of most other moral rights as well) requires, then, performance by some individuals or institutions of each of these three general kinds of correlative duties. Duties to avoid depriving possibly come closest to failing to be essential, because duties to protect provide for the enforcement of duties to avoid. Even if individuals, organizations, and governments were otherwise inclined to violate rights to security, for example, by failing to fulfill their respective duties to avoid, forceful fulfillment of duties to protect by whomever they fell upon—presumably a national government—could probably produce behavior in compliance with duties to avoid. But reliance on duties to protect rather than duties to avoid would constitute heavy reliance on something like national police power rather than self-restraint by individuals, corporations, and lower-level governments, and would involve obvious disadvantages even

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if—probably, especially if—the police power were adequate actually to enforce duties to avoid upon a generally reluctant society. Unfortunately this much power to protect would also be enormous power to deprive, which is a lesson about police that even dictators sometimes have to learn the hard way.

Since duties to avoid and duties to protect taken together have only one purpose, to prevent deprivations, the reverse of what was just described is obviously also possible: if everyone who ought to fulfill duties to avoid did so, performance of duties to protect might not be necessary. Law-enforcement agencies could perhaps be disbanded in a society of restrained organizational and individual behavior. But although reliance entirely upon duties to protect is undesirable even if possible, a safe complete reliance upon duties to avoid is most improbable in the absence of at least minimal performance of duties to protect. Organizations and individuals who will voluntarily avoid deprivation that would otherwise be advantageous to them because they know that their potential victims are protected, cannot be expected to behave in the same way when they know their potential victims are without protection.

The general conclusions about duties to avoid and duties to protect, then, are, first, that strictly speaking it is essential for the guarantee of any right only that either the one or the other be completely fulfilled, but, second, that for all practical purposes it is essential to insist upon the fulfillment of both, because complete reliance on either one alone is probably not feasible and, in the case of duties to protect, almost certainly not desirable.

What division of labor is established by one's account of duties between self-restraint and restraint by others, such as police forces, will obviously have an enormous effect upon the quality of life of those living in the social system in question. I do not want to pursue the questions involved in deciding upon the division, except to note that if either duties to avoid or duties to protect are construed too narrowly, the other duty then becomes unrealistically broad. For example, if a government, in the exercise of its duty to protect, fails to impose constraints upon agribusinesses designed to prevent them from creating malnutrition, the prevention of malnutrition will then depend upon the self-restraint of the agribusinesses. But much evidence suggests that individual

agribusinesses are unwilling or unable to take into account the nutritional effect of their decisions about the use of land, local credit and capital, water, and other resources. This is especially true if the agribusiness is producing export crops and most especially if it is investing in a foreign country, the nutritional level of whose people is easily considered irrelevant.²⁷ If indeed a particular type of corporation has demonstrated an inability to forgo projects that produce malnutrition, given their setting, it is foolish to rely on corporate restraint, and whichever governments have responsibility to protect those who are helpless to resist the corporation's activity—host governments, home government or both—will have to fulfill their duties to protect. If, on the other hand, the corporations would restrain themselves, the governments could restrain them less. How to work this out is difficult and important. The present point is simply that between the bearers of the two duties, the job of preventing deprivation ought to get done, if there is a right not to be deprived of whatever is threatened. And the side that construes its own role too narrowly, if it actually has the power to act, may be as much at fault for contributing to the violation of rights as the side that fails to take up all the resulting slack.

However, as I have already indicated, the duty to protect ought not to be understood only in terms of the maintenance of law-enforcement, regulatory, and other closely related agencies. A major and more constructive part of the duty to protect is the duty to design social institutions that do not exceed the capacity of individuals and organizations, including private and public corporations, to restrain themselves. Not only the kinds of acute threats of deprivation that police can prevent, but the kinds of chronic threats that require imaginative legislation and, sometimes, long-term planning fall under the duty to protect.²⁸

Nevertheless, it is duties to aid that often have the highest urgency, because they are often owed to persons who are suffering the consequences of failures to fulfill both duties to avoid and duties to protect, that is, they are duties of type III-2. These people will have been totally deprived of their rights to subsistence if they are then not aided either. This greater urgency does not, of course, mean that duties to aid are more compelling overall than the first two types of duty, and indeed it is specifically against

duties to aid that complaints that the correlative duties accompanying subsistence rights are too burdensome may seem most plausible. It is important to notice that to the extent that duties to avoid and to protect are fulfilled, duties to assist will be less burdensome. If the fulfillment of duties to protect is sufficiently inadequate, duties to assist may be overwhelming and may seem unrealistically great, as they do today to many people. For example, because the Dutch colonial empire failed to protect the people of Java against the effects of the Dutch schemes for agricultural exports, the nutritional problems of the majority of Indonesians today strike some people as almost beyond all solution.²⁹ The colossal failure of the Dutch colonial government in its duties to protect (or, even, to avoid deprivation) has created virtually Sisyphean duties to aid. These presumably fall to some degree upon the Dutch people who are today still profiting from their centuries of spoils. But whoever precisely has these duties to aid—there are plenty to go around—their magnitude has clearly been multiplied by past dereliction in the performance of the other two kinds of duties by the Dutch, among others. We will return in chapter 5 to some aspects of the difficult question of how to allocate duties to aid, especially when (chapter 6) they cross national boundaries.

This much, however, is already clear. The account of correlative duties is for the most part a more detailed specification of what the account of rights calls social guarantees against standard threats. Provisions for avoidance, protection, and aid are what are needed for a reasonable level of social guarantees. Making the necessary provisions for the fulfillment of subsistence rights may sometimes be burdensome, especially when the task is to recover from past neglect of basic duties. But we have no reason to believe, as proponents of the negative/positive distinction typically assert, that the performance of the duties correlative to subsistence rights would always or usually be more difficult, more expensive, less practicable, or harder to “deliver” than would the actual performance of the duties correlative to the rights that are conventionally labeled negative and that are more often announced than in fact fulfilled. And the burdens connected with subsistence rights do not fall primarily upon isolated individuals who would be expected quietly to forgo advantages to themselves for the sake

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of not threatening others, but primarily upon human communities that can work cooperatively to design institutions that avoid situations in which people are confronted by subsistence-threatening forces they cannot themselves handle. In spite of the sometimes useful terminology of third parties helping first parties against second parties, etc., it is worth noting, while assessing the burden of subsistence duties, that the third-party bearers of duties can also become the first-party bearers of rights when situations change. No one is assured of living permanently on one side of the rights/duties coin.

• 3 • LIBERTY

*neg/poor
& more*

Not only is this book not a comprehensive theory of rights, it is also not an exhaustive discussion of basic rights. Its primary purpose is to try to rescue from systematic neglect within wealthy North Atlantic nations a kind of right that, as we have already seen, deserves as much priority as any right: rights to subsistence. But it is essential to consider briefly the right conventionally most emphatically endorsed in North Atlantic theory: rights to liberties. Some liberties merit our attention for many reasons, not the least of which is a strange convergence between supposed "friends" of liberty in the North Atlantic and rulers in the poorer countries who would share my emphasis on the priority of subsistence rights. Both groups have converged upon the "trade-off" thesis: subsistence can probably be enjoyed in poor countries only by means of "trade-offs" with liberties.¹ The only discernible difference between these friends of liberty and these particular friends of subsistence is the professed reluctance with which the friends of liberty advocate that the poor in other people's countries should be subjected to the "trade-off." The two versions might well be called the theory of reluctantly repressive development and the theory of not so reluctantly repressive development.

The Shah of Iran and his spokesmen, for example, were clumsy advocates of not so reluctantly repressive development. In an article by the Shah's representative at the International Monetary Fund and World Bank published prominently by the *New York Times* in the Sunday edition of its Op-Ed page we find the necessity of exchanging liberty for subsistence readily assumed:

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In the third world countries suffering from poverty, widespread illiteracy and a yawning gap in domestic distribution of incomes and wealth, a constitutionally guaranteed freedom of opposition and dissent may not be as significant as freedom from despair, disease and deprivation. The masses might indeed be much happier if they could put more into their mouths than empty words; if they could have a health-care center instead of Hyde Park corner; if they were assured gainful employment instead of the right to march on the capitol. The trade-offs may be disheartening and objectionable to a Western purist, but they may be necessary or unavoidable for a majority of nation states.²

The opposite view was put with eloquent clarity by martial-rule opponent and former Senator Diokno of the Philippines:

Two justifications for authoritarianism in Asian developing countries are currently fashionable.

One is that Asian societies are authoritarian and paternalistic and so need governments that are also authoritarian and paternalistic; that Asia's hungry masses are too concerned with providing their families with food, clothing, and shelter, to concern themselves with civil liberties and political freedoms; that the Asian conception of freedom differs from that of the West; that, in short, Asians are not fit for democracy.

Another is that developing countries must sacrifice freedom temporarily to achieve the rapid economic development that their exploding populations and rising expectations demand; that, in short, government must be authoritarian to promote development.

The first justification is racist nonsense. The second is a lie: authoritarianism is not needed for developing; it is needed to perpetuate the status quo.

Development is not just providing people with adequate food, clothing, and shelter; many prisons do as much. Development is also people deciding what food, clothing and shelter are adequate, and how they are to be provided.³

Even the theory of justice of John Rawls, the depth and sincerity of whose commitment to liberty is in no way in doubt, some-

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times easily assumes both the possibility and the necessity of exchanging liberty for economic growth. As Robert E. Goodin has noted, "When, as an exception to his general rule, Rawls (Sec. 82) allows that a desperately poor nation might justly sacrifice some civil liberties for some increase in economic well-being, the whole discussion presupposes that a nation *can* purchase one at the price of the other."⁴ What is the place of liberty in a framework that acknowledges the importance of subsistence?

I want to show that although the advocates of repressive development profess, as I do, a strong commitment to the provision of subsistence, those theories of repressive development must be sharply distinguished from the theory of basic rights presented here. One of several major differences is the place assigned here to at least some liberties, and it is the purpose of this chapter to indicate how fundamentally the same argument that establishes security rights and subsistence rights as basic rights also justifies the acknowledgement of at least certain political liberties and certain freedom of movement as equally basic.

ENJOYING LIBERTY FOR ITS OWN SAKE

As indicated early in chapter 1, rights are basic "only if enjoyment of them is essential to the enjoyment of all other rights," irrespective of whether their enjoyment is also valuable in itself.⁵ A liberty is usually valuable in itself, and liberties are usually discussed in terms of the satisfaction, if not exhilaration, that their exercise can directly and immediately bring. But the substance of a basic right can have its status only because, and so only if, its enjoyment is a constituent part of the enjoyment of every other right, as—to use our standard example—enjoying not being assaulted is a component part of the enjoyment of anything else, such as assembling for a meeting. Consequently, in this chapter liberties that are candidates for the status of substance of a basic right will be examined solely from the admittedly restricted point of view of whether they are constituents of the enjoyment of every other right. I will after this section simply set aside the consideration of any direct and immediate satisfaction that comes from enjoying the liberty in itself. But this conscious omission in no way implies any denial of any other value that liberties may have in themselves. And

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even the enjoyment of liberty for its own sake has an important implication concerning basic rights.

Certainly there are many liberties the exercise and enjoyment of which are valuable in themselves—and are for that reason very valuable indeed, irrespective of whether these liberties are also valuable as constituents of the enjoyment of some larger activity. And not all liberties that are valuable in themselves are especially grand. Sheer freedom of physical movement, not being forced to stand still (a common form of torture) or being kept locked in an overcrowded prison cell, but being allowed simply to walk around, may strike most people, who have never been deprived of it, as a liberty providing rather minor satisfaction by itself. And to some degree it may not be the presence of the liberty but the absence of its deprivation—the absence of walls and enforceable threats against movement—that we value. At least the intensity of the dissatisfaction from being deprived may be much greater than the intensity of the satisfaction from enjoying the liberty. But then we do not normally value things only for the intensity of the satisfaction they bring. For though it may not be especially exhilarating just to stroll out and see if the bluejays are still angry at the squirrel with the crooked tail, it can be very important and satisfying to know that if one wants to, one may (and if one doesn't want to, one need not).

If one is free to walk around, one's freedom of physical movement is of course also valuable as a mere means—of visiting friends, obtaining exercise, buying groceries, etc. It is valuable as a means in addition to its independent value in itself, and this value as a means can be called its instrumental value. But its direct satisfaction remains. In a humane prison, one's friends could visit, one could run in place or perhaps in the exercise yard, and the groceries would be not only supplied but prepared. None of this would lessen the desire to be able simply to go for a walk when and if one wished, for the sake of the walk itself and not because one needed to get somewhere.

It is true of many liberties, of course, that they are valuable not because one will be constantly—or, ever—exercising them but because they are available if wanted. Having a liberty can be valuable in itself even if one does not actually exercise it. But what may seem to be a fine distinction here is vitally important. For the

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people who do not in fact exercise their liberties, it must nevertheless be true that they actually could exercise them. It must not merely be the case that they comfortably believe they could, when they could not if they were to try, because they would be prevented or hindered by common and serious but remediable threats. This provides a connection in one direction with the two basic rights already established.

People can obtain real satisfaction from false beliefs. If I am optimistic about the next few years because I believe that I am essentially healthy, my optimism is no less real if my confidence is misplaced and I have undiagnosed cancer. But the correct explanation of my confidence, then, is not my health. It is my mistaken belief that I am healthy when I am not. Similarly, people may feel content because they believe that opportunities for political participation, for example, are guaranteed to them, when in fact if they try to vote, or vote the "wrong way," they will be beaten up, arrested or fired. If so, they are not deriving satisfaction from a liberty they have but are not exercising. They are living in a fool's paradise quite different from their real situation. Illusions are not liberties.

So, it is true that people can derive satisfaction from liberties that they do not exercise but could exercise. But in order for it to be correct to attribute their satisfaction to their liberties, not to illusions about liberties, it must be true that the liberties can in fact be exercised, if the people try to exercise them, without subjection to standard threats. The belief in the usability of the liberty, on which the people's satisfaction rests, must be correct, if it is to be the liberty that is beneficial to them. Thus, it is fraudulent to comfort people with promises of liberties that they cannot actually enjoy because necessary constituents of the enjoyment, like protection for physical safety, are lacking. It is fraudulent, in other words, to promise liberties in the absence of security, subsistence, and any other basic rights.

When arguing against an imbalance in one direction (toward promised rights to liberties and away from needed constituents of the exercise not only of rights to liberties but of all other rights), it is extremely difficult not to strike a position that is unbalanced in the opposite direction.⁶ Insofar as the enjoyment of rights to liberties depends upon the enjoyment of security and subsistence, the

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rights to security and subsistence appear to need to be established first. And it does seem to follow that if there are rights to liberties that cannot be enjoyed in the absence of security and subsistence, rights to security and rights to subsistence must be *more* basic than rights to liberties.

But this does not follow. It is also possible—and, I will now try to show, is actually the case—that not only does the enjoyment of rights to some liberties depend upon the enjoyment of security and subsistence, but the enjoyment of rights to security and subsistence depends upon the enjoyment of some liberties. A mutual dependence holds both between enjoyment of rights to some liberties and enjoyment of security and subsistence and, in the other direction, between enjoyment of rights to security and subsistence and enjoyment of some liberties. And, of course, if the enjoyment of security and subsistence is an essential component of enjoying liberties as rights, then one has a basic right to the enjoyment of security and subsistence, as we have already seen. And if, as I will now try to show, the enjoyment of some liberties is an essential component of enjoying security and subsistence as rights, then one also has equally basic rights to those liberties.

An unwelcome complication, however, is that the dependence is not completely symmetrical: the enjoyment of rights to *every liberty* is dependent upon the enjoyment of security and subsistence, but the enjoyment of rights to security and rights to subsistence is dependent upon the enjoyment of *only some liberties*. These are the liberties that, whatever the satisfaction they give in themselves (it may be considerable), are a constituent part of the enjoyment of other rights. To single out at least some of these liberties as among the basic liberties, or more properly the liberties that are the substances of basic rights, is the purpose of this chapter.

To avoid misunderstanding it is vital to keep in sharp focus the question to which I am hereafter in this chapter seeking the answer. I am not asking which are the richest or most elevated forms of liberty, judged by moral ideals of the good life or the good society.⁷ Undoubtedly there are kinds of liberty that are necessary for, say, the cultural and artistic expression invaluable to the highest forms of society. But if the exercise of those liberties is not necessary for the exercise of all rights, those liberties are not basic

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rights, however important they are for other reasons. My concern now is to determine not the highest, but the most basic, kinds of liberty. I am here, as elsewhere in this book, working on the foundations, not the spires, of the edifice of rights. The basic liberties will turn out to include the liberty of participation.

IS PARTICIPATION UNIVERSALLY DESIRED?

Much more might well be said in order to tighten up the over-used concept of participation than can be said here.⁸ Three points, however, are essential to mention. First, the focus of the participation I will be discussing is: the fundamental choices among the social institutions and the social policies that control security and subsistence and, where the person is directly affected, the operation of institutions and the implementation of policy. Without genuine influence over fundamental structures and strategies, influence over implementation may be to little effect. But without influence over details of implementation and operation where one's own case is affected, influence over fundamentals may be to little effect. On the other hand, it is unrealistic to say that everyone is entitled to influence upon all details. Thus, I arrive at the characterization of the focus of participation just given: all the fundamentals and the details affecting one's own case.

Second, for a right to the liberty of participation to be of any consequence, the participation must be effective and exert some influence upon outcomes. The participation must not be merely what Carole Pateman has called "pseudo participation" and "partial participation."⁹ Obviously it cannot be required that genuine participation will always yield the result wanted, but it is not enough, at the other extreme, that people be heard but not listened to. I can combine these first two points by saying that we will be discussing *effective participation*, meaning genuine influence upon the fundamental choices among the social institutions and the social policies that control security and subsistence and, where the person is directly affected, genuine influence upon the operation of institutions and the implementation of policy.

Third, participation as discussed here is not construed in a narrowly political sense. One's security and subsistence, and the re-

mainder of one's life, are at least as deeply influenced by economic organizations, like domestic corporate oligopolies and gargantuan transnational corporations, as by governments and strictly political organizations. Whether broad participation in the constraint of corporate activity can be direct or must be by way of political institutions, many of which are in any case deeply intertwined, is a question of means that can be pursued after settlement of the question about basic rights to be considered now.¹⁰

Two chief considerations are brought against the judgment that effective participation is a basic right. First, it is sometimes noted that many people are in fact not interested in participation in fundamental choices about social institutions or social policies, even if the fulfillment of their own rights is affected. From this observation it is then inferred that participation cannot, therefore, be a universal right. Charles Frankel maintained: "To be so characterized a right must meet two tests. First, do people everywhere think of it as a right . . . ?"¹¹ In quite a few traditional peasant societies, in fact, the social structure was sharply hierarchical in each community, and in each community the major landlord made the fundamental decisions even about the basic rights of security and subsistence. Moreover, in at least some of these communities the specific decisions made did actually provide both security and subsistence. The landlord saw to it that his workers were safe from want and attacks, and they were content to enjoy their security and subsistence and to be free ordinarily of concern with necessary arrangements.¹² And one can try to imagine a benevolently paternalistic dictatorship over a modern society in which people are free from deprivation or, when protection fails, are assisted in overcoming their lack of security or subsistence; institutions and policies are designed entirely by the dictator and his "experts"; and the people, as well as the dictator, are satisfied with the results of the arrangements.

But although the premise (that many people are in fact not usually interested in participation even in fundamental choices) is true, the conclusion (that participation cannot be a universal right) does not follow. It is not a necessary condition of something's being a universal right that it is universally believed to be a right. People can certainly have rights that they do not know they have. Some slaves, for example, may expect and accept beatings

from their masters. They may believe that masters have a right—a duty, even—to "discipline" their slaves. If so, the slaves' beliefs are mistaken: there is no right to possess, or to violate the physical security of, another human being. Beliefs about rights can be incorrect, just as beliefs about almost all other subjects can.¹³

Which rights people have is independent of which rights they believe they have. This is a perfectly general point, applicable to any right. People's rights may be more numerous—or fewer—than they think. The same is true of duties, of course. People do not have only the duties they believe themselves to have. If that were true, no master who believed otherwise could have a duty not to "punish arrogance" with physical assaults upon his slaves. It is not "OK as long as you are sincere," and neither rights nor duties are determined subjectively.

Which rights, and correlative duties, people have is determined by weight of reasons. If the reasons for according everyone a particular right are strong enough, everyone has that right, and everyone else and all organizations and institutions ought at least to avoid violating it, and some others ought to protect it and to assist those deprived of it. If the reasons for according it are too weak, there is no such general right. In order to decide which rights there are one must assess the quality of reasoning, not measure the quantity of belief.

Saying that people can have rights regardless of whether they believe they have them, needs to be sharply distinguished from saying that people must exercise the rights they have regardless of whether they want to exercise them. The latter is ridiculous as a general thesis and has no connection with the former. That I have a right to freedom of movement, for instance, does not mean that I must constantly or, for that matter, ever move, if I do not wish to. Probably some rights actually ought to be exercised—for example, a right to a public education probably ought to be exercised, at least by everyone who cannot afford to pay for a private one that is better than the public one available. Perhaps a right to freedom of movement ought to be enjoyed by anyone able to enjoy it, because of some such consideration as the alleged broadening effects of travel. But any duty, if there is one, to take advantage of a right you have would not be a duty correlative to the right, but the quite different kind of duty that flows from a

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moral ideal of a rich or fulfilled life. Such ideals and their associated duties may well be important, but they are simply not part of a theory of rights. Whether people ought, as part of an ideally full life, to want to participate in the institutions and policies that control the fulfillment of their rights is an important question. But it is a different question from whether they have a basic right to participate if they do want to—and even if they choose not to.

IS PARTICIPATION UNIVERSALLY NEEDED?

A second consideration against acknowledging effective participation as a basic right is much more difficult to handle than was the fact that some people do not want to participate, and it raises much more fundamental issues. This second contention is that at least some people do not need to participate in order to receive the substance of some of their rights, including even the basic rights already established: security and subsistence. Since, by definition, something can be the substance of a basic right only if enjoyment of it is essential to the enjoyment of all other rights, participation cannot be a basic right if any other rights can be enjoyed even in the absence of participation. If even only one other right can be enjoyed in the absence of participation, then the enjoyment of participation is not an essential component of enjoying something as a right and does not, strictly speaking, qualify to be the substance of a basic right. Some despotisms, which allow little or no participation, do provide security, subsistence, and some other substances of rights to their populations. Is participation actually necessary, then, for receiving other rights? Does the example of an enlightened despotism that provides security and subsistence not show that participation is not strictly necessary?

These are hard questions to answer. In order to decide about them we need a firm and sharply defined conception of what it means to enjoy a right. Clearly a paternalistic dictatorship can provide both security and subsistence. But can a dictatorship without participation provide for the enjoyment of a *right* to security and of a *right* to subsistence? We must recall exactly what some features of a right are, as introduced in the first chapter.

A right provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed

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against standard threats. That the enjoyment ought to be socially guaranteed means that arrangements ought to have been made by, or with (if participation is established as a basic right), others for situations in which a person otherwise could not arrange for his or her own enjoyment of what the person has a right to enjoy. An alleged right that did not include a demand for social guarantees, in the sense of arrangements made by, or with, some of or all the rest of humanity, would be a right with no correlative duties, with nothing required of others, and this would not be a normal right at all but something more like a wish, a dream, or a plea.¹⁴

Enjoyment of the substance of the right is socially guaranteed, as our analysis of duties in the previous chapter showed, only if all social institutions, as well as individual persons, avoid depriving people of the substance of the right, and only if some social institutions (local, national, or international) protect people from deprivation of the substance of the right and some provide, if necessary, aid to anyone who has nevertheless been deprived of the substance of the right. Enjoyment is socially guaranteed, in short, only if the three correlative duties constitutive of a right are provided for, as necessary, by social institutions. A person is actually enjoying a right only if the person is living among social institutions that are well designed to prevent violations of the right and, where prevention fails, to restore the enjoyment of the right insofar as possible. Is it, then, true that a person can in fact enjoy, most notably, rights to security and to subsistence in the absence of rights to genuine influence upon the fundamental choices among institutions and policies controlling security and subsistence and, where the person is directly affected, choices about the operation of institutions and the implementation of policy?

All things considered, the answer is no, although some qualifications must be added before we are finished. It is not possible to enjoy full rights to security or to subsistence without also having rights to participate effectively in the control of security and subsistence. A right is the basis for a certain kind of demand: a demand the fulfillment of which ought to be socially guaranteed. Without channels through which the demand can be made known to those who ought to be guaranteeing its fulfillment, when it is in fact being ignored, one cannot exercise the right.

The apparent counter-example of the benevolent dictator is a

case of the enjoyment only of security and subsistence, not a case of the enjoyment of a right to security and a right to subsistence. It is the enjoyment of things that are the substances of rights (security and subsistence), but not *as* substances of rights. What is missing that keeps people under the ideally enlightened despot we are imagining from enjoying rights, and that would be supplied by rights to participate in the control of the substances of other rights, is social institutions for demanding the fulfillment of the correlative duties, especially the duty to provide one vital form of protection: protection against deprivation by the government itself, if it should become less enlightened and less benevolent, in the form of channels for protest, levers for resistance, and other types of protective action by the deprived or potentially deprived themselves. Such action is of course to some degree self-protection, not protection by others acting out of a duty to protect, but what others will have done in fulfillment of their duties in this case is to have cooperated in providing and maintaining in advance of the need for them the institutional means of self-protection through effective participation. And participation is a component not only of the prevention of deprivations of rights but also of the arrangements for securing aid when violations have occurred.

To see why the benevolent dictator cannot provide rights to security or rights to subsistence we need to look at the case more closely. The dictator may of course provide security, subsistence, or both at any given time, but simply to provide something is not the same as to provide it as a right. To provide something as a right means to provide social guarantees for its enjoyment against standard threats, and these guarantees must include adequate arrangements for the effective performance of all three types of correlative duties.

The case of duties to aid is perhaps the weakest, but still sufficient. Certainly aid might be provided to people deprived of security or subsistence even if the victims had no right to participate in any of the arrangements for security or subsistence, including the arrangements for aid. Aid might be provided by individuals and by non-governmental institutions, and it might also be provided even by the dictator's government itself. One item that would be missing without participation would be one of the best sources of information about who needed aid, which kind of aid they

needed, and why they needed it. Information could be requested or spontaneously supplied without the recognition of a right to participation, of course, but it could also be suppressed relatively easily if no right to participation was recognized and institutionalized. And the information made available to the despot directly by victims of deprivation could probably be secured indirectly if the despot were for some reason sufficiently dedicated to staying fully aware of people's needs for aid. Surveys could be regularly conducted, etc., however unlikely it is that any actual despot would be so assiduous in collecting information about expensive assistance needed by people in no position to demand it.

The supplying of information, however, is barely, if at all, a form of genuine participation. A more important item that would be missing without guaranteed participation for the intended recipients of the aid would be a powerful disincentive for the kind of theft of aid supplies for which the Somoza regime in Nicaragua was notorious but which is not at all uncommon.¹⁵ If the intended beneficiaries were not treated as passive, they could do much to restrain bureaucratic corruption. Most important, however, are the detailed knowledge of a local area and the commitment to seeing that their area obtains what it needs that local residents could bring to decision-making about the implementation of general policies.

The cases of duties to avoid and to protect are clearer still. A benevolent dictator certainly might have very efficient arrangements to protect subjects from deprivation by fellow subjects. This kind of law and order could be extremely effectively provided by a dictator who was not corrupt, however unlikely it is in fact that a dictator can for long avoid corruption. The main problem is: how are people to be protected from deprivation by the dictator? One of the critical features of dictatorship is that potential deprivation and potential protection are in the same hands. A dictator might choose to be benevolent by avoiding deprivation of security or subsistence. But even a dictator who had been self-disciplined in the past also might, for any one of a number of obvious reasons, change his or her behavior toward at least some subjects. Against deprivation by a previously benevolent dictator, no defense may be possible in the absence of established forms of participation available to intended victims.

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What the absence of provisions for participation that would allow protest and mobilization of opposition against any deprivation undertaken means is, quite simply, that people who did enjoy security and subsistence would be enjoying it entirely at the discretion of the dictator. And to enjoy something only at the discretion of someone else, especially someone powerful enough to deprive you of it at will, is precisely *not* to enjoy a *right* to it. In the absence of participatory institutions that allow for the forceful raising of protest against the depredations of the authorities and allow for the at least sometimes successful requesting of assistance in resisting the authorities, the authorities become the authoritative judge of which rights there are and what it means to fulfill them, which is to say that there are no rights to anything, only benevolent or malevolent discretion, including the discretion to decide what counts as benevolent.

OTHER LIBERTIES: FREEDOM OF PHYSICAL MOVEMENT

My discussion has concentrated so far upon a kind of liberty that is normally thought of as an economic and political liberty: participation in the control of the economic and political policies and institutions that determine the fulfillment of security, subsistence, and other rights. I have left aside many other liberties, some of which will turn out to be basic rights upon thorough examination. This is not the place for a comprehensive discussion of the varieties of liberty, important as that task is. But it is worthwhile for contrast to look briefly at one very different type of liberty, freedom of physical movement, which was our initial example of a liberty that is itself very satisfying. Does freedom of physical movement also serve as a component of every other right in a way that would make it a basic right?

Most notably, freedom of physical movement is the absence of arbitrary constraints upon parts of one's body, such as ropes, chains, and straitjackets on one's limbs, and the absence of arbitrary constraints upon the movement from place to place of one's whole body, such as imprisonment, house arrest, and pass-laws (as in South Africa), at least within regional boundaries.¹⁶ One might have hoped that something as apparently straightforward as physical movement and its prevention by others could be simple.

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Of course it is not and I cannot pursue many of the complications here. But two complications need to be underlined.

First, some qualification like "arbitrary" is necessary because of cases of physical constraint that are conventionally accepted as morally legitimate, such as straitjacketing a psychotic who would otherwise mutilate himself or herself until tranquilizers have had time to take effect, and imprisoning common criminals after prompt and fair trials. But the use of "psychiatric terror" in the USSR, for example, means that even the question of "treating psychotics for their own good" must be handled with care.¹⁷ And practically every repressive regime in the world holds that those whose rights to freedom of physical movement, among other things, it is violating are common criminals, terrorists, traitors, subversives, etc. But since these problems are widely recognized, I will not pursue them and will simply assume that we have some rough but workable notion of due process in the commitment of the allegedly psychotic or criminal to mental institutions, prisons, or house arrest.¹⁸

Second, the qualification "at least within regional boundaries" is needed simply to reserve for other discussions two extremely important matters that—this is the only point here—are not *simply* matters of freedom of physical movement and would therefore require extensive, separate analysis. One is the conscription, usually of youths, for public service in places they would not themselves choose to go. This includes practices like the traditional U.S. system of military conscription that sends youths outside their own country to fight and the Chinese system of peacetime conscription that sent youths to other regions within their own country to serve in agriculture, etc.¹⁹ The other matter is the right of emigration and the relatively neglected but necessarily related right of immigration. I will simply not pursue questions about the status of these further liberties here, but will look very briefly at the simplest case: freedom of physical movement within the general area in which one is already living, free of arbitrarily imposed chains and walls.²⁰

Freedom of physical movement is so clearly satisfying in itself that it is initially somewhat difficult to focus on the question whether it has the kind of value as a component of other activities that qualifies it to be the substance of a basic right. Obviously free

movement has great value as a part of many kinds of enterprises, but is it actually true that the enjoyment of freedom of physical movement is necessary for the enjoyment of every other right? Examples readily come to mind of other rights that one could evidently enjoy while, for example, in prison. For instance, at least some composers could, provided they were supplied with the necessary equipment, enjoy even a particularly valuable other kind of liberty, namely freedom of expression, and perhaps create radically new musical forms. As long as the length and severity of the prison sentence was unrelated to the content and style of the composition and the composer did not need contacts unavailable in prison, some hardy souls could—indeed, some have—let their imaginations soar in spite of the imprisonment of their bodies. The followers of at least some religions, even if they were denied equipment they might prefer to have (books, altars, etc.), could—once again, often do—still believe as they wish, meditate, pray, and sing, provided that their sentences are not based upon or affected by their religion. As long as people are not being tortured, beaten, exploited for labor, or otherwise harrassed, they can enjoy quite a few activities, especially what might be called the solitary intellectual liberties, like individual creativity requiring only modest material needs and like the individual aspects of religion and contemplation.²¹ We have an entire genre of prison literature, much of it fine and much of it very free in spirit. Indeed, the free spirit in the shackled body is a recurrent theme of poetry and folklore.²²

Yet, these examples are, I hope, not very compelling. Certainly the aspiring composer can be supplied with pen and ink, with a turntable and records too perhaps. But he or she can as well so very easily be deprived of them all. The records, the writing hand, the eardrums, even the spirit, can all fairly easily be broken. And there is no need actually to break things: the materials can be politely removed, the person instructed to write nothing, and the instruction enforced, as necessary. Much can be permitted and everything can be prohibited. With contemporary drugs the most independent mind can readily be plunged into nightmare and chaos. And it is all dependent upon the wishes of people other than the prisoner, upon whoever is in power. Vulnerability and

dependence, helplessness in the face of all serious deprivations, are the normal fate of at least the arbitrarily imprisoned.²³

The argument here can be telescoped, since the argument about freedom of movement can now be seen to be the same as the argument about participation. Yes, even in the absence of a right to freedom of physical movement, people can enjoy the substances of many rights. But they cannot enjoy them as rights, only as privileges, discretions, indulgences. Deprivation can occur as readily as provision, and this is not what enjoying a right means. A right provides the basis for a demand the fulfillment of which ought to be socially guaranteed, and a right can be enjoyed only where individuals and institutions avoid deprivation, protect against deprivation, and aid any who are nevertheless deprived. A right can be enjoyed only where, to the extent that individual action will not guarantee the substance of the right, institutions are available to do it. A person is not enjoying a right when he or she is enjoying the substance of a right in total dependence upon the arbitrary will of others. To enjoy a right is to exercise it within institutions that effectively protect one against deprivation of it, especially deprivation by those with the most power in the situation. And effective protection must include channels through which those whose rightful demands have not been satisfied, can in fact repeat and insist upon their demands until they are fulfilled.

No one in the state of vulnerability and dependence of the arbitrarily imprisoned is in any position effectively to make even the demands for the things that are rights. The arbitrarily imprisoned are at the mercy of their captors. They cannot flee and they cannot fight, and they certainly cannot make demands. To be deprived of freedom of physical movement is to be deprived of the independence essential to the kind of self-protection needed as part of any adequate institutions for performance of the duty to protect. If one is in no position to make demands (deprived of freedom of movement) or if one has no channels through which to make demands (deprived of liberty of participation), one cannot effectively make known—or, more important, organize resistance to—failures in the performance of duties to avoid, duties to protect, or duties to aid. Therefore, the freedom of physical move-

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ment, as well as the liberty of economic and political participation, are basic rights, because enjoyment of them is an integral part of the enjoyment of anything as a right.

PATERNALISTIC DICTATORSHIP REFORMED?

The varieties of liberties are so numerous that an exhaustive consideration of which liberties are basic liberties would require an extensive and, for my purposes, unnecessary further analysis. My purpose is to explore reasonably fully the structure of the fundamental argument for any judgment that something is the substance of a basic right and the specific application of that argument to subsistence, which is customarily ignored by theorists around the North Atlantic. And we have now seen that fundamentally the same argument originally given to support the judgment that security and subsistence are basic rights also supports the judgment that liberty of participation and freedom of movement are basic rights as well. Unfortunately, the argument has a weak spot, when applied to liberties, that it does not have when applied to security and subsistence. Before we leave the subject of liberty this difficulty ought to be noted, although it is not, I think, in the end fatal.

Rights provide the basis for demands, but it is useful to distinguish the content of the demand from the act of demanding, or the making of the demand. One may demand one's rights, but obviously one may in addition, or instead, demand someone else's rights—that is, demand that someone else's rights be fulfilled for him or her. Conversely, and more importantly here, someone else may demand one's own rights on one's behalf. Many a lobbying group acts on behalf of the rights of people who are not in the group.

Now this practice reflects the fact that it is not a necessary condition of obtaining fulfillment of a right that one be in a position oneself to make the demand for the substance of the right. Some controversy exists about whether animals and future generations of human beings, for example, have rights. If they were to be declared not to have rights, it could not be for so simple a reason as that they are not able to press on their own behalf the demands for the substance of their rights. On the contrary, we tend to believe

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that it is precisely those who are most vulnerable to deprivation and are most powerless to resist it, like the unconscious person, the torture victim, and, perhaps, animals and unborn generations, for whom it is of the greatest importance that duties to protect and to aid be performed. A major purpose of rights, after all, is to protect against deprivation those unable to protect themselves, and to aid when protection fails. It is ironical but essential that a right provides the basis for a demand sometimes made on behalf of, and often made by, those with little or no power themselves to press it upon the individuals and institutions who have the correlative duties to fulfill the right but prefer to ignore it and their own duties.

Now this fact that people do not need to have obtained the substance of a right for themselves in order to enjoy it is the source of difficulty in justifying the acknowledgment of participation and free movement as basic rights. For it seems that people would also not need to participate in obtaining something for themselves in order to be able to enjoy it as a right. The reply on behalf of accepting participation and free movement as basic rights was, in essence, (1) that full performance of the correlative duty of protection that is necessary to complete fulfillment of a right must include the building and maintaining of effective institutions for self-protection as the ultimate barrier against deprivation, and (2) that self-protection involves both physical movement and political participation.

Unfortunately for the case in favor of accepting liberties as basic rights, (2) is much more obvious than (1). Certainly self-protection, or the defense of one's own rights, depends on physical mobility and effective political influence (and possibly other liberties as well). But it is less clear that adequate protection must include mechanisms for self-protection. Why not, instead, simply make the protection so thorough and effective that no self-protection is ever called for? It might be suggested, for example, that the importance of protection merely establishes the need for some kind of system of checks and balances, which could be non-participatory. Indulging the fantasy of the benevolent and uncorrupt dictator a little further, we could perhaps imagine a dictator who established in at least partly independent form either an ombudsman or even a judicial system with some authority to

protect people against abuses by the rest of the regime. Our despotic caterpillar is now on the verge of becoming a restrained butterfly, and it is progressively less certain why the government we are imagining should continue to be called a "dictatorship." But leaving aside worries about labeling the example, we can certainly note the abstract possibility of a rule of law protecting rights without any genuine influence by those with the rights on fundamental decisions about the institutions embodying the rule of law or the implementation of the institutions' policies.

The quickest way to indicate the practical inadequacy of this model of the non-participatory rule of law is simply to recall, for example, the Vorster regime in South Africa, which used an elaborate and, in many respects, rigorous system of rule of law precisely as an instrument for the deprivation of rights to both security and subsistence of members of the majority of the population, who could not effectively participate in the federal government.²⁴ It is barely conceivable, it might be conceded, that a paternalistic dictatorship might go so far as to establish a genuinely independent legal system that could in some respects restrain even the dictator. But what if, as in South Africa, the legal system is itself carefully designed to maintain and protect, not rights, but a systematic pattern of gross violations of security rights and subsistence rights, as well as rights to liberty?

It would appear that, however many levels of checks and balances are built into a political and legal system, institutions providing for participation are almost invaluable as the ultimate monitors and brakes upon the substantive results of the procedures. To put the point in its most abstract form, we have no reason to believe that it is possible to design non-participatory procedures that will guarantee that even basic rights are in substance respected. Consequently, whatever the non-participatory protective procedures, it will always be important to have other procedures or institutions that allow the people who have assessed the usefulness of the protective procedures (and also of the participatory procedures themselves, of course) on the basis of whether they themselves can in fact exercise their rights, to act upon their assessment in some influential way. The "bottom line" is the extent to which people's rights are enjoyed, and however many ranks of official watchdogs may be established, the crucial infor-

mation lies with the people whose rights are the alleged object of all the official attention. These people may not care enough to participate effectively, even if channels are available, especially if long denials of rights have crushed their spirit. We have, however, no reason at all to suppose that the official watchdogs and official maintainers of checks and balances will in general have a deeper level of commitment to seeing that people can enjoy their rights than most of the people with the rights, and no reason not to add the ultimate check of political participation. The participatory institutions should, accordingly, be in general at least as effective as any other institutions for detecting and resisting violations of rights.

The lack of any certainty that arrangements for participation in choices among institutions and policies controlling security and subsistence will enable everyone to enjoy security and subsistence may appear to undercut this part of the argument for acknowledging participation as a basic right. The underlying argument for the importance of participation has been that participation is always essential for retaining security, subsistence, and other rights, as rights, because it is a vital component of protection. Now it is being admitted that even if rights to participation are guaranteed and used, all this may still fail to guarantee everyone's rights. This is even more obviously true of freedom of movement. Is it not being conceded that participation and free movement may not serve the purpose invoked to justify guaranteeing them?

It is indeed being granted that even the enjoyment of a right to full participation may fail to retain for people the enjoyment of their other rights—even their other basic rights. But the reason being advanced here in favor of acknowledging participation as also a basic right is not that the exercise of a basic right of participation is sufficient for the exercise of other rights, but that it is necessary. The case for judging that participation is indeed necessary, especially for the fulfillment of the duties of protection correlative to every right and for the fulfillment of the correlative duty of every government not to deprive people of the substance of their rights, has now been made. This case is in no way weakened if, in spite of being necessary, full participation is not also sufficient for creating conditions in which people can exercise their other rights. The same is true for free movement.

In general, if more than one condition is necessary, no one condition can be sufficient (because something else is also necessary). Our earlier arguments that security and subsistence are each necessary for the exercise of all other rights—and are therefore basic rights—had already established that no other condition could by itself be sufficient. In fact, we have little reason for confidence that even the enjoyment of all these basic rights—security, subsistence, participation, and freedom of movement—is sufficient, as a set, for the enjoyment of any other rights. But it is very clear that the absence of any of these basic rights is sufficient normally to allow the thwarting of the enjoyment of any other rights, and that is why each of these is a basic right.

Something of a soft spot, however, remains in this argument for participation and in the structurally identical argument for freedom of movement. At the practical level there is no room whatsoever for doubt that no non-participatory system of government will ever be so paternalistically solicitous of the safety and welfare of the population under its rule that members of the population would not find extremely valuable some very solid mechanisms for participation in the arrangements for their safety and welfare. Where are people safe and well-nourished by the grace of their self-disciplined and solicitous dictators? The Philippines? Kampuchea? Indonesia? Brazil? South Africa? Ethiopia? Haiti?

At a purely speculative level it is nevertheless imaginable that some non-participatory system of protection might somehow be as effective as the best participatory system possible in the same circumstances. Perhaps there could be something like a system of advocates, as if everyone always had a court-appointed attorney-cum-bodyguard to prevent failures in the fulfillment of his or her rights, and each person would be better looked after by his or her respective personal advocate than through any efforts at self-protection. We need not try to design a seemingly realistic institution, since the theoretical point is clear in the abstract. The one aspect of the hypothetical example that must be quite definite, however, is that it is not simply that most people happen not usually to participate actively in making arrangements for that to which they have rights. Probably most people everywhere do not in fact usually participate in making arrangements for fulfillment of their rights. What counts about the hypothetical example is that, whatever else is said about the people's enjoying rights, they

do not have the right to participate in the arrangements for fulfilling the other rights that they are said to have, even if they want to participate.

What I am calling the soft spot in the argument at the theoretical level, then, is the fact that it is not utterly inconceivable that some set of institutions without a basic right to participation might turn out to protect people's other rights as well as, or better than, the most effective participatory institutions do. However unlikely this is in practice, it is not evident how to rule out the theoretical possibility within the terms of the present argument. Roughly the same is true of the right to freedom of movement. Some regime that was otherwise marvellously benign but did not want its citizens moving about freely might confine everyone to a type of house arrest—it might, say, have a permanent curfew with the requirement that everyone be in his or her appointed place every evening at curfew unless given special permission to be elsewhere—but guarantee to everyone the enjoyment of everything other than freedom of movement (and participation in decisions about whether there should be freedom of movement) to which people have rights. Once again, this does not seem to be unimaginable, although I will not pause to fill in all the details, and, because it appears to be conceivable, it cannot be ruled out as, in this sense, possible. These extraordinary hypothetical examples, however, seem to me to give little guidance for ordinary actual cases. Hence, I believe the argument for treating the two liberties I have considered as basic rights remains secure.²⁵

Meanwhile, it ought to be emphasized how high a hurdle any would-be paternalistic dictator would be attempting to leap if the dictator tried to meet the terms of this argument. All that it has been necessary to concede is this: if a regime actually provided better protection for every right, including of course security rights and subsistence rights, except rights to liberties like political participation and freedom of movement, than any of those rights would receive if rights to liberties were acknowledged and honored, then the regime's failure to provide for liberties would be permissible, other things being equal.²⁶ *The minimum standard is a higher level of protection for every other right.* I do not expect ever to see such a regime, and I certainly would not allow any dictator with such pretensions the chance to experiment with me, given the weight of the historical evidence against success.²⁷