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ON BEING OBLIGATED TO GIVE AID: MORAL AND
POLITICAL ARGUMENTS.

CITY UNIVERSITY OF NEW YORK, PH.D., 1978

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ON BEING OBLIGATED TO GIVE AID:
MORAL AND POLITICAL ARGUMENTS

by
JUDITH ANN LICHTENBERG

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This manuscript has been read and accepted for the Graduate Faculty in Philosophy in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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CHAPTER I

INTRODUCTION

In a recent essay, Ronald Dworkin distinguished two kinds of argument within political theory that together comprise "the major grounds of political justification."¹ Arguments of policy "justify a political decision by showing that the decision advances or protects some collective goal of the community as a whole." Arguments of principle, on the other hand, support a decision by showing that it "respects or secures some individual or group right."² The core of this distinction is not new; for moral philosophy in general can be seen as embodying two broad kinds of argument corresponding to those Dworkin describes. Teleological arguments justify a decision by showing that it maximizes some good, like welfare, happiness, or self-realization; deontological arguments support a conclusion by showing it to accord with a rule of morality, by showing it to be right.

But although the distinction is not new, it is still

¹"Hard Cases," in Taking Rights Seriously (Cambridge: Harvard University Press, 1977), p. 83.

²Ibid., p. 82.

informative: it tells the would-be political advocate what he will have to do to make his case. For a political program of any complexity will, as Dworkin notes, require both kinds of arguments to justify it. This fact legitimizes a practice one might otherwise regard with suspicion. Proponents of one or another political or economic view invariably are found to maintain that the system they favor both satisfies the demands of justice and individual rights, and also promotes the goals of the community more successfully than (or at least as successfully as) any competing system--as if under the improbable assumption that all right and good things are compossible. So, for example, defenders of a free market economy will say that only a market system protects individual rights (property rights will be stressed), and also that, as a matter of fact, such a system does more to improve the lot of the worst-off than ostensibly more egalitarian systems--not, of course, through any design or good will on the part of entrepreneurs, but as a result of the natural operation of market forces on the self-interested acts of individuals. Likewise, socialists will insist on the unique capacity of socialism to secure distributive justice and human rights; and they will argue as well that the essential forms of well-being are best advanced in a socialist society. (If doubt arises about whether a socialist system can compete with capitalism's ability to satisfy material demands, nonmaterial goods may be emphasized.)

There is, again, on the face of it something suspect in this assumption of a neat coincidence of the stricter demands of morality with the claims of welfare; one is inclined to call into question either the good faith or the judgment, or both, of those who make it. But although skepticism may be warranted in particular cases, on further reflection the assumption comes to seem more plausible. For no political program could survive if it didn't succeed to some extent in embracing both the "right" and the "good"; and the extent to which a political plan does this may transform it from a mere possibility to an ideal worth striving for. An ideal is an ideal because it is perceived to be able to satisfy the strict demands of right conduct while at the same time enlarging the possibilities for human beings.

This is perhaps just to make Dworkin's point over again: the justification of significant political decisions requires both arguments of principle and arguments of policy. But although true, this statement may be misleading. For there is a certain asymmetry between the two forms of justification. Arguments of principle, which refer to some individual or group right, have what might be called an "imperative advantage" over arguments of policy. This is for the reason that, in Dworkin's words, "individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish,

as individuals, to have or to do, or not a sufficient justification for imposing some loss or injury upon them."³ So demonstrating that an economic or political policy violates somebody's right has a certain finality about it: it constitutes a damning judgment on and conclusive argument against that policy. Rights set the limits of the permissible. Arguments of policy are, by contrast, typically less absolute, more a matter of degree.

The shortest route to discrediting a political system, then, is to show that it would violate the fundamental rights of some person or group; no further words need be wasted. But the directness of this approach is not its only virtue. For it focusses on the critical moral disagreements that usually divide proponents of competing political and economic views, disagreements that are often obscured by the unresolved practical and factual controversies that also separate them--about what arrangement is more efficient or maximizes welfare. In terms of the overall justification of economic policies and social arrangements, the latter are very important. But underlying these questions there is almost always a wider and in principle less bridgeable gulf between advocates of competing political views: a different conception of individuals' rights against and obligations to each other and the state.

³Taking Rights Seriously, introduction, p. xi. The term "imperative advantage" is mine, not Dworkin's.

It is this kind of basic moral controversy underlying competing political conclusions that is the subject of this dissertation. The question is whether the state may coerce one person to aid another, or whether coercion for such purposes violates individuals' rights. Many questions can be raised about the merits of a policy of compulsory aid-giving: about its practicality, its desirability, its efficiency as a means to some agreed-upon goal.⁴ But prior to these questions it has to be established whether the state has the moral right to coerce one person to aid another. If it does not have the right, these other issues are immaterial. If it does, they still remain to be resolved; and the implementation of any policy will depend on how they are resolved. One might decide that, after all, legal sanctions are not the most effective way of achieving the desired goal, or even that the enforcement of assistance creates more problems than it solves. But rejection of a policy on these grounds is a very different matter from rejection on the grounds that in carrying out the program the state goes beyond its

⁴Answers to these questions will depend in part on the particular form that aid takes. Although the appropriate form of aid depends to a large extent on empirical questions to be resolved by economists and other social scientists, some clues are given in the aims and values underlying the requirement that aid be provided. It will be suggested in chs. V and VI that these favor forms of assistance that permit recipients to become free from the need for aid, as against forms which perpetuate dependence.

permissible limits, that in doing so it transgresses the sacred area of individual rights or human freedom.

Recently, Robert Nozick has argued that (a) the state may not coerce one person to aid another, because (b) in so doing it violates the rights of those individuals who are coerced.⁵ Nozick has made explicit a view that operates at the level of feeling in many people; it is largely on the basis of this view that socialism is regarded by them as morally illegitimate. According to this conception, the enforcement of aid-giving involves taking what rightfully belongs to one person and giving it to someone who has no right to it. If Nozick's defense of this view were successful, the issue of coercing people to give aid would be closed; the conclusive argument against it would be made. I believe he is wrong on both counts: individuals do not have rights that are violated by being forced to give aid; and the state may coerce them to do so. The defense of these assertions is the aim of this dissertation.

What does it mean to give aid? What part does the acknowledgment or refusal to acknowledge the state's right to coerce to give aid play in the justification of a political view?

It may be easiest to understand how I am using the term 'aid' by contrasting it with something else that can

⁵Anarchy, State, and Utopia (New York: Basic Books, 1974), p. ix.

be given, viz. compensation.⁶ Let us say that the conclusion that A owes x to B is based on a principle of compensation if it is supported by showing a causal connection between some behavior of A's and a harm or injury to B. Compensation is due to B on account of the effect of A's behavior on him; compensation is compensation for the injury done. By contrast, I will say that the conclusion that A owes x to B is based on a principle of aid if (or to the extent that) it is not supported by showing such a causal connection. In the argument that one person owes aid to another, any causal connection between A's prior conduct and B's present situation is irrelevant.

Arguments from the principle of compensation are in one sense at least uncontroversial. Adherents of political doctrines all along the spectrum can agree that if the action of some individual or collective entity has significant and harmful consequences for others, then compensation is owed to those harmed. Disagreement resides not in acceptance of the principle itself but in its application: in the

⁶'Aid' and 'compensation' seem to be the closest approximations to what I want to signify; but I don't claim that my use precisely reflects ordinary usage at every point. Certainly one does not strictly imply the irrelevance of any causal relation between A's conduct and B's plight in the assertion that A should aid B. But nor does one imply a causal relation or its relevance; and I would say there are loose suggestions of the independence of 'aid' from causal responsibility. This use, anyway, is consistent with Nozick's--so we are arguing the same issue.

questions of what actions are harmful, who has done them, and to whom. No one argues that it is all right to pollute the air that others breathe; one disputes what pollutes the air, and whether he has done that. Many of the controversies surrounding compensation are factual ones: Did x cause y? (Do x-type events cause y-type events?) Did A do x? Where many have done x, what is the contribution of A's doing it to the harm done? To call these problems factual is not to minimize their importance or their difficulty; it is rather to emphasize that their resistance to solution results from a deficiency of information or knowledge. Of course not all problems in applying the principle of compensation are factual. Since the principle is essentially dependent on the notion of a causal relation, philosophical disagreement about causation will be reflected in different views of compensation. Some people will argue, for example, that benefitting from an arrangement one has not brought about constitutes a causally relevant contribution to that arrangement; others will deny this. Moral assumptions cannot be altogether avoided here. In any case, differing views of causal relevance, whether based on moral or nonmoral considerations, will bear significantly on conclusions concerning who owes what to whom.

But while it is at least uncontroversial that harming someone creates an obligation to redress the harm, the very moral status of the principle of aid is, in the Western

tradition at least, open to question. Although everyone can agree that it is desirable for people to give aid--a practice to be praised and encouraged--many will deny that it is obligatory to help someone whose predicament one has had no part in bringing about and/or that the state may force one to do so. (The connection between the obligatoriness of giving aid and the permissibility of coercing people to do so will be elaborated in chapter II.) The absence of any causal contribution is thought to make all the difference.

The idea that giving aid does not properly fall within the realm of the obligatory is reflected in the common reactions of philosophers and nonphilosophers alike upon learning of my interest in the subject of giving aid. The inference is often made--and not on the basis of a particular moral or ideological view--that the subject of this investigation is what philosophers call the supererogatory; in ordinary talk, what is "above and beyond the call of duty." Among philosophers, this conclusion may be explained in part by the traditional description 'benevolence' or 'beneficence' under which moral philosophers normally included injunctions to assist others. Even when such injunctions were thought obligatory, the suggestion that one who gives aid does more than fulfill minimum moral requirements is hard to avoid when these actions are described as benevolent. The identification of aid-giving with

benevolence or goodness and therefore with conduct above what is minimally acceptable may also be fostered by some general linguistic features of the way we talk when we talk about giving aid. It is easy to make the assumption that to do (when it is not to do harm) is to do good: ontological or verbal positivity is taken for moral. (See chapter III for further discussion of this kind of misidentification of one dimension with another.) Of course in one sense to give aid is to do good: it is to benefit someone, to make him better off; certainly it is not to do bad. But 'doing good' may misleadingly suggest more than this.

The thesis defended here is that some instances of giving aid are obligatory in precisely the same sense not causing harm is. This is not, then, an inquiry into the problem of supererogation.

The independence of the principle of aid from causal questions makes the subject an ideal one for philosophical inquiry. Without the intrusion of these highly debatable issues--about which philosophers do not have expertise anyway--the purely moral issues can more easily be isolated. When it comes to the overall justification of policy, of course, these nonmoral issues again become important. Practical conclusions are likely to be based on complex considerations involving both aid and compensation. Just as defenders of a political or economic view are found to claim that their program satisfies both the demands of justice and individual rights and those of welfare, they are

likely to support conclusions about the extent of redistribution with arguments from both aid and compensation. Libertarians are inclined to minimize economic interdependence, express skepticism about the validity of ascribing causal connections between complex events involving large numbers of people, and reject the view that one who benefits from a situation he has not created makes a causal contribution to it. In addition, they will repudiate the moral principle of aid. Socialists and egalitarians will adopt the contrary family of views on the causal and factual questions; where skepticism about making causal ascriptions leads some to abstain, they may instead choose to err on the side of assuming responsibility rather than not assuming it. And on the purely moral question, they are likely to argue that even where it is clear that one has no causal responsibility for a bad situation, one may still have a moral responsibility to move to alter it.

The question of the state's right to coerce one person to aid another has not only a literal but also a kind of symbolic--representative, not metaphoric--significance. To explain this fully will require an elaboration of the connection between the denial of the thesis defended here and one's view of what natural (i.e. uncontracted) rights people have. In chapter III it will be argued that the conclusion that the state may not coerce people to give

aid depends on the assumption that people have negative but not positive natural rights.⁷ Negative rights are rights to noninterference, to the forbearances of others; positive rights are rights to others' actions or, in Nozick's phrase, rights "to be in a certain material condition," which dictate others' actions. The acknowledgement of positive natural rights is a kind of benchmark which crucially affects one's political conclusions. The negative/positive split also arises in connection with the pivotal issue of freedom. At the heart of this split, it will be argued, is the question whether there is a necessary moral difference between action and omission and therefore between prohibitions against actions and prohibitions against omissions. This will turn out to be the central moral question of this dissertation. If it can be shown that action and omission are in principle morally equivalent, the assumption of only negative and not positive natural rights and the emphasis on negative and not positive freedom will be undermined, and the conclusion that the state may not coerce people to give aid will be shown unjustified.⁸

⁷The arguments of this dissertation are all addressed to those, like Nozick, who deny that the state may coerce people to give aid while admitting its right to coerce in other cases. The anarchist who refuses to grant legitimacy to any state coercion will remain unaffected by what I say.

⁸See ch. III for a discussion of the implicit assumption of a moral difference between action and omission in political argument (especially in Nozick); chs. IV and V for an examination of its legitimacy; ch. VI for an inquiry into its workings in arguments about freedom.

The term 'aid' is general; there is no indication from it alone what in particular is given. In fact, the significant piece of information is communicated by the verb in 'giving aid': giving _____ would serve equally well. The question concerning natural rights and obligations is whether people have a right to get, or only to be left alone; whether they have an obligation to give, or only to forbear from acting in certain ways. A natural right to receive aid or an obligation to give it can be understood as a stand-in for other positive natural rights and obligations; the demonstration of such a right is a vindication of positive natural rights generally.

I have chosen to frame the problems under investigation here in terms of rights and obligations. Talk in terms of rights has become so pervasive both within moral and political philosophy and also outside it, throughout the culture, that the adoption of this framework may, on the one hand, seem not in need of explanation or justification, or, on the other, may appear to be an unthinking response to the fashion of the day. Everyone talks of rights, asserts them when a strong moral claim is felt, insists that his are violated when faced with an especially noxious course of action.

Some may decry this trend, thinking this use of the concept of a right a misuse. But it is consonant with the

view of rights and obligations developed here (see ch. II), according to which talk in terms of rights and obligations is primarily a way of asserting what is morally permissible and impermissible, morally necessary and forbidden. The primary meaning of 'right' and 'obligation', it will be argued, is what can be called imperatival; so their rhetorical use is quite appropriate. (This doesn't mean, of course, that any particular assertion of a right is valid or justified or true.)

At the same time, what is said here in terms of rights and obligations could have been said without them. Although, in virtue of their imperatival meaning, rights and obligations embrace that part of morality which is most fundamental, in another way rights and obligations are not fundamental. On some ethical theories, rights are conceived as fundamental in the sense that they are not reducible to anything else and not explainable in terms of anything else; rights are that on the basis of which reasoning about morality proceeds. So Nozick, for example, opens Anarchy, State, and Utopia with the assertion "Individuals have rights, and there are things no person or group may do to them."⁹ On this kind of moral view, there is no further

⁹Nozick, p. ix. One may wonder whether this is a fair characterization of Nozick's (and others') view. It may seem implausible that the mere assertion of a right can be thought to be the final resting place of a process of justification in the way this suggests; it may seem more appropriate to a morality based on God-given commands (which may in fact be the origin of this kind of moral view). But

back, no deeper one can go than individual rights. By contrast, on the view developed here, rights, though fundamental in the sense that they embody morally overriding claims, are not the conceptual starting place but the end of a complex process of determinations. It is always appropriate to ask why someone has a certain right; and the answer is likely to require considerations of welfare or other teleological notions. Justification only begins with the assertion of a right. So in this way rights are not fundamental but derivative.

The general strategy of the dissertation is as follows. In chapter II the relation between the legitimacy of state coercion generally and individuals' rights and obligations is discussed; and an analysis of 'right' and 'obligation' is given. In chapter III it is argued that the view that the state may not coerce people to give aid, though it may coerce them to refrain from doing certain things, presupposes a necessary moral difference between action and omission. This undefended assumption is revealed at various levels of political and moral argument, most concretely in the denial of positive but not negative natural

apart from a few remarks about the sanctity of the individual--which don't explain why they have the particular rights Nozick thinks they have--no deeper justification is to be found in his theory. And this, I hope to show, is no accident; for once the move to go "behind" rights is permitted, the all-or-nothing view expressed in Nozick's work is begun to be undermined. See chs. III-V.

rights. In chapter IV I argue that this crucial assumption is mistaken. Doing so involves what is really an inquiry into the grounds of moral rights and obligations. It is argued that what makes us say there is a right to nonaggression (and an obligation to refrain from aggression) ought also to make us say there is, in some situations, a right to positive action (and an obligation to act). Having argued that there is no necessary difference between action and omission, in chapter V I try to show that, for some crucial kinds of cases, there is no nonnecessary but significant practical difference between them such as would arise from the correlation of action or omission with morally relevant features.¹⁰ In chapter VI, I discuss the question whether coercing people to act is an undue curtailment of their freedom, or significantly different from coercing them to refrain from acting. In addition, some of the nonmoral arguments against coercing people to give aid--those concerning, e.g., the appropriateness, efficiency, or desirability of doing so--will be considered.

¹⁰See ch. IV, sec. 1, for a discussion of the meaning of necessary and practical differences, among others.

CHAPTER II

THE STATE'S RIGHT TO COERCE AND INDIVIDUALS' RIGHTS AND OBLIGATIONS

The thesis to be advanced in this dissertation is that if individuals have negative rights (rights to non-interference or to forbearances) and negative obligations (obligations to refrain from interference or aggression), then they also have positive rights (rights to things or to the actions of others) and positive obligations (obligations to act);¹ and if the state has the right to coerce people to fulfill negative rights and obligations--to forbear from doing certain things--then it also has the right to coerce them to fulfill positive rights and obligations--to do certain things. But before these substantive issues can be approached, several issues must be resolved and questions answered. What does it mean to say that someone (or some entity) has a right or an obligation? Are there different kinds of rights? How do obligations differ from other imperatives (if they are imperatives)? How are rights and obligations related? What is the

¹ I.e. natural--uncontracted--rights and obligations. The status of contracted positive rights and obligations is not controversial. See below, ch. III, pp. 51-52.

connection between the rights and obligations of individuals and the right of the state to coerce them? Section 1 is about rights; section 2 is about obligations; and section 3 considers the relation they bear to coercion by the state.

1. Rights and Rights

The concept of a right is ambiguous, in both its ordinary and its philosophical use. In one sense, to say of someone that he has a right to do something is just to say that he may do it; one might instead say that he has no duty not to do it or that it would not be wrong for him to do it. Even if it turns out that such rights have value or are meaningful only if accompanied by constraints on other people, it seems clear that in asserting a right a speaker does not necessarily imply any such constraints. Often, however, when a person asserts a right (to do or not do, to have done or not have done), he means to say something about the constraints that this right puts on others. Perhaps most assertions of rights in the context of moral and political argument are of this sort. An individual right such as a right against physical aggression involves essentially a claim about what others may and may not do: one could not "mean" such a right without "meaning" these constraints on others.

In philosophical discussion, the ambiguity of 'right' is reflected in the question whether rights and obligations are correlative: whether for every right there must be a

corresponding obligation and vice versa.² This is of course a question of words; we can choose to use 'right' and 'obligation' in such a way that a correspondence is preserved, or we can choose not to. Why should we decide one way or the other? The answer has at least partly to do with the role the concept of a right has played and continues to play both in moral and political thought and in political action.

One could not make sense of individual rights and their place not only in political theory but also, what is equally important, in the drama and rhetoric of political activity, without construing the assertion of such rights typically to be assertions of what is morally binding, rather than merely what is permissible. What people have rights to in this sense is what they must have, what they cannot be denied.³ Recall again Dworkin's definition of a right: individuals have rights "when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or not a

² Discussion of this basic issue may be found in, e.g., W. D. Ross, The Right and the Good (Oxford: Clarendon Press, 1930), app. 1: "Rights." The ambiguity of 'right' exists also in its adjectival form, which, as J. N. Findlay notes, is used "to cover both the permissible and the genuinely binding or pressing." (Values and Intentions (New York: Humanities Press, 1961), p. 338.)

³ Thus it would seem to be pointless or self-defeating to talk in terms of rights but not give them some kind of moral priority (as Thomas Nagel recently suggested one might do).

sufficient justification for imposing some loss or injury upon them."⁴ These rights, which may be called strong rights, have strings attached to them; they essentially involve bonds or constraints on other people. So one cannot determine whether someone has a strong right without following out the implications of his having it for the ways it limits the behavior of others. For it is here mainly that controversy lies. The assertion of this or that right would be relatively innocuous were not someone constrained by it to do or forbear from doing certain things. It is because the difficulties attaching to the assertion of a right are primarily connected with those who would thereby be obligated to act or forbear that the focus in this investigation is on obligations rather than rights. (The possibility will be left open that there are obligations without corresponding rights. But, though it is not crucial to my argument, for the cases considered a corresponding right will usually be clear.)

A strong right, then, is really an element in a relation, the other element being a duty or obligation of another person or persons. The rights asserted by political philosophers, politicians, revolutionaries, and the like are clearly rights of this kind. A right to life means at least that others may not kill you; a right to a positive good (if there are any) such as sustenance or education means

⁴P. xi.

that these goods must be provided for you.⁵ But it may not always be clear in the statement of the right who is obligated to fulfill it; so it's easy to win friends while saying nothing by invoking rights.

This discussion may lead one to ask whether there are any rights that are not strong rights; or, put another way, whether there is ever a point in talking about rights that do not imply constraints on other people. What good are rights if they have no concrete implications for how people must act? Don't they in that case represent nothing more than the expressions of hopes or ideals? What does a "permission without a protection"⁶ come to?

The standard example of a weak right, or liberty, is problematic. Hart describes such a case as follows:

Two people walking along both see a ten-dollar bill in the road twenty yards away, and there is no clue as to the owner. Neither of the two are under a 'duty' to allow the other to pick it up; each has in this sense a right to pick it up. Of course there may be many things which each has a 'duty' not to do in the course of the race to the spot--neither may kill or wound the

⁵I.e., if you want what is yours by right. On most views of rights, there is an implied connection between the content of rights and a person's preferences (see again Dworkin's definition just above). One does not have to accept what one has a right to.

⁶Joel Feinberg, Social Philosophy (Englewood Cliffs: Prentice-Hall, 1973), p. 82. The distinction between rights proper and liberties or privileges, earlier made by Hohfeld, is clearly set out by Arthur Corbin, "Legal Analysis and Terminology," Yale Law Journal 29 (1919).

other--and corresponding to these 'duties' there are rights to forbearances.⁷

But it is not clear that we should say a person in these circumstances has a right to pick up the money. His right is a right to try to get it. But the right to try is a strong right--a right supported by various ongoing obligations and prohibitions. You may do anything that is normally permissible to get to the money first; you may not do anything not normally permissible; likewise for anyone else. If you succeed in getting to the money first while abiding by the usual rules, you then may acquire a strong right to it; until then you have no right to it, although you have other rights which may facilitate your getting it. So to say you have a right to pick up the money means only that there is prima facie no reason (e.g., its belonging to someone else) why the legitimate exercise of your strong rights may not give rise to your having a strong right to the money.

But if Hart's example is not a clear instance of a weak right, there is another context in which talk about rights that do not carry correlative obligations may be meaningful: not the normal areas of competition to which he refers, but rather situations of extreme scarcity, where there is not enough of some necessary good, like food, to

⁷H. L. A. Hart, "Are There Any Natural Rights?," Philosophical Review 64 (1955): 175-91. Reprinted in Anthony Quinton, ed., Political Philosophy (n.p.: Oxford, 1967), p. 57.

meet the survival needs of all. Here we may want to say that everyone is released from the usual obligations of noninterference, and may do what he must to get the needed good for himself: each is permitted to act in such a way as to get what he needs, and none is obligated to let others get it. There are rights, permissions, without corresponding obligations. The assertion of rights under these conditions seems to amount to the judgment that conduct that would in other circumstances be prohibited is permissible, and not subject to blame or punishment. Seen from the other side, it means that what might in less dire circumstances be a strong right (e.g. to certain minimum positive conditions) does not imply the usual constraints on others, because here these constraints would require extreme self-sacrifice. What we have is a kind of moral free-for-all (without the morally pejorative connotations this term may suggest). Rights of self-preservation in contexts where all parties are innocent but where someone must die may, then, exemplify weak rights.⁸

Demonstrating the viability of weak rights permits us to leave open whether the state's right to coerce is a strong or a weak right. For the purposes of this discussion, it is sufficient to show that the state may coerce people to give aid (as against Nozick's view that it may not),

⁸ This is not meant as an argument for the substantive moral view described, but rather an elaboration of the meaningfulness and usefulness of talk of weak rights for some contexts.

without establishing whether those coerced are morally obligated to comply--for which a strong right of the state would have to be shown. To argue for a strong right to coerce is to become enmeshed unnecessarily in the problems of authority and obedience. It can be questioned whether anyone ever has a duty of obedience as such;⁹ but if the duty rests on the rightness of what is commanded or coerced then it must be established anew for each such command. Dworkin has shown how the question of the state's right to coerce or punish can be separated from the question of an individual's right to disobey, through the distinction between strong and weak rights.¹⁰ We can say that a person has a weak right to disobey any law if his conscience dictates that it is wrong, though unless the law in fact invades his strong rights, the state may punish him for disobedience. If a law violates his strong rights, however, a person has a strong right to disobey, and the state may not punish him. So, on this view, the state's right to coerce is not a strong right: if people are obligated to comply it is not because what is commanded is commanded by the state. But however the question of the nature of the right to coerce is resolved, the important point here is

⁹ See Robert Paul Wolff, In Defense of Anarchism (New York: Harper & Row, 1970).

¹⁰ Taking Rights Seriously, in the title essay, pp. 186-97.

that the same answer applies to the state's right to coerce people to forbear and to its right to coerce them to give aid.

2. Obligations and . . .

As I understand rights and obligations, they can be defined solely in terms of permissibility. If a person has a strong right to do x, then others are obligated not to prevent him from doing it; they may not prevent him. If he has a strong right not to do x or not to have x done to him, then others are obligated not to force him to do x or force x upon him; they may not force him. If one person has a right to something in another's possession, then the second person is obligated to give it to the first; he may not not-give it. The permissibility here is moral permissibility; but legal permissibility, for example, can be understood in the same way. Through the notions of the morally permissible and the morally impermissible we can get the idea of the "morally necessary" as well: for what you may not do is what you must not do, and what you may not not-do is what you must do.

Whether it is a question of moral rights and obligations or legal or institutional ones, this seems to me to be as close an approximation to ordinary and philosophical usage as one is likely to get. It should be noticed that this way of conceiving rights and obligations says nothing about how people come by them or what makes something

impermissible, permissible or necessary (mandatory). These issues, though crucial, are distinct from the question of what such rights and obligations are, what they amount to.

In recent years, various philosophers have objected to the use of 'obligation' as, in Hart's words, "an obscuring general label to cover every action that morally we ought to do or forbear from doing."¹¹ Though all the criticisms could be summed up superficially in these words, the description at the same time masks the variety of reasons different philosophers have objected to some use of 'obligation'. Broadly, these criticisms can be divided into two kinds. The first emphasizes what can be called the "quantitatively" special character of obligations--their implication of a certain degree of urgency of a prohibition or injunction.¹² The second stresses their "qualitatively" special character--that they are bonds with a certain pedigree, coming into existence only where there have been agreements, undertakings, assumptions of relationships. It is sometimes difficult to evaluate these criticisms just because the distinction between the qualitative and the quantitative is not made; the critic may, without being fully aware of it, be making two different points at once. I will consider first the "quantitative" criticisms and then

¹¹Hart, p. 55.

¹²The term 'quantitative' is not entirely satisfactory. But it stands in clear contrast to the view of obligation described as 'qualitative'. And it brings out the crucial factor of imperatival strength.

the "qualitative" to see if they bear on my use of 'obligation'.

Several philosophers have insisted that statements about obligations or about rights are not to be conceived as equivalent to statements of moral 'oughts'.¹³ So, for example, Joel Feinberg asserts that

there are some actions which it would be desirable for a person to do and which, indeed, he ought to do, even though they are actions he is under no obligation and has no duty to do. It follows logically that to

¹³ See also the criticisms of Kurt Baier's view, below. J. J. Thomson objects to using 'right' in such a way that it follows from the fact that A ought to do something for B that B has a right against A. Speaking this way, she says, makes "the question of whether or not a man has a right to a thing turn on how easy it is to provide him with it; and this seems not merely unfortunate but morally unacceptable. . . . It's rather a shocking idea that anyone's rights should fade away and disappear as it gets harder and harder to accord them to him." Shocking? It seems only reasonable. It is a minimum condition of having a right that it be possible to satisfy it. Unless we are to rule in advance that there are no positive natural rights (rights to things or to the actions of others), it is inevitable that the relative ease or difficulty of provision be built into or partially determine the content of rights. While one may agree that if A ought to do x for B it doesn't follow that B has a right against A, this is not for the reason Thomson gives but because (a) 'ought' in at least some of its common (moral) uses doesn't convey the force or the urgency that 'right' and 'obligation' do (see below, this section); and (b) even strong 'oughts' do not in themselves carry correlative rights. As noted above, what I have said leaves open the possibility that obligations do not always carry correlative rights; I have asserted only the converse, that (strong) rights have correlative obligations. (Judith Jarvis Thomson, "A Defense of Abortion," Philosophy & Public Affairs 1 (1971): 47-66. Reprinted in James Rachels, ed., Moral Problems, 2d ed. (New York: Harper & Row, 1975), p. 101.)

say that someone has a duty or an obligation to do x is not simply another way of saying that he ought to do x.¹⁴

On my view, the reason saying someone is obligated to do something is not just another way of saying he ought to do it is that statements of obligation assert what it is impermissible for a person to do or not-do; 'ought' statements, on the other hand, are not necessarily so strong. Feinberg himself implies this vagueness or ambiguity in 'ought' when speaking in the same breath of what it would be desirable for a person to do and what he ought to do. "What you ought to do" can mean anything from "what you must do," the only thing (morally) to do, all the way to "what it would be good if you did," the best thing to do.

Statements of obligation, on the other hand, could never be confused with mere exhortations to act for the best. Obligation is narrow and negative; as J. N. Findlay says, when we ask what we are obligated to do we usually

¹⁴"Supererogation and Rules," in Doing and Deserving (Princeton: Princeton University Press, 1970), p. 5. Feinberg is objecting to a narrow conception of morality in which 'oughts' and counsels of wisdom are treated on the model of duties. But the criticism can also be levelled against the utilitarian, who might be accused of the converse failing--treating obligations on the model of 'oughts', assimilating the deontological to the teleological model.

Sometimes 'ought' is used for "on-balance" judgments: what ought to be done in a particular case. On this usage, saying someone is obligated to act or forbear does not imply that he ought to act or forbear; for there may be overriding reasons why he should not fulfill his obligation. Where 'ought' is not used in this way, however, statements of obligation imply 'ought' statements, but not vice versa.

want to know what we are not obligated to do.¹⁵ It is generally clear, he says, what "would be better or worse to seek to realize, while it is always maddeningly unclear what one is obliged to do. The obligatory, moreover, has a much closer relationship with the undesirable and the evil than with the desirable or the good."¹⁶ Fulfilling one's obligations is the sine qua non of moral conduct; it is just over the line separating the permissible from the impermissible.

If Feinberg means just to assert the "quantitatively" special character of obligations--their imperatival strength, as compared to the ambiguity of 'ought' statements--I have no argument with him. Sometimes, however, he appears to be making a different point. "If I tell you what your obligations are, I do not necessarily give you advice of any kind; I simply report that you stand in certain relations to other people, relations of commitment and trust."¹⁷ Here he seems to be saying that statements of obligation are

¹⁵Findlay, p. 342.

¹⁶Ibid., p. 21.

¹⁷"Supererogation and Rules," p. 8. See also C. H. Whitely, "On Duties," Proceedings of the Aristotelian Society 53 (1952-53). Whitely makes a similar claim about the concept of duty. He implies that the alternative to his view amounts to equating doing one's duty with doing what is best. Whitely's remarks show that these problem issues are not avoided by substituting 'duty' for 'obligation'. In addition, 'duty' has the disadvantage of lacking a verb form.

on a different level from imperatives or 'ought' statements. They are qualitatively special, referring to bonds that have been created by some prior act, agreement, or undertaking of the person bound. But although it makes sense to say that in telling you what your legal obligations are, I don't necessarily give you advice of any kind but merely report certain facts, it would be very odd to say that I don't pass judgment or give advice in telling you what your moral obligations are. "He's your child; it's your obligation to take care of him"--this may be an absurd understatement, but could hardly be understood as a disinterested description. True, statements of obligation are overridable in particular cases; but so are 'ought' statements, like "You ought to keep your promises." Only "on-balance" 'ought' statements, like "You ought to keep this promise," are not overridable--and this by definition.

The idea that there is something qualitatively special about obligations is more fully developed by Kurt Baier. He too begins by denying the equivalence between obligation statements and 'oughts', but it is clear that he is not just asserting a difference in imperatival force between them:

Admittedly, whenever A has an obligation to do x, it is also true that he ought to do x. But the converse is not true. I have never killed anyone or stolen anything. These are things which it would have been wrong for me to do and which, if I had done them, I ought not to have done, but they are not things

which I had, or was under, an obligation not to do.¹⁸

Clearly on Baier's view it is no less wrong to kill someone for not being obligatory; it is just different. How is it different? In the first place, "obligations between people can arise only on account of what has already happened or been done."¹⁹ Presumably, something has to have happened between the people connected by the obligation, or has to have been done by one of them, if this condition is not to be trivial. Secondly, according to Baier, obligations are "relationships between at least two people. They arise only when the normal moral relationship between two or more people, that of moral noninvolvement, is disturbed, and they end only when the state of moral noninvolvement is restored."²⁰

Baier's point in these remarks is to argue against the view that people can have obligations to themselves. Surprisingly, what in his view makes it peculiar to say that one is obligated not to kill would seem not to apply to the positive case where, for example, we might want to say that one person is obligated to try to save another (assuming no prior relationship between them). Here, the crisis of a

¹⁸The Moral Point of View (Ithaca: Cornell University Press, 1958), p. 221.

¹⁹Ibid., p. 218.

²⁰Ibid., p. 216.

life in danger seems as likely a candidate as anything for disturber of the "normal moral relationship" of "noninvolvement" between would-be saver and victim (granting for the sake of argument this characterization of the normal moral relationship between people). And unlike the case of the "obligation" not to kill, here the parties to the relationship are determinate and specifiable. Still, there has been no agreement and no special relationship between the parties; if this is necessary for an obligation there is none here. But even granting that there is an obligation to save in this case would be, from my point of view, insufficient: I want to say that there is also an obligation not to kill.

It is important to recognize that the two interpretations of 'obligation'--the one quantitative and prescriptive, stressing the moral necessity of an act or forbearance, the other qualitative and descriptive, emphasizing the origin of the bond--are essentially incompatible. It is no accident that Feinberg distinguishes the assertion of an obligation from the passing of judgment, for if saying I am obligated to do something is equivalent to saying I have contracted to do it, then it is a further question whether I ought to do what I have contracted to do, whether I ought to fulfill my obligation. And, on the other hand, if saying I am obligated to do something means that morally I must do it, that I may not omit to do it, the question of how I got into this position of having to do something is

a separate, substantive question. It may turn out that one is obligated to do something only when one has agreed or in some other way undertaken to do it, but this can't be determined by language alone.

Although there is clearly some tendency to speak of obligations in the qualitative and descriptive sense of bonds incurred (mainly in legal, institutional and financial contexts), this use seems to me secondary to the quantitative and prescriptive meaning of the term. In addition, the qualitative use is more difficult to reconcile with the role obligations have played with rights, especially in the natural rights tradition. The idea that (strong) rights have as correlatives obligations is a commonplace of political philosophy. A right is natural only if it "is not created or conferred by men's voluntary action";²¹ if there are any (strong) natural rights, they too will have correlative obligations. But if we accept the qualitative sense of 'obligation' there can be no natural obligations of the sort that correspond to natural rights: 'natural obligation' is a contradiction because obligations by their nature presuppose voluntary action.

Hart's candidate for natural right is "the equal right of all men to be free," which means, among other things, that in the absence of certain special conditions everyone "has the right to forbearance on the part of all others from

²¹Hart, p. 53.

the use of coercion or restraint against him save to hinder coercion or restraint" ²² Does this satisfy Baier's condition that obligations involve relationships between at least two people? It may seem odd to say that my right to noninterference involves a relationship between me and the whole world. Yet it does put constraints on everyone else: it bears directly on what they may and may not do, and so involves them essentially. And how shall we understand Baier's idea that obligations arise only where the "normal moral relationship" of "moral noninvolvement" is disturbed, when the very point of this right to be free is to maintain noninvolvement, to keep others at a distance? Hart's willingness to speak of obligations in the present context ²³ shows that his own objection to the overly general use of the term ²⁴ is an objection to using it interchangeably with weaker 'oughts'; it does not constitute a rejection of the quantitative and prescriptive sense of 'obligation' in favor of the descriptive.

This long excursion into what may appear to some to be merely a verbal fine point has seemed necessary to me

²² Ibid.

²³ General rights--of which natural rights, Hart believes, are a species--"have as correlatives obligations not to interfere to which everyone else is subject and not merely the parties to some special relationship or transaction." Ibid., p. 64.

²⁴ See above, p. 26.

for two reasons. The first has to do with the connection between rights and obligations and the legitimacy of coercion. This connection will be further explored in section 3. Because of it, it isn't enough to acknowledge that some act or omission is wrong or even heinous while refusing to call its negation (a forbearance or positive act) obligatory. What people's rights and obligations are bears directly on what the state may and may not do.

The other reason for arguing over the word 'obligation' is more specifically connected with my thesis. I believe that the ambiguities in 'obligation' have helped to prejudice the question whether the state may coerce one person to aid another. (Specifically, the answer 'no' has been rendered more likely.) How may this happen? Without at this stage having established a definite connection between obligations and coercion, we can suppose that showing that people are sometimes obligated to give aid is an important step in demonstrating the state's right to coerce them to aid. But when the question is raised whether anyone is ever so obligated, it is sometimes said that no one can be obligated to give aid unless he has contracted this burden through some prior act, agreement or undertaking. It may be admitted that one ought to do it, that one would be a monster if one didn't, etc. But obligations, so the argument goes, come into being with specifiable acts. If a pedigree can't be provided, there is no obligation,

whatever else there may be. But, for the reason given in the last paragraph, nothing but an obligation will do: only rights and obligations have such clear consequences in terms of what the state may and may not do.

If the qualitative view of obligations were consistently applied, it would not contain a bias against the present thesis. Then, in addition to refusing to speak of an obligation to give aid, one would also refuse to speak of an obligation not to kill, corresponding to a right to life. (Baier's use is consistent on this point.) But instead it often happens that talk of obligations is found objectionable only in the positive case. Being saddled with positive burdens one has not voluntarily acquired seems to call out for explanation in a way that being saddled with unasked-for negative burdens ("Don't's") does not. So the use of 'obligation' in the negative case may be allowed to pass, making it look as if there were some essential difference in the moral status of negative prohibitions and positive injunctions. Perhaps there is; but this can't depend on an equivocation.

This point foreshadows the subject of the next chapter, where I will explore the ways in which our moral and political language facilitates preconceptions about the relative moral status of doings and not-doings, action and omission. If obligations presuppose agreements or undertakings, this must apply equally to obligations to act and

obligations to forbear. So before concluding that there can be no obligation to give aid unless that burden has been in some manner assumed, one must be willing to say that there can be no obligation not to kill or to forbear from interference unless this burden too has been undertaken. But I hope I have adequately explained why I think talk of obligations is appropriate in both the negative and the positive case.

3. Rights, Obligations and Coercion

One of the basic tasks of political philosophy is to say how the demands of morality (and perhaps also its loftier aims) must affect and limit politics, especially the coercive power of the state. So it must translate the requirements of morality into political terms. At least since the time of Hobbes, the concept of a right has served as a crucial link between the moral and the political (and legal) realms. For reasons given below, obligations have played a less flashy and obvious role; but, because of their essential connection with rights, they are equally important in arguments concerning the permissibility or impermissibility of coercion by the state. But we need to be less vague and more specific about the connection between rights and obligations and the legitimacy of coercion.

On some views, the concepts of right and obligation are directly connected with the justifiability of coercion. Grouping these concepts together with justice and fairness, Hart says that

the concept of a right belongs to that branch of morality which is specifically concerned to determine when one person's freedom may be limited by another's and so be made the subject of coercive legal rules.. . . The important common characteristic of this group of moral concepts is that there is no incongruity, but a special congruity in the use of force or the threat of force to secure that what is just or fair or someone's right to have done shall in fact be done; for it is in just these circumstances that coercion of another human being is legitimate.²⁵

Elsewhere he speaks of "what most people would regard as the salient feature of an obligation," its connection with coercion or compulsion: "If we have an obligation to do something there is some sense in which we are bound to do it, and where we are bound there is some sense in which we are or may be compelled to do it."²⁶ The connection Hart seems to posit here is, although not precise, very strong. One might almost think from these remarks that having a right is a sufficient condition for permitting coercion to fulfill the right; and similarly for obligations. But to this it can be immediately objected that there are many

²⁵ Hart, pp. 55-56.

²⁶ "Legal and Moral Obligation," in Essays in Moral Philosophy, A. I. Melden, ed. (Seattle: University of Washington Press, 1958), p. 95.

contexts in which we speak without hesitation of rights and obligations where not only is there no supposition that coercion is appropriate but where in fact it seems clearly inappropriate. Promising is the paradigm case of an obligation-creating act, but it is only in specific kinds of cases that promises have legal force. For practical reasons, things could not be otherwise; but few people would wish that they were. There is a purely private and personal sphere of human relations that is (for practical and other reasons) and, almost everyone would agree, ought to remain entirely outside the domain of law and politics. But within this sphere we speak of duties of gratitude, obligations not to be cruel (which sometimes are enforceable), rights to be treated in certain ways, etc. So it is clear that the existence of a right or an obligation cannot be a sufficient condition for coercion to enforce it.

A much more modest but still significant connection between rights and obligations and coercion is this: the state may not coerce a person to do (or not do) what he has a strong right not to do (or to do). This connection is negative, not positive; it says when coercion is inappropriate, in contrast to Hart's positive correlation of rights and obligations with the appropriateness of coercion. What the state may not do is to violate individuals' rights²⁷

²⁷ This view accords with Nozick's underlying assumption concerning the connection between the state's right to coerce and individual rights. Nozick says that any state more extensive than the minimal state "is

This connection is even weaker than it may appear. In the case of negative rights--rights not to be done to or not to do--what it implies about what the state may do is clear. If you have a right not to be done to or not to do then the state may not force you to be done to or to do. But for positive rights--rights to things or to the actions of others--the implications about the state's right need to be spelled out. To say that the state may not coerce in violation of strong rights is not equivalent to saying it may or must enforce these rights. So, for example, if people had a right to receive aid, it wouldn't follow that the state ought to ensure that they got it.

unjustified" because it "will violate persons' rights not to be forced to do certain things" (p. ix). In spite of his objection against Hart that the enforceability of a right must be shown separately from its existence (pp. 90-93), Nozick's own mode of argument commits him to the view that if a person has a right not to be forced to do something, it must be because he has a right not to do it. There is no further right not to be forced. If there were, Nozick would have to show that the state does not violate it when it coerces someone to refrain from doing something he has no right to do. So, for example, to show that the state may coerce people to refrain from aggression, it would have to be argued not only that they have no right to commit aggression but also that they have no right not to be forced to commit aggression. But the legitimacy of coercion against aggression is taken to be shown by the absence of a right to aggression, i.e. an obligation not to commit aggression. So, to be consistent, the legitimacy of coercing people to give aid must stand in the same relation to their rights and obligations: if people are obligated to give aid the state will not violate their rights in coercing them to give it. Although a right does not entail a right of enforcement, an obligation (to do x or not do x) defeats the claim that in coercing x or not-x the state violates a right.

For further evidence of Nozick's unwarranted unequal treatment of coercion to refrain and coercion to act, see below, ch. III, sec. 1, esp. pp. 68-71.

The weak connection between coercion and rights and obligations posited here means that the focus of attention is on the rights of would-be donors of aid, not recipients. The argument is not that if people have a right to receive aid, the state may coerce others to give it; rather that if some have a right to receive aid, others have an obligation to give it, so the state does not violate the donors' rights in coercing them. It is, after all, the use of force that is controversial; and it is donors of aid who will be forced and whose rights, therefore, are most directly at issue.

This analysis accords with and indeed is explained by the conception of rights and obligations in terms of "pure permissibility" presented above. Rights and obligations define the most fundamental part of morality, the sine qua non. To have a strong right is to have an unarguable claim. So it is clear that the state would transgress the most fundamental rules of morality by coercing in opposition to such a right. Of course it also makes sense to think that this rock bottom quality of rights and obligations should have some positive force in political life: that the existence of a right ought sometimes to make coercion appropriate to enforce it, rather than making it only inappropriate to violate it. Along these lines, one might take Hart to be saying that the existence of a right or obligation is a strong prima facie reason for thinking

coercion appropriate which can be defeated on various grounds.²⁸ But then those rights and obligations which clearly lie outside the domain of politics have to be accounted for. In any case, since I am arguing against those who say that coercing a person to give aid violates his rights, the negative connection between rights and coercion is adequate.

Is it sufficient to show the permissibility of the state's forcing people to give aid that doing so doesn't violate anyone's rights? What I have said so far may imply that it is: that individual rights are the only significant impediment to the legitimacy of coercion. Whether this is so depends on how broadly the notion of a right is construed. On Dworkin's formal definition, it would appear that when-ever a goal (such as increased security or welfare) is not sufficient to override individuals' interests, it is because of some rights that individuals have--for a right is defined as that which cannot be overridden. On the other hand, one could think of rights as constituting the major obstacle to imposing coercion without construing every illegitimate act of coercion as the violation of a right. The reason for this approach is that it seems less artificial: there may be overriding moral concerns that we don't ordinarily think of as involving rights.

²⁸See below, ch. V, pp. 167-71, and ch. VI, pp. 198-201, for some reasons for thinking coercion appropriate.

The question is raised in order to resolve a methodological problem about arguments concerning freedom.²⁹

A significant objection to coercing people to give aid is that it requires an illegitimate or undue invasion of their freedom. This objection may be framed in terms of rights, so that it is said that individuals have a right to freedom which is violated by being coerced to give aid. But the counter-argument to this objection also refers to freedom; it will be said that the freedom of those to be aided is also at stake. If this point is also made in terms of rights, we are left with a clash of rights to one thing, freedom. Assuming that it is indeed freedom in both cases, the rights as it were drop out, and we are left to evaluate and calculate the amount of freedom involved on each side. Thinking in terms of rights doesn't illuminate anything here; to argue that whoever would lose more freedom on the whole by a policy decision is the "true" right-holder is to abandon the point of talk about rights: one might as well appeal directly to a "calculus of freedom." It is no doubt in part this kind of problem that Dworkin is thinking of when he says that "there is no general right to liberty as such."³⁰ But if it is agreed that there is no right to

²⁹See ch. VI for a full discussion of these issues.

³⁰"What Rights Do We Have?," in Taking Rights Seriously, p. 269. This is not to imply that the denial of a general right to liberty was an afterthought to accommodate such objections.

liberty that is violated by being coerced to give aid, still it has to be admitted that the liberty of the person coerced is diminished. If total liberty were greatly curtailed by coercing people to give aid, one might conclude that doing so was morally illegitimate, and not just undesirable.³¹ It is for this reason that to show the permissibility of coercing people to give aid, it is necessary to do more than demonstrate that doing so doesn't violate anyone's rights. At the same time, given the formal view of rights adopted here, the conclusion that no one's rights are violated by an act of coercion takes one most of the way to demonstrating its legitimacy.

In the history of political theory and in the practice and rhetoric of politics, rights have played a central role and obligations have played almost none. From a psychological point of view, this imbalance is easy to understand. Humans being only human, they can be moved to act from the belief that they are entitled to this or that; the recognition of one's obligations is hardly as effective a spring of action. (Angels, if they needed to have obligations at all, would be impelled to act from them alone.) But obligations are at least as important, conceptually and practically, as rights. First, because

³¹ There seems to be no room for this conclusion on Dworkin's division of political justification into arguments of policy and those of principle, since arguments of principle are defined in terms of rights.

whenever someone has a strong right, someone else has an obligation. And it is on the person obligated that the "cash value" of the right/obligation nexus depends: it is he who will have to do or refrain from doing something. Second, because to show that someone has an obligation to do (or not to do) something is to show that he has no right not to do (or to do) it, establishing an obligation constitutes the most crucial link in the argument that the state violates no one's rights in coercing and that it may coerce.

CHAPTER III

ACTION, OMISSION AND THE MINIMAL STATE

In the last chapter I explained what I understand by a right of the state to coerce a person to do or not to do something, and what the connection is between such a right and the rights and obligations of individuals related in a relevant way to the state. Whether any state does have a right to coerce it is not my purpose to find out: the question of anarchism--is the state per se legitimate?--will not be dealt with here. The question of this dissertation is whether, assuming that the state sometimes has the right to coerce people, it has the right to coerce them to give aid.

Most people do grant that the state is sometimes morally permitted to coerce its citizens or subjects to do or refrain from doing certain things. The question is what, exactly, the limits of the state's coercive powers are: what may it compel people to do or forbear from? Some functions are uncontroversial: everyone agrees that if the state may coerce at all, it may coerce people not to kill, not to do physical injury to others and not to steal from them. Few people dispute the state's right to enforce contracts made between individuals. But beyond these and a few other

minimal functions, controversy arises. Libertarians like Nozick believe that these are the only legitimate coercive functions of the state. Other thinkers like F. A. Hayek are more pragmatic and less ideologically rigorous but basically accept the theory behind libertarian conclusions.¹ Nozick denies explicitly that the state may coerce one person to aid another.² A more general statement of his view is that so-called redistributive functions of the state are, at worst, a violation of individuals' rights to keep what belongs to them; at best, a display of benevolence or charity to recipients of aid or welfare, rather than a giving to them of their due.

The central contention of this chapter is that the belief that the state may not coerce one person to aid another rests on a crucial but undefended philosophical position. Specifically, those who say it is illegitimate for the state to coerce people to give aid, though legitimate for it to coerce them to refrain from aggression and theft and to fulfill contracts, rely on the assumption that there is a morally significant difference in principle between action and omission, between doing and not-doing.³

¹F. A. Hayek, The Constitution of Liberty (Chicago: University of Chicago Press, 1960).

²Nozick, p. ix.

³See below, pp. 51-52, where it is explained how the state's right to enforce contracts is consistent with the libertarian's assumption of an essential moral difference between action and omission. This isn't obvious, since in

It is this difference which legitimizes the state in coercing people to refrain from positive violations like aggression and theft but does not support its compelling them to act, as, e.g., to give aid.⁴

In the next chapter it will be argued that there is no necessary moral difference (though there is a conceptual one) between action and omission.⁵ Here the point is just to show that Nozick and others do rely on such a moral difference, and that they need to in order to justify the conclusion that coercion is permissible to prevent aggression and the like but not to get one person to aid another.

enforcing contracts the state (often) coerces people to act, not forbear. See n. 8, n. 17 for discussion of another coercive function generally permitted by libertarians, i.e. prevention of fraud.

⁴Terminological clarity is especially important when venturing into the netherworld of not-doings. In what follows I speak interchangeably of doing and acting; not acting, omitting, forbearing. Often 'act' is used differently in a way which permits its application to omissions or not-doings that possess certain features, e.g. intentionality, so that an intentional omission may be called an act. Here, however, 'act' means 'positive doing'.

In talking about the state's coercing a person to refrain or forbear from doing something no internal goings-on in a person are implied when he refrains or forbears (e.g. holding himself back).

I use 'omission' where it is clear what action is wanted, without meaning to imply that a person who omits to do the thing is at fault for not doing it. That, of course, would be begging the question. See ch. V, sec. 1, for further discussion of the meaning of 'omission' and the problem of what it is a person isn't doing.

For a discussion of the fine points of usage for these issues, see Eric D'Arcy, Human Acts (Oxford: Clarendon, 1963).

⁵See ch. IV, sec. 1, "Different Differences," for an account of features of and differences between necessary, essential, and practical moral differences, and between moral and conceptual differences.

The assumption of a moral difference between action and omission is not confined, moreover, to libertarians. Liberal thinkers who allow the state more than minimal functions may unintentionally advance the libertarian cause by their own tacit endorsement of the distinction. In section 3 this point will be illustrated with examples from the work of H. L. A. Hart and Isaiah Berlin.

It is important to be able to account for the widespread belief that--to put it loosely and generally--it is worse to do positive harm than to omit to act in a way which results in harm, even if finally one concludes that the first isn't worse necessarily than the second. In chapter V, I will discuss in detail the reasons that make the emphasis on "sins of commission" over "sins of omission" understandable and indeed justifiable for many actual cases. These depend on the ways negative and positive requirements correlate with morally relevant characteristics of situations in which moral decisions must be made. But it will also be argued that the emphasis on negative requirements is in part unjustified, and rests on an illegitimate comparison of would-be requirements to aid those connected to the agent only indirectly and distantly with requirements to refrain from direct and personal violence.

For the present, however, it has to be established that the assumption of a moral difference between action

and omission does in fact constitute a crucial link in the argument against the state's right to coerce people to give aid. For this I turn to an examination of Nozick's Anarchy, State, and Utopia.

1. Nozick's Theory

According to Nozick, "a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified," and "any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified."⁶ He says too that political philosophy--which defines the moral limits of the state--"is concerned only with certain ways that persons may not use others; primarily, physically aggressing against them."⁷ Except for enforcing contracts, the state's coercive functions are, on Nozick's view, all negative; the state may coerce people not to do certain things--kill, injure, steal, lie--but may not coerce them to do things.⁸ In this section I will try to find the

⁶Nozick, p. ix.

⁷Ibid., p. 32.

⁸An assumption is made here about Nozick's view of fraud. The concept of fraud, unlike lying, is unclear. The prohibition against fraud may disallow only outright lying, the telling of untruths, or it may forbid also withholding relevant information. Whether one takes fraud to include the latter as well as the former is likely to depend on one's general view of the significance of the difference between action and omission. Nozick says nothing about fraud, and I assume here that he takes the narrow view of it.

justification for this emphasis. But first it needs to be explained how the state's right to enforce contracts, involving coercion to do, is consistent with the prohibition in all other cases against coercing people to act.

When the state forces a person to fulfill a contract he has made, it compels him to do what he has agreed or undertaken to do. This introduces a distinction crucial in discussions of natural rights, between coercing someone to do what he has agreed or in some manner voluntarily undertaken to do, and coercing him to do what he has not undertaken to do. In light of this distinction, the relevant question is whether the state may ever coerce a person to do something when he has not in any way voluntarily undertaken to do it.⁹ The case of contract, then, where one has agreed to do something, is not at issue. But no agreement

⁹ Having agreed to do something changes the situation sufficiently to make it unclear whether nonfulfillment of contract should even be seen as an instance of omission. If we regard contracting-to-do as the first step in a larger doing which ends with the fulfillment of the contract, then omissions within the boundaries may be seen as misdoings of the whole rather than not-doings. The question whether an offense is a commission or an omission may have no right answer where the offense consists of embarking on one course of action without also doing something else. If a person drives without a license, it is absurd to ask whether the offense is the positive one of driving or the negative one of not getting a license. See Graham Hughes, "Criminal Omissions," Yale Law Journal 67 (1958), p. 598; Orvill C. Snyder, "Liability for Negative Conduct," Virginia Law Review 35 (1949). The essential point is that omissions post-contract are not omissions ex nihilo; it is the latter only that are immune, on Nozick's view, from legal action--it is only their moral status (relative to actions ex nihilo) that is in dispute.

is necessary, on Nozick's view, to legitimize the state in forcing people not to kill or steal; and so the question is why coercing them to act in the absence of contract is necessarily a violation of their rights.¹⁰ To understand why he thinks so we need to see just what natural rights Nozick thinks people have.

Nozick opens Anarchy, State, and Utopia dramatically: "Individuals have rights, and there are things no person or group may do to them (without violating their rights)."¹¹ These rights are natural in the sense that they are not acquired; in Hart's words, they are rights "not created or conferred by men's voluntary action."¹² Nozick's first sentence is not as unspecific as it might appear to the

¹⁰It is not clear whether the power to enforce contracts is part of what Nozick calls the state's "fundamental coercive power," i.e. power not resting on the consent of the person to whom it is applied (p. 6). It depends on what the consent is supposed to be consent to: consent to do (or not do) what the state coerces, or consent to the coercion itself. If the former, then enforcing contracts is not part of the state's fundamental coercive power: its right rests on one's having agreed to do the thing. In these terms my question is whether it is part of the state's fundamental coercive power to force people to do anything, or only to forbear. But if the consent referred to is consent to the coercion itself, then it seems arbitrary to include the enforcement of contract as part of the state's fundamental coercive power without some specific argument. (But of course this is not one of the coercive powers of the state a libertarian is likely to give up.) Why shouldn't the power to force one person to aid another be part of the state's fundamental coercive power too?

¹¹Nozick, p. ix.

¹²"Are There Any Natural Rights?," pp. 53-54. See also Ross, pp. 55-6, who defines natural rights as those not arising out of contract.

unwary reader: there are things no one may do to you, it says; it doesn't say that there are things no one may omit to do for you. Without explicitly denying that people have positive natural rights--rights to things and to the actions of others--Nozick asserts that they have negative natural rights--rights not to be done to. Similarly he says: "What persons may and may not do to one another limits what they may do through the apparatus of the state."¹³ Again, there is no mention of what persons may not not-do, nor any argument that there is nothing they may not not-do, or that it isn't comparable to what they may not do. What is as noteworthy as Nozick's omission is that the reader is likely not to notice it or the implicit assumption behind it that there is an essential moral difference between action and omission. This may be explained in part by a confusion in the notion of a prohibition. Prohibitions are by their nature negative, in the sense that they have to do with what is impermissible. But the "may not" of a prohibition can range over a positive or a negative: "may not do" or "may not not-do." One might forget that prohibitions can be doubly negative, and think only of those that say what one may not do.

A powerful metaphor in Nozick's work for individuals' natural rights, which reinforces the idea that prohibitions govern only actions and not omissions and that natural rights

¹³Nozick, p. 6.

are all negative, is that of the boundary surrounding a person which others may not cross. "A line (or hyper-plane) circumscribes an area in moral space around an individual."¹⁴ Nozick introduces this metaphor in raising this question: "Are others forbidden to perform actions that transgress the boundary or encroach upon the circumscribed area, or are they permitted to perform such actions provided that they compensate the person whose boundary has been crossed?"¹⁵ Elsewhere he discusses actions that only impose a risk of boundary crossing.¹⁶ These issues are not relevant to the subject at hand, but Nozick's words are revealing; from them we can see why talk of boundaries and boundary-crossings is misleading. The dilemma can be put this way: the sacrosanct area surrounding an individual is either a "physical" space or a "moral" space. If it is a physical space, then it is legitimate to speak of other's actions only as transgressing the boundary. Everyone has a small plot, his property, that others may not enter without permission of the owner. But if the sacred area is in

¹⁴Ibid., p. 57. Similar metaphors and misleading figures of speech can be found in the writings of many political thinkers, from Mill to Berlin and Hayek: "private sphere," "frontier between private and public life," etc. Indeed it seems hard to talk about these issues without some geometric or other graphic verbal device, misleading as these may be.

¹⁵Ibid.

¹⁶Ibid., p. 75.

"moral space," it is illegitimate to assume that the boundary can be transgressed only by others' actions; their omissions too may "cross" the permissible limits.

Now Nozick says that the sacred area surrounding an individual is in moral, not physical space. Yet everywhere he speaks only of actions, positive doings, that violate the boundary, never of omissions. Since it is only for the protection of the sacrosanct area that the state may use coercion, it is easy to see how, in Nozick's theory, it comes to be permitted only the minimal functions of protection against force, theft, and fraud--all positive violations.¹⁷

This points up the danger in such figures of speech as the boundary surrounding an individual. The very concreteness and physicality which make them useful heuristic devices at the same time prejudice the question. We are misled by the picture. (As Wittgenstein says in the Blue Book, philosophy "is a fight against the fascination which forms of expression exert upon us.") Admittedly, omissions are not concrete; nothings, not somethings (though we may if we like say that sometimes a nothing is a something).

¹⁷ Even construing fraud narrowly as the telling of untruths, fraud doesn't violate a person's physical space as force and theft do (sticks and stones can break my bones, etc.). Yet, like force and theft, lying is a positive violation. This shows that even the description of the sacred area as physical shouldn't be taken literally. Perhaps a photographic metaphor is more useful: the question is whether the space around an individual can be violated by negatives or only by positives.

But whether this lack of physical substance makes omissions morally insignificant--or to put it in terms of the metaphor, whether the moral boundary coincides with the physical--has to be argued, not assumed.

Why Nozick thinks that the line circumscribing an individual may be transgressed only by others' actions has to do with the content of people's natural rights, which set the limits of the permissible.¹⁸ General natural rights are all negative, rights against others' interference.¹⁹ What about the right to property, which is central in Nozick's theory and which would appear to be a positive right? The right to property is a specific right to this or that thing arising out of one's relation to this or that thing. One comes to own something (legitimately) either by "mixing one's labor" with it, if it is an unowned object, or by buying, trading for, or being given it, if it is not. Insofar as the right to property puts constraints

¹⁸"Locke holds that this line is determined by an individual's natural rights, which limit the action of others" (p. 57). This is clearly Nozick's view as well.

¹⁹If a general right were one possessed by everyone (barring special conditions as where one contracts the right away or forfeits it by violation of others' rights), then, given scarcity and the condition that we speak of rights only where there is the possibility of satisfaction, there could be no positive general rights. (This is Hart's view in "Are There Any Natural Rights?") A general right is better seen as one which may depend on circumstances for its "activation," but which does not depend on anything a person does: it is possessed by everyone who finds himself in the activating circumstances. (See below, this section, for further discussion.) The right to property, then, is not a general right.

on others, it is negative: it dictates what they may not do (i.e. take what doesn't belong to them). Since rights are first and foremost relations between people, the right to property is essentially negative.

Nozick explains his rejection of positive natural rights as follows:

The major objection to speaking of everyone's having a right to various things such as equality of opportunity, life, and so on, and enforcing this right, is that these "rights" require a substructure of things and materials and actions; and other people may have rights and entitlements over these. No one has a right to do something whose realization requires certain uses of things and activities that other people have rights and entitlements over. Other people's rights and entitlements to particular things (that pencil, their body, and so on) and how they choose to exercise these rights and entitlements fix the external environment of a given individual and the means that will be available to him. If his goal requires the use of means which others have rights over, he must enlist their voluntary cooperation.²⁰

There are only particular rights to particular things; no rights "exist in conflict with this substructure of particular rights The particular rights over things fill the space of rights, leaving no room for general rights to be in a certain material condition."²¹

Nozick calls this view a theory and uses it to justify the belief that there are no positive natural rights ("The major objection to speaking of everyone's having a

²⁰Nozick, p. 238. (Emphasis in original.)

²¹Ibid.

right to . . ."). Yet clearly it is no more than a restatement of the no-positive-rights stand. One might just as well turn the argument upside down to justify, or appear to justify, the opposing view:

The major objection to speaking of someone's having a right to a particular thing such as this villa, that corporation, and so on, and enforcing this right, is that these "rights" require a substructure of things and materials and actions; and other people may have rights and entitlements over these. No one has a right to something whose realization requires certain uses of things and activities that other people have rights and entitlements over. Other people's rights and entitlements to be in a certain material condition (to be fed, educated, employed, and so on) and how they choose to exercise these rights and entitlements fix the external environment of a given individual and the means that will be available to him . . .

Of course here too, saying it doesn't make it so. And no one would want to maintain the extreme view which might be suggested by this line of thought that there are no particular rights to particular things. But it seems plausible that general rights to be in a certain material condition constrain particular rights. Nozick describes the "reverse theory" to his as one that "would place only such universally held general 'rights to' achieve goals or to be in a certain material condition into its substructure so as to determine all else."²² But there is an intermediate and more compelling position that would include both general and particular rights into its substructure. On such a view, general "rights

²²Ibid.

to" would partially determine the structure of rights held by setting certain lower limits that would have to be met before rights to particular things could be "activated."²³ So, for example, accumulation of private property (having its own principles of acquisition and transfer) would be limited by the requirement that a certain level of material well-being be achieved within the relevant social unit (e.g. community, society, world).

At least part of the reason rights to be in a certain material condition may seem problematic is that there is a tendency to think that any natural rights must be susceptible of simple formulation. But although any simple natural rights will be negative ones, not even all negative rights are simple. One may be able to assert without exception a right not to be tortured; but even the right to life, understood as a right not to be killed, will on all but the absolute pacifist view have to be qualified in certain ways (to accommodate, e.g. self-defense, abortion, euthanasia, war, capital punishment, depending on the particular moral view taken). Yet no simple formulation is possible for any positive natural right, if rights are to retain their value as moral/political weapons by referring only to claims it is at least possible to satisfy.²⁴

²³ I.e. particular things over and above those granted by the positive general rights.

²⁴ Thus the slight air of absurdity about the United Nations Declaration of Human Rights, which includes such things as the right to paid vacations in its list.

Since in the course of world history conditions of scarcity have been such that starvation has been at many times inevitable, a right to the food one needs to live would have to be conditional on the possibility of satisfaction. And this condition alone isn't stringent enough, if one believes that the situation in which everyone is at bare subsistence is worse than one in which some starve and others are able to do more than just survive. So Nozick is correct in thinking the right to life isn't a right to whatever one needs to live (certainly not anyone, anywhere, at any time, no matter what his needs); but it doesn't follow that it isn't a right to some things some people need to live. Whether there are such positive rights is not the subject of this chapter. The point here is that to say there can be no positive natural rights because the "space of rights" is already filled with particular rights to things is not to give a reason but to beg the question.²⁵

If there is justification in Nozick's work for his repudiation of positive natural rights, it will have to be found at another level, in the moral theory underlying the

²⁵See also Thomson, p. 96. Thomson asks what having a right to life comes to. On some views, she says, it includes "having a right to be given at least the bare minimum one needs for continued life. But suppose what in fact is the bare minimum a man needs for continued life is something he has no right at all to be given?" Here too we find the question-begging suggestion that what a person needs to live might be something he has no right to because the "space of rights" is filled with particular rights to things.

political conclusions. The moral theory can in turn be seen as consisting of two levels: the idea of side constraints, and below that, the interpretation of Kant's categorical imperative.

Nozick contrasts an ethical theory containing side constraints with one in which a moral concern functions as a moral goal, "as an end state for some activities to achieve as their result."²⁶ Utilitarianism is the obvious example of the latter kind of theory. Here the sole criterion not only of what is permissible but of what ought to be done (there being no ultimate distinction) is maximization of the good. And though there may be rules of thumb that are reliable guides to action, ultimately it is an empirical question what does and doesn't maximize the good: there are no constraints on action except the constraint to produce the greatest good.

One could, Nozick suggests, construct a "utilitarianism of rights," in which minimizing the violation of rights replaced maximizing happiness as the goal to be achieved. Such a theory would correct for utilitarianism's reputed neglect of rights and its inability to accommodate the idea that there are some things one may not do even though doing them would maximize happiness. A utilitarianism of rights "would require us to violate someone's rights when

²⁶Nozick, p. 28.

doing so minimizes the total (weighted) amount of the violation of rights in the society."²⁷

In contrast, Nozick's view places rights as "side constraints upon the actions to be done: don't violate constraints C. The rights of others determine the constraints upon your actions."²⁸ Rights are not an element in the goal to be achieved; rather, they limit one's goal-directed behavior. The crucial difference between the two kinds of moral theory is that on a side-constraint theory it is not permissible to violate a right even to minimize total violation; on a goal-centered theory it is permissible, and indeed required.

The question is whether there is anything significant in Nozick's assumption that it is in every case possible to avoid violating someone's right. If it is never permissible to violate a right, it must be possible not to: 'may' (not) implies 'can' (not). One circumstance where it would seem to be impossible to avoid violating someone's right is where a person has agreed to do two incompatible things: e.g., meet A at a certain time in one place and meet B at the same time at a different place. Either A's or B's contracted right to be met will have to be violated. But Nozick can avoid this difficulty by arguing that contracting conflicting obligations is itself a violation of

²⁷Ibid.

²⁸Ibid., p. 29.

someone's right. He suggests the principle that "an act is not wrong and so cannot be prohibited if it is harmless without a further major decision to commit wrong."²⁹ Since contracting conflicting obligations is "harmful" without any further decision to commit wrong, it is itself wrong and may be prohibited. It is possible to avoid violating either A's or B's right because it is possible to avoid entering into incompatible contracts.

What about rights that have not been contracted? If all natural rights were negative, it would always be possible to avoid violating such rights simply by not acting, by doing nothing.³⁰ I avoid violating your natural right to noninterference by not killing you, not touching you, not having anything to do with you. But if some natural rights were positive--requiring the action, not the forbearance, of others--the problem of violation becomes more complicated. Then we will have to decide between two ways of speaking: (1) We can say that it is not always possible to avoid violating someone's right, because A's right to the food he needs to live may conflict with B's right to employment or with C's right not to have his property invaded. Or, (2) we can say that determining what rights people have is a very complicated matter which can't

²⁹ Ibid., p. 127.

³⁰ Assuming that contracts which violate a natural right not of the contractor are invalid, it would then be possible to avoid violating all rights, natural and contracted.

be done in advance of the facts (as Nozick and most natural rights theorists have thought) because it depends in great part on what the facts are. The relevant facts are those having to do with the absolute and relative positions of those whose rights are in question. How badly off is A? How responsible is he for his situation? How badly off will C be if some of his property is taken? How great an invasion of his freedom is required to take it?

Whether we choose (1) or (2), if there are any positive natural rights the problems of determining rights and their violation are inextricably bound up with some kind of calculation. In (1), these rights are first acknowledged; then one has to calculate (on whatever basis) which takes precedence. This is what Nozick calls a utilitarianism of rights. In (2), calculation precedes and partly determines who has what right. Here the conclusion that a right will sometimes have to be violated is avoided by relocating conflict to the stage before rights are assigned. It seems likely that for any particular type-(1) conception, a type-(2) conception with the same consequences could be given (and vice versa); for a given distribution, two equivalent accounts of rights will justify it.

But although (1) and (2) may be equivalent in their consequences, they are not identical in every respect. The fact-dependent conception of rights, (2), has the virtue of preserving the "sacredness" of rights; violation will be

extraordinary, not normal as it will be on (1).³¹ Since the inviolability of rights is a crucial part of their meaning and their moral and political value, this is a sufficient reason to choose (2) over (1).

Clearly Nozick accepts neither of these conceptions of rights. (1) is repudiated explicitly as a "utilitarianism of rights." And everything Nozick says about natural rights indicates he does not think them fact-dependent as they are in (2).³² But what, one may be wondering, is the significance of this and what does it have to do with his acceptance of side constraints?

The objection I am raising to Nozick's side-constraint view can be compared to one of his own criticisms of Rawls's theory. Concerning Rawls's original position and what occurs there Nozick says: "A procedure that founds principles of distributive justice on what rational persons who know nothing about themselves or their histories would agree to

³¹I say 'extraordinary', rather than 'absolutely forbidden under any circumstances'; the latter clearly seems too strong. Cf. Nozick, p. 30n: "The question of whether these side constraints are absolute, or whether they may be violated in order to avoid catastrophic moral horror . . . is one I hope largely to avoid." A theory which absolutely prohibits rights violations is likely to have one of two fatal defects: either it requires total intransigence in the face of all possible consequences, catastrophes, conditions; or else it ends up identifying the assertion of a right with "on-balance" judgments of what ought to be done in a particular case, thus making talk of rights pointless and superfluous.

³²It is important to see that the question of whether to view rights as fact-dependent is a conceptual, not a moral one, which in itself says nothing about the content of

guarantees that end-state principles of justice will be taken as fundamental."³³ Similarly it can be said that a theory containing side constraints ("Don't violate people's rights") together with a fact-independent conception of natural rights guarantees that no positive natural rights will be allowed by the theory. This is for the reason that, as explained above, the acceptance of positive natural rights requires that we say either that some rights will regularly have to be violated (thus no side constraints) or else that what natural rights people have depends partly on the facts.

The objection, then, isn't to side constraints per se (since positive injunctions--"Do x"--could be included among side constraints) but to side constraints conjoined with a fact-independent conception of rights. What it shows is that the side constraint model in Nozick's theory can't provide the kind of independent justification for the no-positive-rights view that is needed; it contains a bias against positive rights.

Is there a still more fundamental level in Nozick's theory which supports his acceptance of negative but not positive natural rights and so in turn the prohibition against coercing people to act but not refrain from acting?

rights. It is only when joined to other assumptions that it becomes significant (see next paragraph).

³³Nozick, p. 198. (Emphasis in original.)

If there is such support in Nozick's theory it must be found in his interpretation of Kant's categorical imperative.

Side constraints upon action, Nozick says, "reflect the underlying Kantian principle that individuals are ends and not merely means: they may not be sacrificed or used for the achieving of other ends without their consent. Individuals are inviolable."³⁴ Nozick emphasizes repeatedly the unacceptability of a person's being used, sacrificed, or treated as a means by another. On his view, being forced to contribute to another's welfare is a clear case of being treated as a means--a means to the other's good--and is therefore a violation of the Kantian injunction.³⁵

The trouble with Nozick's Kantianism is that it tells only half the truth about what Kant said and meant; it tells the half that dictates what one may not do, and ignores the half that says what one may not omit to do. For Kant did not say just that one may not treat a person (solely) as a means; he said that one must treat him always as an end.³⁶ The negative part of the injunction, "Never

³⁴Ibid., p. 31.

³⁵Ibid., p. 33; see also p. 30.

³⁶Immanuel Kant, Foundations of the Metaphysics of Morals, tr. Lewis White Beck (Indianapolis: Bobbs-Merrill, 1959), 429 (p. 47). In fact, what are here referred to as the negative and positive parts of the categorical imperative are not separate in Kant's formulation: "Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only."

treat a person (solely) as a means," can, it is true, be satisfied by avoiding human contact. If you have nothing to do with a person, you don't "treat" him, a fortiori you don't treat him as a means.³⁷ But this isn't sufficient to fulfill Kant's imperative. To treat humanity as an end it will sometimes be necessary to act, not refrain from acting. By taking up only the negative part of the imperative, Nozick supports the emphasis on prohibitions against actions to the exclusion of omissions; by not taking up the positive part, he distorts the intent of the whole.

So, for example, according to Nozick the state would violate the injunction not to treat a person as a means if it forced him to come to the aid of another. It may not compel A, a passerby, to try to save the life of B, a stranger who is drowning. Consider first just the relation of A and B, without the state. If A doesn't try to save B, we will grant that he doesn't treat B as a means because he doesn't "treat" him at all. But neither does he treat him as an end. One cannot treat someone as an end without

³⁷ This is granted here for the sake of argument. In ch. V it becomes apparent that one can treat a person as a means (and not just not treat him as an end) by doing nothing. This happens when, for example, one person has something to gain by another's death, which will occur unless the former acts. There need not be any prior relationship between the two for the failure to save in such circumstances to amount to treating as a means; what is required is just that the person who could save not-act with a certain end in view (e.g. to succeed to the endangered person's position). See below, ch. V, pp. 140-41.

adopting and furthering certain of his ends as one's own. It is clear that one does not treat someone as an end by letting him drown.³⁸

It would be implausible for Nozick to deny that if A were treating B as an end, he would try to save him. But he will argue that in any case the state treats A as a means by forcing him to help B. Is it the coercion, then, that violates the Kantian injunction? If so, then all coercion violates it with respect to the person coerced, whether he is forced to act or to forbear. If a person is coerced to act, the state fails to treat him as an end, and treats him as a means to someone else's good. If he is coerced to forbear, the state fails to treat him as an end, though it is not clear whether we should also say it treats him as a means. Because he is being forced to not-act, there is no-thing that can be called a means. But since the state is forcing him, it is "treating" him--if not as a means, at least against his ends.

But perhaps it is not all coercion (coercion per se) that violates the Kantian injunction. In that case it would

³⁸Kant, 430-31 (p. 49). Kant, of course, held that it is impossible to will the principle never to help others in need. "For a will which resolved this would conflict with itself, since instances can often arise in which he would need the love and sympathy of others, and in which he would have robbed himself, by such a law of nature springing from his own will, of all hope of the aid he desires" (424, p. 41).

Kant's notion of an end is difficult and complex. I do not try to do it justice here, but only hope to make clear that Nozick's view is not in keeping with Kant's on any reasonable understanding of an end.

seem that whether a coercive measure violates it depends on whether what it coerces violates it.³⁹ So when the state forbids aggression, it merely enforces what the Kantian injunction demands: aggressing against a person treats him solely as a means. But then it is clear that coercing A to save B is also not a violation of the injunction: in trying to save B, A not only doesn't treat him as a means; he treats him as an end.

Nozick would almost certainly choose the second alternative--that the state violates the Kantian injunction only when what it coerces does. But on either alternative it is clear that there is no relevant difference between coercing to prevent aggression and coercing to give aid: either both violate the injunction or neither does. This conclusion can be avoided only by focusing on that part of the Kantian principle which can be satisfied by forbearing, and excluding the equally important part which may often require acting. Such selective attention can be justified only on the assumption of an essential moral difference between prohibitions against actions and those

³⁹This was Kant's own view, expressed in The Metaphysical Elements of Justice, tr. John Ladd (Indianapolis: Bobbs-Merrill, 1965), 231 (p. 36): "if a certain use of freedom is itself a hindrance to freedom according to universal laws (that is, is unjust), then the use of coercion [also a hindrance to freedom] to counteract it, inasmuch as it is the prevention of a hindrance to freedom, is consistent with freedom according to universal laws; in other words, this use of coercion is just." See also above, ch. II, sec. 3, esp. note 27, on the connection between rights, obligations, and coercion.

against omissions (or, to prevent quibbles, on the assumption that there are no genuine prohibitions against omissions). I have argued that this assumption can be found at every level of justification for Nozick's political conclusions: from his explicit statements about natural rights, to his conception of an adequate moral theory as one containing side constraints, and finally to the underlying Kantian foundation. The assumption is crucial but undefended. In the next chapter it will be asked whether it is defensible.

2. Hart, Berlin, and a Generalized Argument

The assumption of a moral difference between action and omission is not confined, in political philosophy, to Nozick's theory or to that of libertarians alone. It can be found implicit in the thinking of other political theorists who may not share Nozick's minimalist conclusions but who facilitate them by their own reliance on the assumption. This is revealed by an examination of the concept of freedom as it is understood by such writers in the liberal tradition as Hart, Berlin and Hayek. The concept of freedom plays a crucial role in determining the limits of the state's coercive power: both generally, because freedom is often thought to be, in Hayek's words, "not merely one particular value but . . . the source and condition of most moral

values";⁴⁰ and specifically, because the abridgment of freedom involved in coercion may be thought justified primarily to protect freedom. In chapter VI the concept of freedom will be investigated in more detail; it will be argued that an adequate conception will not presuppose the moral nonequivalence of action and omission and thus will not support the minimalist conclusions for which arguments from freedom are often made. Here I will only try to indicate how the idea of freedom typically adopted by liberal thinkers does in fact presuppose a moral difference between action and omission.

In Hart's work, freedom is directly connected with individual (natural) rights, and therefore with the justifiability of the use of force. In "Are There Any Natural Rights?," he advances "the thesis that if there are any moral rights at all, it follows that there is at least one natural right, the equal right of all men to be free."⁴¹ This means that in the absence of certain special conditions,

any adult human being capable of choice (1) has the right to forbearance on the part of all others from the use of coercion or restraint against him save to hinder coercion or restraint and (2) is at liberty to do (i.e., is under no obligation to abstain from) any action which is not one coercing or restraining or designed to injure other persons.⁴²

⁴⁰ Hayek, p. 6.

⁴¹ p. 52

⁴² Ibid.

Hart doesn't say that this is the only natural right, but clearly for him it is the one for which the strongest case can be made. And he does say indirectly that all general rights--of which natural rights are, on his view, a species--are negative.⁴³

This right to be free is a negative right against others' actions; it requires that they forbear, and couldn't justify positive intervention. To construe freedom as entirely negative in this sense and then to make the right to be free the fundamental natural right is to ensure that obligations of forbearance will have primacy in the political sphere over obligations to act, if the latter are not excluded altogether. So it has to be seen whether what is contrary to freedom is necessarily action, or whether inaction may also sometimes oppose it.

Berlin understands freedom⁴⁴ in much the same way that Hart does: "I am normally said to be free to the degree to which no man or body of men interferes with my

⁴³"General rights have as correlatives obligations not to interfere to which everyone else is subject" (p. 64). One might take this to show the inadequacy of the idea of a general right for natural rights. See above, p. 56.

⁴⁴I.e. negative freedom. As much of what goes for Berlin under the name of positive freedom doesn't seem to be freedom at all, with respect at least to his views the discussion can proceed largely within the confines of negative freedom. See below ch. VI, sec. 1, esp. n. 8.

activity."⁴⁵ "The defense of liberty consists in the 'negative' goal of warding off interference."⁴⁶ This talk of the negative may be confusing; we need to know what is negative about the defense of liberty. Is it that the demands of freedom are satisfied always by forbearance, restraint, so that defending liberty is negative in the physical sense described above? If so, this a priori exclusion of actions needs to be argued for. Or is the defense of liberty negative in the sense that it enjoins only the prevention of harm, not the doing of good, and so is negative in a moral sense? But if this is the case, there is an illicit identification of doing with doing good. To assume that when one doesn't act--e.g., doesn't try to save someone's life--one merely fails to confer a benefit, rather than causing or contributing to a harm, is to legislate a moral question verbally.

Berlin defines (negative) freedom not simply as the absence of frustration, which can be achieved by extinguishing desires, but as "the absence of obstacles to possible choices and activities--absence of obstructions on roads along which a man can decide to walk."⁴⁷ The crucial question concerns the nature of these obstacles to freedom.

⁴⁵ Four Essays on Liberty (London: Oxford University Press, 1969), "Two Concepts of Liberty," p. 122.

⁴⁶ *Ibid.*, p. 127.

⁴⁷ *Ibid.*, intro., p. xxxix.

It is generally agreed that not every kind of inability that stands in the way of a person's realizing his goals constitutes an obstacle to freedom. I am not unfree because I am unable to fly. But to say this is not to say that lack of freedom "implies the deliberate interference of other human beings within the area in which I could otherwise act."⁴⁸ For one thing, it would seem to be irrelevant whether the interference is deliberate--intended to have the effect it does on another person--or is just a side effect of an action having another goal. But the central question is whether lack of freedom necessarily implies the positive action involved in interference, or whether omissions may also constitute abridgments of freedom. There is an ambiguity in the idea that unfreedom implies human involvement, which is revealed in Berlin's assertion that "You lack political liberty or freedom only if you are prevented from attaining a goal by human beings."⁴⁹ Shall we say I am prevented from attaining a goal by human beings if a natural obstacle to my goal can be removed by them and is not? True, it is their inaction which prevents me; but the inaction of a human being who can act is not on a par with the

⁴⁸Ibid., p. 122. Berlin uses the term 'coercion', which he appears to use to mean 'the denial of freedom'. I say 'lack of freedom' because 'coercion' is heavily laden with the connotation of positive action. For discussion of the correlativity or lack of it between coercion and freedom, see below, ch. VI, pp. 186-88.

⁴⁹Ibid.

inaction of inanimate nature. So the argument that not every form of inability constitutes a barrier to freedom isn't enough to show that inabilities that "occur in nature" but which can be altered by human actions are likewise not obstacles to freedom. And of course the case for "oppression by omission" is even stronger where, as in the real world, inabilities result from a complex concatenation of natural circumstances and deliberate and nondeliberate human practices.

But to say that human omissions aren't on a par with the recalcitrance of nature is not yet to show that they are on a par with human actions. That these may be moral equivalents is the argument of subsequent chapters. This is also the view taken by those who deny the significance of the distinction between liberty and the conditions (or worth, in Rawls's formulation) of liberty, and by some proponents of positive freedom. Further investigation of these issues will be useful.

Like the view that natural rights are all negative, the idea that freedom is only the absence of positive interference is made to appear more plausible than it really is by the use of certain key expressions which contain a bias along the action/omission dimension. So, for example, we may be too willing to accept the definition of freedom as the absence of interference because we respond immediately to the negativity (i.e. badness) of interference, without

realizing its implication of positive intervention. If interference means 'unwanted intervention', then freedom no doubt requires the absence of it. But this doesn't show that positive action per se may not be required by the demands of freedom. Similarly, talk about "obstacles" or "barriers" to freedom may be misleading because the concreteness of these terms makes it look as if what prevents a person from realizing his goals is necessarily something positive standing in the way, and not the failure to act of one who can act. Of course one may argue with the use of the word 'prevent' here: the person who is convinced of the moral difference between action and omission will deny that one who fails to act prevents the other from realizing his goals, and is not therefore responsible for his unfreedom. Terms with causal implications--'cause', 'prevent', 'consequence', etc.—are especially likely to contain biases one way or the other. One may be led to wonder whether it is possible to say anything at all on this issue without begging the question or prejudicing the answer.

But despair is not warranted. A form of argument can be elaborated that is applicable generally whenever it can be questioned whether in making an assertion a person has tacitly assumed a stance on the question of the moral significance of the difference between action and omission. This is a kind of "open question" argument.

One important concern of moral philosophy is to establish the limits of the permissible within a given sphere. In political philosophy the concern is the limits of permissible coercion by the state; in pure moral philosophy it is the area of permissible conduct between and among individuals. Various principles or theories are asserted concerning what is and is not permissible: e.g., one may not violate a person's rights, or cause him harm, or make him worse off, or abridge his freedom in certain ways. About any such principle or theory it can be asked: does the criterion of the impermissible divide actions from omissions, so that, for example, violating someone's natural rights or causing him harm will be said to occur only when a person has done something and not when he has omitted to do something; or is it instead an open question whether the impermissible behavior consists of an action or omission? If the substance of the principle coincides with the distinction between action and omission, then its advocate is committed to the view that necessarily, one violates a person's natural rights or causes him harm only when one acts; he is committed to a necessary moral difference between action and omission. In section 1 this argument was applied to Nozick's conception of the sacrosanct area surrounding an individual. The area is either in "moral space," in which case it can be transgressed either by actions or omissions; or else it is in physical space, in

which case it can be transgressed only by actions. But if the latter, the essential difference between action and omission is assumed.

One might object to this argument as follows. Suppose for the sake of argument we accept the principle that coercion is permissible in order to prevent one person from causing harm to another. (Leave aside the obvious problems connected with defining 'harm'.) But the question of the correct use of 'cause' is not open: it is governed by rules that we neither make up nor are at liberty to change as we please--assuming that we want to speak English, communicate with other speakers, etc. One of these rules is that only events, positive occurrences, are possible causes. Therefore it is not an open question whether an omission may be a cause of harm.

Several things may be said in reply. In the first place, there is plenty of room for disagreement about whether omissions may be causes. The idea that causes must be positive occurrences is likely to take hold in abstract philosophical discussion of causation; in the practical affairs of life we sometimes do ascribe causal responsibility to what doesn't happen--for various good reasons.⁵⁰ But

⁵⁰ See, e.g., Hughes; Otto Kirchheimer, "Criminal Omissions," Harvard Law Review 55 (1942): 615-42; H. L. A. Hart and A. M. Honoré, Causation in the Law (Oxford: Clarendon Press, 1959), Part One; Jerome Hall, General Principles of Criminal Law, 2d ed. (Indianapolis: Bobbs-Merrill, 1960), ch. VI, sec. 4, "Omissions"; John Kleinig, "Good

this is not the main point. For even suppose it were true that causes are always positive occurrences and never omissions. Then the very assertion of the principle that coercion is permissible (only) to prevent one person's causing harm to another--which, on its face, seemed quite innocuous--is now seen to be highly controversial. For what may have seemed to be independent of a significant moral theory (about the import of the difference between action and omission) is not; and we have no more reason to accept the principle than to accept the theory. Similarly, if it is a fact of the English language that 'interference' implies positive action, then defining freedom as only the absence of interference is a more serious step than many who make it may realize.⁵¹

What I have said in this chapter doesn't show that there isn't a moral difference between action and omission.

Samaritanism," Philosophy & Public Affairs 5 (1976): 382-407. In the law, omissions are said to be causes of harm only where there is a prior obligation to act. The parent who doesn't feed his child causes his death; the stranger who also doesn't feed him does not. See below, ch. IV, pp. 84-88. (A different view of moral or legal obligation would alter what we say here.) What we will call a cause depends upon our interests and purposes, on what normally happens, what is expected, etc. But attention to typical contexts in which causes are cited is enough to show there is no metaphysical absurdity in the idea that omissions may be causes.

⁵¹This applies even more clearly to Nozick's version of the Lockean proviso, according to which accumulation is limited by the condition that it not make other people worse off (in certain relevant ways). Failures to act never make people worse off in these ways. See Nozick, pp. 178-182.

So far, I have argued only that the truth of the claim that there is such a difference is crucial for those who want to say that the state may not coerce one person to aid another; and that this view is undefended. What has been established, then, is not the significance of the distinction between action and omission, but only the significance of the question of its significance. The substantive question is the subject of the next two chapters.

CHAPTER IV

THE MORAL EQUIVALENCE OF ACTION AND OMISSION:

A. THE IDEAL CASE

In this chapter and the next it is argued that action and omission are morally equivalent. The argument has two main parts. This chapter is concerned with the claim that there is in principle a moral difference between action and omission. In the next chapter I consider the arguments for the seemingly commonsensical view that there is a great practical difference between would-be requirements to act and those to forbear, whatever the relative moral status of action and omission considered solely in themselves may be. In theory, these problems are independent. But contingent, practical differences are sometimes taken, by philosophers as well as laymen, for necessary ones.¹ And when it is seen that demonstrating the equivalence in principle of action and omission doesn't settle questions of the relative moral status of any but the ideal case, some people may retreat to the view that the differences between morally relevant features

¹For evidence of this confusion and further discussion of the difference between necessary and practical differences, see below pp. 92-4 and pp. 105-9.

typically correlated with actions and those typically correlated with omissions permit most of the same conclusions about particular cases as would an essential difference. I will argue against this view in the next chapter.

Briefly, the plan of these two chapters is as follows. First, two ideal cases are presented which, I believe, reveal the equivalence in principle of action and omission. I try to say what it is about these cases that makes the equivalence clear. Next some examples and arguments of contemporary philosophers are considered that purport to show an essential difference between action and omission. These examples can be shown to be faulty in various ways. The arguments supporting them are also criticized.

Looking closely at the examples offered by both sides brings into focus the characteristics of conduct that are morally relevant. In the next chapter the theory underlying conclusions about cases is developed in greater detail. Morally relevant features--which are commonly thought to correlate in significant ways with actions and omissions--can be grouped under two general headings:

(1) certainty or probability of the connection between an act or omission and the harm to be avoided; and (2) sacrifice or cost to the agent in having to forbear or to act. The idea that there is a gulf between actions and

omissions comes from comparing cases that are asymmetrical with respect to these features; when comparable cases are compared, the gulf disappears. This becomes especially clear as we break away from the paradigm of harmful action which has come to obscure our thinking--action which results directly and immediately in harm--and attend to actions along the continuum whose harmful effects are increasingly less direct and immediate, both in space and in time.

Before proceeding to these substantive problems, however, something needs to be said about the different possible differences between action and omission, and their differences.

1. Different Differences: Conceptual,
Moral, Essential, and Practical

In what has been said so far the conceptual distinctness of action and omission has been taken for granted. Indeed, without this assumption the question of their moral equivalence or difference is not intelligible: there aren't two distinguishable things to be compared. Yet it is sometimes said that action and omission aren't conceptually distinct.² What is the reason for this doubt? It arises

²Whoever says this doesn't need to be convinced that action and omission aren't morally distinct. Conversely, those against whom the arguments of these chapters are made don't doubt that they are conceptually distinct.

from the realization that one has access to a strand of behavior only via some description of it, and that the same strand can often be described alternatively by a positive or by a negative description--in terms of something the agent did, or in terms of something he didn't do. But then it would seem that no strand of behavior is per se an action or an omission; whether it is one or the other depends on what description it goes under, and there are many possible true descriptions for any strand, some negative and some positive. So, for example, if a parent doesn't feed his child and the child dies, one might say any of the following things: he didn't feed his child; he starved his child; he let his child die; he caused his child's death. Presumably all these descriptions cover the same behavior; yet some emphasize positive action, other omission.

The difficulty here can be dispelled by some further considerations. In the first place, it is clear that not every active verb corresponds to a positive action. In saying the parent starved his child one is not saying or implying that the parent performed physical actions that resulted in the child's death--on the contrary. The use of the verb 'starve' emphasizes the significance of the parent's omission, as perceived by the speaker.³

³The use of an active verb to describe an omission doesn't only or necessarily imply the omission's moral significance. It indicates its noteworthiness in some way or other.

But is the description of the parent as starving his child merely an injection of the speaker's moral beliefs into his description? No; and this raises the second important point. It can be grasped more easily by comparing the parent's behavior with another case. If a stranger doesn't give food to a beggar and the beggar dies, we will say that the stranger didn't feed the beggar, but not that he starved the beggar.⁴ Yet the same strand of behavior--no physical actions relevant to the starving person's death--seems to be involved in both cases. What is the difference between these cases which warrants the description of the agent as starving (someone) in the one case but not in the other?

The difference depends on the fact that the parent has undertaken to care for his child, but the stranger has not undertaken to care for the beggar. Agreeing or undertaking to do something not only establishes a moral obligation; it also legitimizes certain descriptions. Specifically, it legitimizes a description which is expanded in scope to include more than the bare omission. For the omission is, in light of the undertaking, no longer bare; it is not what I have been calling an ex nihilo omission. The apparent similarity of the behavior of the

⁴In other cases it would be peculiar to say of someone that he didn't x, even when he didn't x. One doesn't say "He didn't feed x" unless there is some reason to think he would have, could have, should have, might have, fed x. See D'Arcy, p. 41ff; also below, ch. V, pp. 132-34.

parent and stranger is illusory. Although both "didn't feed," the parent in addition did certain things (e.g. brought a child into the world) which warrant picking up the train of behavior at an earlier stage. The description of the parent as starving his child is a broader description which makes reference to both actions and omissions.⁵

For a large class of omissions--those that occur within the context of a prior agreement or undertaking of some kind--one has discretion to describe what happens either negatively or positively. Positive descriptions cover a longer strand of behavior of which the omission is only a part. It is by attending to this class of omissions that one is led to think there is no conceptual difference between action and omission. For about a given segment of behavior it is not usually hard to distinguish physical movements from the absence of physical movements. The question under consideration is whether one can be obligated to perform physical movements without having performed earlier physical movements--as, it is generally thought, one can be obligated not to perform physical movements without having performed earlier physical movements. If

⁵ It is not only the parent's having undertaken or agreed to do something that legitimizes the positive description of his omission. It is also that his doing so creates expectations in others that he will act, and makes them less likely to. As a result of his prior actions, the parent's omission occurs within a closed system; the stranger's does not.

anyone doubts that so much moral controversy can rest on this merely physical difference, he can satisfy himself that this is the disagreement by reviewing the controversial cases.

Once the conceptual distinctness of action and omission is acknowledged, the question arises whether they are morally different or not. What does it mean to assert or deny a moral difference between them? A person is committed to a moral difference between action and omission if, given a pair of cases parallel in every respect except that one requires positive action and the other requires forbearance, he thinks the latter more morally binding than the former. Just what 'more morally binding' means will vary according to the particular moral theory or framework, and as the moral difference between action and omission is thought to be more or less significant. On some theories, like Nozick's, the difference will be sufficient to yield a difference in what people have (natural) rights to--viz. forbearances, but not actions. Minimally, one will have to say that given a pair of otherwise parallel cases, "acting badly" is worse than "omitting badly." But saying this, though it implies a moral difference between acting and omitting, does not imply what I will describe as an essential moral difference between them. What is the difference between a moral difference and an essential moral difference?

The difference can be seen by imagining a system of morally evaluating various courses of conduct by assigning numerical values to the features of a proposed course that are thought to be morally relevant. These features might include the likelihood that some harm will ensue if the course of conduct is pursued, the likelihood that it will be avoided if the course of conduct is abandoned, the sacrifice to the agent in carrying out and in not carrying out the plan, etc. Now if the action/omission variable is morally relevant, then this will be reflected in the point system. If the more points a proposed course of conduct has, the less morally desirable it is, then, other things being equal, an action thought to result in harm will receive more points than an omission thought to result in harm.⁶ But since other things are not in general equal, and since the action/omission variable is, on this conception, only one of a number of morally relevant features, this difference will not "survive" in the total calculation to distinguish actions from omissions in general. In fact, it will clearly distinguish only those ideal cases where nothing else differs but action/omission. But an essential

⁶I use 'result in' rather than 'cause' to avoid question-begging discussions of whether omissions can be causes. I am willing to say of omissions ex nihilo that they don't cause harm. Some might object to 'result in' on similar grounds. The connection between an omission (or an action) and a particular harm said to result from it will be made clear below, and in the next chapter.

difference between action and omission would override other factors; it would itself generate a difference between our assessment of cases requiring forbearance and our assessment of cases requiring action. So an essential difference cannot be merely quantitative.

It is clear that in order to distinguish in principle between, for example, negative and positive rights, as Nozick does, there must be not just a moral difference but an essential one between action and omission.⁷ But it is not clear how one would go about arguing for the stronger claim. The "method of parallel cases" used by many philosophers to show a moral difference between action and omission does not, even if successful, show an essential difference. Since I will argue that there is no moral difference between action and omission, I will leave this problem to those who need to solve it.

For purposes of this discussion, the similarities between these differences are more important than the differences. Both differences need to be contrasted with practical differences between action and omission. I will therefore contrast practical differences and necessary ones, meaning by the latter both essential and nonessential moral differences. For both these differences presuppose

⁷ See ch. III, sec. 2. The "open question" argument offered there is an argument against an essential difference. It indicates that action/omission can be separated from features thought to be morally relevant.

that there is necessarily something about actions that distinguishes them morally from omissions. This something might be irreducible, or it might be some characteristic necessarily connected with or implied by being-an-action. If there is no necessary difference between action and omission, then a pair of cases parallel in every respect but that one involves action and the other omission ought to yield the same moral assessment. (This test will be used below, in section 2).

On the other hand, one might reach vastly different conclusions about cases involving actions and those involving omissions not on account of a necessary difference but because some morally relevant characteristic or characteristics were contingently connected--highly correlated--with the action/omission distinction. If it is true that, for example, refraining ordinarily does not involve significant cost to the agent while positive action does, then this ought to be reflected in our conclusions about most cases. But this is a different kind of question from the question of a necessary difference; and the answers are not to be found in the same ways.⁸

⁸For discussion of possible practical differences between action and omission, see ch. V. Cf. James Rachels, speaking specifically of the difference between killing and letting die: ". . . it is very easy to conflate the question of whether killing is, in itself, worse than letting die, with the very different question of whether most actual cases of killing are more reprehensible than most actual cases of letting die." ("Active and Passive Euthanasia," New England Journal of Medicine 292, no. 2, p. 80.)

The distinction between a difference in principle between action and omission and a difference in practice would seem to be quite clear. Yet there is sometimes an ambiguity in a philosopher's assertion that, for example, negative duties are more stringent than positive ones. Arguing in support of this view, Richard Trammell says:

It is an empirical fact that in most cases it is possible for a person not to inflict serious physical injury on any other person. It is also an empirical fact that in no case is it possible for a person to aid everyone who needs help. . . . In short, the negative duty of not killing can be discharged completely. The statement, "For every x, if x is a person, then y does not kill x," is true for many y's. But the positive duty of saving can never be discharged completely. The statement, "For every x, if x is a person and x needs aid, y aids x," is not true for any y in the world.⁹

Since it isn't possible for a person to aid everyone who needs help, obviously one can't be obligated to do so. But it in no way follows that one's obligation to aid some particular person in specific circumstances isn't as stringent as one's duty not to inflict physical injury. Trammell's general point about dischargeability depends on this confusion of the general and the particular. For a particular obligation to save this individual now can be discharged completely: save him and it is discharged.

⁹"Saving Life and Taking Life," Journal of Philosophy 72 (1975), p. 133. For further evidence of Trammell's confusion of the general and the particular and of practical and necessary differences, see below, pp. 103-9.

And since there is no obligation to save everyone who needs saving, there is no obligation which can't be discharged. The concept of dischargeability has no application to the particular case, because a particular obligation is always an obligation to do what can be done.

With respect to the general, talk of dischargeability is a roundabout way of asserting the universality or exceptionless of a right or obligation. The duty not to kill can be completely discharged in the sense that it is possible never to kill (but not in the sense that one "finishes" not killing all those one is obligated not to kill). But although it may be possible never to kill, few people are willing to say that the duty not to kill is exceptionless. And furthermore, as will be argued in the next chapter, the extreme case of killing is misleading as exemplar of the general problem of harming. It is not at all clear that the duty not to cause harm is more easily discharged than the duty to prevent it. So Trammell's point about dischargeability shows at most a difference in degree between negative and positive duties, rather than a difference in kind.¹⁰

Trammell says that the dischargeability of a duty is one of the facts that underlies the distinction between negative and positive duties.¹¹ 'Underlies' falsely

¹⁰Just how great the difference is will be further investigated in the next chapter.

¹¹Trammell, p. 133.

suggests a necessary feature which attaches to all cases. And Trammell's failure to distinguish the general from the particular case makes one wonder whether he knows whether he is arguing for a necessary difference between negative and positive duties, or a practical one. Both may be important, but they are not the same.

2. Parallel and Not Quite Parallel Cases

Imagine the following situation.¹² A person is stranded on a desert island, far from any other land and from human life. The island provides no source of sustenance; and the person's meager provisions are almost gone. Just as he is about to give up hope that he will survive, he sights a vessel heading toward the island. It lands, and a sailor appears and comes ashore. The ship contains plenty of supplies, as well as providing a way back to the human world.

Now consider two possible scenarios that follow. In the first, the sailor won't share his provisions with the stranded man, and won't take him aboard the ship. He

¹²In recent years a number of philosophers have employed this "method of parallel cases," some to establish the equivalence of action and omission, and some to show the difference between them. See, e.g., Michael Tooley, "Abortion and Infanticide," Philosophy & Public Affairs 2 (1972): 37-65; Trammell, "Saving Life and Taking Life," and "Tooley's Moral Symmetry Principle," Philosophy & Public Affairs 5 (1976): 305-313; Rachels, "Active and Passive Euthanasia;" and Bruce Russell, "On the Relative Strictness of Negative and Positive Duties," American Philosophical Quarterly 14 (1977): 97-97.

is ready to leave as he has come. In the second, the sailor attempts to kill the man he finds on the island.

I believe that in these circumstances, the sailor's failure to share his provisions or his ship with the stranded man is morally equivalent to his killing him.¹³ Now one question which arises immediately is whether this judgment is a judgment of the sailor's conduct (i.e. his action or omission) or of his character, or both. For someone might maintain that though the person who does nothing in circumstances like these is as despicable as one who actually kills, nevertheless their conduct is not morally equivalent and does not have the same implications in terms of the involved parties' rights and obligations.¹⁴

Several things may be said in reply. First, no reference was made in the description of these cases to

¹³This case satisfies the condition set out in ch. I to demarcate cases of aiding (as distinct from, e.g., cases of compensating). The sailor's failure to aid doesn't make the stranded man worse off than he would have been had the sailor not appeared at all; the sailor has had no causal role in bringing about the plight of the other. So this situation is unlike that where someone owns the only waterhole in the desert. It is comparable to Nozick's example of the medical researcher who "synthesizes a new substance that effectively treats a certain disease and who refuses to sell except on his terms." The substance is easily available, and so the researcher's appropriation of it doesn't make others worse off than they would have been had he not appropriated it. On Nozick's view, the researcher is within his rights in refusing to sell. (Nozick, pp. 179-181.)

¹⁴I.e., the sailor is not morally obligated to share his provisions, and the stranded man has no right to them and no right against the sailor.

any motives, intentions, or internal states of the sailor. Our ignorance of these does not interfere with our ability to assess the rightness or wrongness of a strand of behavior, just as the legal system can prohibit courses of action without knowing what is in the minds of those who carry them out. (Of course, when it comes to judging and punishing individuals for their conduct these personal facts become relevant, both morally and legally.) On the other hand, since it is sometimes difficult to disentangle the roles played by our assessment of the agent and our assessment of the conduct in judgments of the sort involved in the present case, it makes sense to stipulate the same internal states operating in the sailor in the alternative scenarios. Only if everything but action/omission is the same can our moral assessment of the cases be taken as a reliable test of the relevance of this factor. And if there is no difference between the cases but action/omission, then there is no difference which could make a difference in the rights and obligations involved.

Harmful actions and omissions resulting in harm are often asymmetrical in terms of the motives and intentions of those who act or don't act. This is because a person in control of himself who knows what he is doing doesn't ordinarily attack someone unless he has some sort of a reason; but a reason isn't needed to explain why

someone doesn't act except in certain circumstances.¹⁵ But the present case provides such circumstances. Intuitively, the sailor's refusal to take the stranded man aboard (when he foresees the consequences of refusing and could act with no loss to himself) cries out for an explanation as much as his killing him does. It seems no less plausible that he wants him dead if he leaves him alone than if he kills him. Looked at the other way, the supposition that the sailor kills the stranded man for no reason seems no more absurd than that he leaves him for no reason.¹⁶ So the assumption of parallel internal states isn't even an artificial one for these cases.

What is it about the circumstances of these cases that makes the sailor's failure to aid the stranded man morally equivalent to his killing him? One condition is that no significant sacrifice is required of the sailor to help, just as no significant sacrifice is required for him to refrain from killing.¹⁷ But what is really important

¹⁵This doesn't mean that a reason couldn't be given why someone doesn't do something, should the question arise. But clearly one doesn't have a reason for not doing all the many things one is not doing at any given time.

¹⁶In terms of evaluating agents, it can be argued that indifference in such cases is at least as morally repugnant as malice. With malice, at least, there is, from the agent's point of view, something to be gained from the other's demise. When there is nothing to be gained, the agent's behavior is gratuitous and inexplicable. Thus the moral paradigm in The Fall by Camus, where Clamence, for no reason, permits someone to die whom he could easily save.

¹⁷See ch. V, secs. 2 and 3 for further discussion of the sacrifice factor, and different kinds of sacrifices

here is that there is a probability bordering on certainty--a moral certainty--that if the sailor leaves the stranded man alone and without supplies he will die. It is not just that he can save him, but that no one else can. This fact differentiates the present case from many of the examples that come to mind when thinking about omissions and giving aid. The innocent bystander, for example, can rarely be so sure that if he does not throw the life preserver to the drowning man, the man will drown (though of course he can be fairly sure that if he throws it, the man will not drown).

This morally crucial factor--the certainty of the connection between conduct and harmful consequence--explains the prohibition against physical aggression. For physical aggression greatly increases the chances that harm will ensue. Of course, if what a person does is described as killing someone--a description which incorporates both physical movements and consequences of them--then the connection between action and consequence is no longer just morally certain but logically necessary. But a description of what someone doesn't do can also be given which connects the omission necessarily with a certain upshot.¹⁸ Specifying the conditions under which it is

that may be involved in acting or refraining. I will also argue against the popular idea that refraining does not involve sacrifice or effort in the way that acting does.

¹⁸E.g., the description 'letting die'. One could specify more or less stringent conditions under which

legitimate to incorporate consequences into the description of what a person does or doesn't do is crucial if we are to apply the certainty-of-the-connection-between-conduct-and-consequence criterion, and it will be discussed further in the next chapter. Here it is sufficient to note that, given descriptions that don't incorporate the stranded man's death, the (contingent) connection between certain (aggressive) physical movements of the sailor and the stranded man's death isn't more probable than the connection between the former's leaving the stranded man alone without provisions and the latter's death. We can be quite certain that he will die in either case.¹⁹

Finding a pair of cases whose description is entirely upshot-free reveals more clearly the equivalence in principle of action and omission. Suppose a person finds

it was legitimate to describe someone as letting another person die. See Jonathan Bennett, "Whatever the Consequences," *Analysis* 26 (1966); reprinted in *Ethics*, eds. J. J. Thomson and G. Dworkin (New York: Harper & Row, 1968), pp. 225-30; and Russell, p. 87. One could even introduce a technical term to apply to those cases where a person lets someone die when he is the only one who could save that person.

¹⁹If the very slight chance that another potential rescuer might come along seems to someone to make a significant difference between the cases, we can imagine further that the stranded man is a diabetic suffering from insulin shock, who will die within minutes unless he gets insulin, and that the sailor happens to have some aboard. Time lapses between an omission and a harmful consequence suggest the possibility of later interventions. Sometimes the suggestion is warranted, sometimes not. See ch. V, sec. 3 for discussion of the effects of distance between conduct and consequence on judgments concerning the obligatoriness of acting or refraining.

himself in a room before a set of controls. In the first scenario, he is told that if he pushes a certain button, someone in another room will die. In the second, he is told that if he does not push a certain button, that person will die.²⁰ Here it seems incontrovertible that the agent's obligation to refrain from pushing the button in the first case is precisely equal to his obligation to push it in the second. What makes the equivalence so clear is that, as far as the agent has any reason to believe, the probability that pushing the button will result in someone's death (in the first case) is exactly the same as the probability that not pushing it will result in someone's death (in the second). (In addition, it is clear that no other variables can be taken to distinguish the cases. In particular, the "effort" required to push the button is no more significant than the "effort" required to refrain.) This example confirms that it is the likelihood that one's conduct will result in a certain upshot, and not whether the conduct consists in an action or an omission, that (partially) determines the obligatoriness of acting or refraining.

²⁰Tooley gives a similar example. But he introduces the needless complication of two people whose lives are involved. In one case, if the agent pushes the button, A lives and B dies; in the other, if the agent omits to push the button, B lives and A dies. Although acting and omitting seem morally equivalent here, the example introduces obscuring factors having to do with sacrificing one person to another. See below, p. 120ff. (Michael Tooley, "Abortion and Infanticide Revisited," quoted in Trammell, "Saving Life and Taking Life," p. 136n.)

A way of further testing or confirming one's judgment concerning the equivalence of acting and omitting is to ask what follows upon aggression or failure to aid in terms of the rights and obligations of the involved parties. To return to the desert island example, it is clear that if the sailor tries to kill the stranded man, the latter has the right to defend himself. But it also seems that if the sailor refuses to share his provisions or his ship (when he can, with no loss to himself), the stranded man may do what he must to preserve himself. If he must steal, then he may steal; if he must kill, then he may kill.²¹ This right of the stranded man is not sufficient, however, to show that the sailor is obligated to save him. For a Hobbesian, for example, would acknowledge an absolute right of self-preservation--justifying whatever a person needs to do to save himself--without positing a corresponding obligation on the part of another.²² (Non-Hobbesians can test their judgment of the stranded man's right by comparing it to their judgment of the right of a murderer to preserve himself.) More telling is one's

²¹Our reluctance to acknowledge the right of a person to kill in this kind of situation depends on the extent to which it seems a necessary means to self-preservation. But this is true of self-defense against aggression as well. If one can save oneself from aggression without killing the other person, that of course is better.

²²See above ch. II, sec. 1, for discussion of the plausibility of weak rights of self-preservation.

response to the sailor who has tried to kill or failed to aid, and has suffered the consequences. If the stranded man kills him in self-defense, no moral imbalance has been created; no injustice has been done. Similarly, if in the struggle to gain access to the supplies he needs to survive the stranded man can't avoid killing the sailor, no injustice has been done either, and for the same reason: the sailor has brought his troubles on himself. This situation can be contrasted with one where a person kills a so-called innocent threat--someone who endangers life through no fault of his own--in order to preserve himself. Even though we may justify the killing of an innocent threat (the fat man stuck in the mouth of the cave preventing the escape of those trapped inside), such situations pose a moral dilemma precisely because the innocent threat doesn't choose to endanger the lives of others. He could not have avoided bringing about the situation that results in his death. But the case of the sailor who refuses to aid poses no such moral dilemma, because the sailor is not innocent. He has chosen to act the way he does, when he could easily have acted otherwise. For this reason our attitude toward his death is the same whether he actually tries to kill or just fails to give aid.

These reflections on the consequences of attempting to kill or failing to aid for the rights of the involved parties confirm that the sailor is as obligated to give aid as he is not to kill.

However convincing these examples and arguments may be, they do not address every kind of objection to or argument against saying action and omission are morally equivalent. The rest of this chapter will be devoted to considering some apparent counterexamples to my thesis and the underlying arguments in support of the view that there is a necessary difference between action and omission.

First, consider Richard Trammell's "paradigm case," purporting to show the greater stringency of the obligation not to kill than the obligation to save:

If someone threatened to steal \$1000 from a person if he did not take a gun and shoot a stranger between the eyes, it would be very wrong for him to kill the stranger to save his \$1000. But if someone asked from that person \$1000 to save a stranger, it would seem that his obligation to grant this request would not be as great as his obligation to refuse the first demand--even if he had good reason for believing that without his \$1000 the stranger would certainly die.²³

It seems extremely rash to take this case as a paradigm of anything. For taken individually, the circumstances described are not just unusual but artificial, and their juxtaposition is such as to make a cautious person skeptical

²³"Saving Life and Taking Life," p. 131. As elsewhere in Trammell's article, it isn't entirely clear whether he is arguing for a necessary difference between negative and positive duties or a practical one of such magnitude as to be effectively universal. Since he explicitly attempts to equalize certain factors in these cases (the "effort" involved in giving up \$1000 and the person's motivation toward the stranger), he seems to be arguing for a difference between action and omission even where other features are constant.

about whether his assessment takes into account all the circumstances described, or only some. Furthermore, the cases are not parallel. These points can be spelled out in more detail.

One of the things this example is supposed to show is that we demand of people a greater sacrifice in the fulfillment of negative than of positive duties. Thus, the person threatened with loss of his \$1000 if he doesn't kill is expected to make the sacrifice, while the person who is asked for \$1000 to save someone is not. But it is very important to notice that the person who would have to kill is being threatened. For it is not just that a person is expected not to kill under such a threat; it is questionable whether he ought to alter his behavior in any way in response to threats. Certainly, if I wouldn't kill someone in order to avoid the threatened loss of my money, I wouldn't fail to save someone for that reason either. And indeed the parallel case to the first one described above would be where someone threatened to steal \$1000 from a person if he didn't cease giving cardiopulmonary resuscitation to a heart attack victim. If we assume that the heart attack victim will die without this person's aid, the case becomes like the desert island cases above. Certainly it doesn't constitute a paradigm case of the greater stringency of negative than positive duties.

Part (though by no means all) of the reason it is generally thought inadvisable to respond to threats is that it is usually difficult to be sure that the threat will be carried out if one doesn't cooperate. As I am less sure, I am less inclined to do (or not do) what is demanded to avoid the threatened harm; and I am especially disinclined to do something irrevocable, e.g. kill someone. On the other hand, the extent to which I will be inclined to give up a large sum of money to save someone (as in the second case) depends not only on how certainly the person's death will follow upon my failure to act but also on how immediate the need is (or perhaps we should say the former depends partly on the latter). If I thought "Unless I hand over this \$1000 right now, that person will be dead in five minutes," I would be more inclined to do it than if there were time to make up my mind before the irrevocable moment: time in which something or someone else might intervene. Depending on how we fill in these particular conditions or how our imaginations complete the story that Trammell leaves incomplete, our assessment of the relative moral status of the cases changes or becomes explainable on various grounds other than action/omission.

In general, Trammell argues that negative duties are more stringent than positive ones (in part) because they are easier to fulfill and don't involve great

sacrifices.²⁴ If true, this is entirely consistent with the equivalence in principle of action and omission. Indeed, it would seem to follow that when a negative duty did involve great sacrifice, this would diminish its stringency. But now Trammell wants to say that morally we require people to make greater sacrifices to fulfill negative duties than positive ones, which implies that their greater stringency is independent of the question of how much sacrifice is involved. One may suspect that Trammell's insensitivity (evident at other places) to the distinction between what is true in general and what is true of any particular cases, and to the difference between necessary and practical differences, has led him to impose his view of what is true in general on the case which is supposed to test for what is necessarily true. In other words, he treats what by his own account is a practical difference as if it were necessary. For if in general negative duties are stricter than positive ones (in part) because they are easier to fulfill, why should a negative duty that is harder to fulfill be as strict as if it were easy?

In order to test the hypothesis that morally we require greater sacrifices in the fulfillment of negative

²⁴"Saving Life and Taking Life," pp. 133-135; and above, p. 92f.

than positive duties, we would have to find two cases in which the sacrifice involved in fulfilling the duty was approximately equivalent and significant (since Trammell thinks the similar assessment for cases where the sacrifice is equivalent but minimal is inconclusive), and where other morally relevant factors were parallel. But the problem here is that it is very difficult to construct the right sort of cases. For what is needed is a case to compare with the one where I would be required to give up something very significant--say, my life's savings--in order to save someone's life, and where only I can save that person's life. For it is Trammell's feeling that one would not be morally bound to do this that leads him to say that greater sacrifices are required in the fulfillment of negative than positive duties. So we need a case where one would have to sacrifice something comparable in order to avoid killing someone.

It's easy to think of cases where significant sacrifices have to be made to avoid harming or even killing people, where those harmed or killed are unspecified, and the harm is indirect, in space and/or time. Such cases form the substance of many legal and political problems, and involve such issues as pollution and civil liberties. For these cases it seems clear that the question of how much sacrifice is involved for people to refrain from acting in a certain way does operate in a

straightforward way to determine judgments about whether the actions ought to be permitted or not.²⁵ This tells in favor of the view that the cost involved in acting or not acting is a determinant of obligation, rather than being determined by it.

But in the very special cases that are needed to compare with those direct omissions where great sacrifice is involved to aid someone, it is hard to imagine the appropriate circumstances. For why, after all, when one is about to pull the trigger or put the knife into his heart, can't one simply refrain, just like that? How could a great sacrifice be involved? That it is so difficult to bring into focus a remotely plausible situation comparable to that where if I don't save someone, he will die, and where a great sacrifice is involved for me to save him, is in itself reason to be suspicious. For it is noteworthy that the feeling that action and omission aren't equivalent is strongest where we don't have parallel cases. Where we do, it is often easier to see that it is other factors accompanying the action/omission difference that affect the comparative assessment.

Several conclusions can be drawn from these observations. First is that direct physical violence is the paradigm case of prohibited behavior precisely because

²⁵For more on this, see below, Ch. V, sec. 3.

it exemplifies the extreme of the two morally relevant factors: certainty that one's action will result in harm, and minimal sacrifice needed to refrain. If it happened that people had to give up something significant to avoid directly harming or killing people, this would be relevant, just as it is relevant in the less extreme cases. Furthermore, in the only comparable instances of the extreme case that are plausible, where one might have to risk one's life or limb to avoid harming someone--situations of extreme scarcity, or, e.g., where one had to drive over a cliff to avoid running someone over--it seems clear that having to make such a sacrifice crucially enters into our moral assessment. Many would say that the usual obligations are in such circumstances inapplicable.²⁶ So all the ways we reason about these questions support the view that if, or rather when, negative duties are more stringent than positive ones, it is because they involve less sacrifice and are therefore easier to fulfill.²⁷

²⁶E.g. Hobbes, Hume. For references and further discussion of this point, see below, Ch. V, p. 159f.

²⁷I have benefitted from discussion of these issues with Frances Myrna.

There is an argument concerning sacrifice (in the most general sense) that is sometimes made to support a genuinely necessary difference between action and omission: viz. that action requires an output of energy or effort that is not involved when a person doesn't act. This argument rests on a machine-like conception of human beings. When a machine is not on (performing some operation), it is off, dead. But if a person wants to do

For various reasons, then, this example demonstrates nothing about the relative stringency of any given negative and positive duties. Some of the difficulties discussed are avoided in another pair of cases presented by Trammell. This is a modification of a pair of examples Tooley used to show the equivalence of action and omission. Trammell finds certain features of the original pair unfair, and modifies it as follows:

(1) Jones sees that Smith will be killed [by a bomb] unless he warns him. But Jones is apathetic. So Smith is killed by the bomb even though Jones could have warned him. (2) Jones is practicing shooting his gun. Smith accidentally walks in the path and Jones sees Smith; but Jones's reaction is apathy. Jones pulls the trigger and Smith is killed.³⁰

This example supports the "plausibility of the distinction between action and inaction," according to Trammell, because of the connection between Jones's behavior in each case and "the factor of responsibility":

something, not doing it may involve as much or more effort than is required to act when one does not want or wants not to act. (Think of trying to break a habit, or staying on a diet.) To demand that a person not act is not to demand nothing. For a related argument, see below, Ch. V, pp. 162-63.

³⁰"Tooley's Moral Symmetry Principle," p. 308. Tooley's example is in "Abortion and Infanticide," p. 59. The modifications have to do with factors concerning Jones's motivation. In Tooley's example, Jones wants Smith dead.

In Case 2, if Jones had not pulled the trigger, Smith would not have been killed. But in Case 1, Smith might still have been killed by the bomb even if Jones had never existed. The link between action and responsibility does not seem accidental, since the more directly and clearly a person is responsible for another person needing to be saved, the more likely we are to say that the first person is killing the second.³¹

The kind of responsibility Trammell is talking about is obviously some kind of nonmoral (e.g. causal) responsibility, since it is moral responsibility we are trying to determine.

Though there is a genuine and crucial issue here, Trammell's comment diverts attention away from it. For though it may be true that the greater the extent to which a person is causally responsible for another's needing to be saved, the more likely we are to say that the first is killing the second, the question is not whether we would describe a particular failure to save as a killing, but whether in a given set of circumstances these are morally equivalent.

What Trammell means to say, though, is that there is a significant moral difference between killing (or, more generally, harming) and not saving (or, more generally, not aiding), because no matter how alike the circumstances may otherwise be, in the former case one has

³¹Ibid.

caused or brought into existence the harm, while in the latter case one has not. If I push a nonswimmer into the lake, then his difficulties are caused by me; if I hadn't pushed him--or if I hadn't been there to push him--he wouldn't be in the predicament he's in. But if I happen to pass by when a nonswimmer falls into the lake, his difficulties are independent of me; he would be in the same predicament even if I hadn't passed by. Whether morally significant or not, this difference is necessary in the sense that it distinguishes all actions from all (genuine, or ex nihilo) omissions. It legitimizes describing harmful actions as causing harm, while withholding this description from omissions, no matter how devastating their consequences. Instead of asking whether action and omission are morally equivalent, we could ask if (other things being equal) not preventing harm is as bad as causing it (or, to put it another way, if making someone worse off is necessarily worse than not making him better off).

The idea that bringing a harm into existence (what I call being causally responsible for it) is morally of a different order than failing to prevent or alleviate it goes deep in our thinking about moral responsibility. This is odd, on reflection. For moral responsibility can be ascribed only (as far as we now know) to human beings, while causal responsibility can be ascribed to almost

everything in nature. Considering the universe as a whole, causal responsibility is cheap, while moral responsibility is extremely rare. This ought to lead one to ask what it is about human beings that makes their causal agency morally significant.

What distinguishes the causal role of a human being from that of an inanimate object or nonhuman animal is that ordinarily, at least, the human being can choose to act in one way or another; and he can choose on the basis of his knowledge of various things. If this were not so, causal agency would be as morally irrelevant for humans as it is for everything else in nature. And, indeed, when a person could not have chosen not to be a causal agent in a process that results in someone's harm, he is absolved of moral responsibility. If a person with no history of heart disease has a coronary attack while driving, and he runs over a pedestrian, it is clear that he has no moral responsibility for the harm he causes; for his action is accidental and non-negligent.³² Morally it is on a par with floods and earthquakes: unfortunate but not morally ascribable to anyone.

Normally, however, a person is able to choose not to act in a way that he foresees will cause harm to

³²For some suggestions along the lines of this argument, see Russell, p. 92.

someone.³³ It is this that gives causal agency moral significance. But this condition equally warrants (other things being equal) holding a person morally responsible when he is able to choose to act in a way that he foresees will prevent harm to someone. For it is the ability to choose how to act, on the basis of knowledge, that distinguishes human beings from the rest of nature and legitimizes holding them (and nothing else) morally responsible--for what they do and for what they don't do. With respect to adult human beings, causal responsibility is merely a sign, usually though not always reliable, of moral responsibility. That moral responsibility ultimately has nothing to do with causal responsibility is revealed in the example given above of the person who knows that someone will die if he does/does not (in the alternative cases) push a button. There it seems absurd

³³Sometimes we hold people responsible for causing harm when they didn't foresee the consequences of their actions, because we think they ought to have foreseen them. But this is warranted only on the assumption that the person is responsible for his ignorance, i.e. that he could have chosen not to put himself in a position where he would be ignorant: "we punish a man for his very ignorance, if he is thought responsible for the ignorance, as when penalties are doubled in the case of drunkenness; for the moving principle is in the man himself, since he had the power of not getting drunk and his getting drunk was the cause of his ignorance." (Aristotle, Nicomachean Ethics, tr. W. D. Ross (London: Oxford University Press, 1925), 1113b30.)

to deny that the person is equally obligated in both cases. And it is clear that the only difference between the cases (unlike many of the examples given by Trammell and others which are relatively complicated and do not clearly isolate the feature under consideration) is that in the one case one must choose to perform a minimal physical movement in order to avoid someone's death and in the other one must choose not to perform it.

If still it seems somehow unfair or wrong that people can be held morally responsible in situations they don't create, the defect would seem to be in the nature of things--something, therefore, that must be taken for granted. We can be held morally responsible because within certain constraints we can choose how to act; but it is just a fact that we can't (beyond a certain point) choose the circumstances from which we must choose. But this applies equally to acting and refraining. It's true that if someone falls into the water and starts to drown, it's not the passerby's fault. But likewise if a person finds himself inclined to kill someone, it may not be his fault that he is so inclined. Just as we think the latter is morally required to refrain if he can, so also the passerby may be required to act if he can.³⁴ Confronted

³⁴As elsewhere in these pages, the "other things being equal" rider applies.

with circumstances, we have to choose and can't choose not to choose.

If there is no essential difference between causing harm and failing to prevent it, how does this affect the assessment of Trammell's parallel cases? I believe that if the cases are indeed parallel in every other respect, then Jones's failure to warn Smith of the bomb is morally equivalent to his shooting him. The inclination to think they are not equivalent comes from the natural assumption that there are other asymmetries between the cases. Simply avowing that the cases are parallel is not enough to ensure that such assumptions won't figure--not necessarily explicitly or consciously--in a person's assessment. So, for example, in the first case it is natural to imagine that someone else might be able to warn Smith of the bomb; that Jones might be in some danger himself if he warned Smith; that the urgency of the situation--the need to do the right thing in a very short space of time--might cause Jones to lose his head, thereby making his inaction partially excusable. But if we keep in mind that only Jones can warn Smith, that Jones neither is nor perceives himself to be in any danger, and that he doesn't panic or lose his head, it is no longer counterintuitive

to say that his failure to warn Smith is equivalent to his shooting him.³⁵

One reason one might be reluctant to acknowledge that action and omission are in principle morally equivalent is that this may be thought to imply that a person who is causally responsible for a harm is no more obligated to alleviate it than someone who is not causally responsible for it. But what follows is just that one who is merely causally responsible is no more obligated than one who is not; and this, it can be seen, does not violate any of our moral beliefs. When the person who has caused harm could have not caused it (had he chosen to), then his causal agency implies moral responsibility. However obligated to give aid a person with no causal responsibility might be (and this will depend on the factors of degree-of-connectedness-between-behavior-and-harmful-upshot and amount of sacrifice required), the person who has non-accidentally or negligently caused a harm is bound by that

³⁵The cases then resemble the desert island example. But the test used in the desert island example to confirm the equivalent evaluations won't work here. In the former case, the sailor's refusal to aid warrants the stranded man in doing what he must to preserve himself; and the sailor, having chosen not to cooperate, can't claim an injustice. But in this case what Smith needs (the information that there is a bomb) is something he doesn't know he needs; and of course if he did know he needed it, he wouldn't need it--he would have it. There is nothing for Smith to wrest from Jones, and nothing for Jones to lose to Smith.

obligation to give aid plus the obligation arising from having caused the harm.

If, for example, a person accidentally and non-negligently trips a person who can't swim, and the non-swimmer falls into the lake, the former is causally responsible for the latter's predicament. This causally responsible person is as obligated (no more and no less) to try to get the nonswimmer out of the water as anyone else similarly situated. For

To call the act accidental and non-negligent is to imply that the relevant person is completely absolved of moral responsibility for the resulting situation. If the person has no moral responsibility for the situation, there would seem to be no grounds for assigning him a greater duty for changing it than others similarly situated.³⁶

But the situation is very different when someone pushes a nonswimmer into the lake. This person is morally responsible for the resulting predicament because he could have chosen not to do what he did. His action is morally comparable to that of someone who knowingly and willingly allows a nonswimmer to fall into the lake when he could easily prevent his falling in--e.g., by holding

³⁶Russell, p. 92. Any inclination to think otherwise can probably be explained in terms of a kind of spillover of guilt from the typical case of causal responsibility that is not accidental or non-negligent, as well as doubt (implanted by Freud, among others) as to the accidentalness of so-called accidents.

out his hand. This action and this omission are related in the same way to the nonswimmer's trouble: he wouldn't be in trouble if the first person hadn't pushed him, or if the second had held out his hand.

This action and this omission occur at an early stage of the situation we are considering, where the harm comes into existence. The question then arises what a person's obligation is given the existence of the harm--when the nonswimmer is flailing about in the water. On my view, if for some reason everyone else (including any guilty parties) has disappeared from the scene, the failure to save of the sole remaining individual (where no sacrifice is required, etc.) is morally equivalent to his killing the drowning man; for his omission is sufficient for the death to occur. But if we are asking which of a number of individuals is obligated (or how obligated) to alleviate the situation, the fact of someone's having non-accidentally or negligently caused the harm is morally relevant, for it is his action that has vastly increased the probability of harm in the first place. (Similarly, other things being equal, for the person who, at the moment when the nonswimmer was about to fall in, chose not to hold out his hand to prevent it.) Of course, in the situation described, any person's failure to try to save would be a serious moral transgression; the excuse "But I didn't push him" would be very lame. But

considering the whole episode from the coming into existence of the harm, the person who could have chosen to behave in such a way that the harm would not have come into existence is morally responsible for not so choosing, as well as being morally bound in the way anyone finding himself able to save would be.

Thus, the equivalence of action and omission is consistent with the commonsensical belief that (normally) one who has caused a person harm owes him more in the way of assistance than one who has not.

The argument for the moral equivalence of action and omission wouldn't be fully satisfactory without some account of an important class of cases commonly taken to constitute counterexamples. Some of these cases have received a great deal of attention recently because of their connection with issues raised by breakthroughs and developments in medicine. Typical cases involve a situation in which one must choose between killing a person in order to save others, and not killing the person with the result that these others die. Though everyone agrees that more deaths are worse than fewer deaths, almost no one will say that it is permissible to kill people "in the interests of cancer research or to obtain, let us say, spare parts for grafting on to those who need them."³⁷

³⁷ Philippa Foot, "The Problem of Abortion and the Doctrine of the Double Effect," Oxford Review no. 5 (1967);

A similar problem is posed by this familiar example, described by Philippa Foot:

Suppose that a judge or magistrate is faced with rioters demanding that a culprit be found for a certain crime and threatening otherwise to take their own bloody revenge on a particular section of the community. The real culprit being unknown, the judge sees himself as able to prevent the bloodshed only by framing some innocent person and having him executed.³⁸

Foot's explanation for the belief that it is not permissible for the judge to frame an innocent person, and that, more generally, it is not permissible to kill a person in order to save others, is that "even where the strictest duty of positive aid exists, this still does not weigh as if a negative duty were involved."³⁹

The first thing to be noticed about these cases, in contrast to those presented earlier, is that they all involve a choice between two evils and between the interests of different individuals. But more than this, what they all involve is a decision whether to sacrifice one person for another. It is this that is so morally repellent that we are reluctant to allow it no matter what the cost. But--and this is what is relevant to the present

reprinted in Moral Problems 2d ed., ed. James Rachels (New York: Harper & Row, 1975), p. 64.

³⁸Ibid., p. 63.

³⁹Ibid., p. 67.

discussion--whatever it is about sacrificing one person or his interests to another that is objectionable, it has no necessary connection with the distinction between action and omission. This is demonstrated nicely by Russell's twist on the case described by Foot. In Russell's version, the innocent person the judge has in his custody is a diabetic.⁴⁰ So in order to prevent the rioters from going on a rampage and killing innocent people, it isn't necessary for the judge to kill his charge; he need only refrain from giving him his insulin, and let him die. It seems clear that if it is wrong for the judge to execute his prisoner, it is equally wrong for him to let him die in this way. For in either case, whether he acts or doesn't act, he is sacrificing the person; and it is this that is objectionable. Similar variations can be introduced in the medical cases to show that what is wrong with killing people for their parts has nothing per se to do with the greater stringency of negative duties. (Instead of killing the patient for his heart or liver, the nurse stands idly by as he chokes on his dinner.)

What is common to all the sacrifice cases is that the death (or something short of death) of one person is needed for some purpose (laudable or otherwise). The most common way to achieve someone's death is to kill him; and

⁴⁰Russell, p. 90.

this makes it look as if it is the action of killing per se that is impermissible. But examining cases where the death can be achieved by refraining from performing a simple action that would prevent it shows that it is achieving the death, and not achieving it through action, that is objectionable.⁴¹ In both the negative and the positive case, one chooses to act in a way that one knows will result in someone's death; and one chooses to act in that way because one knows it will result in the death. This does not explain everything important about the problem of sacrificing people, nor does it follow that it is never permissible to sacrifice anyone, no matter what the consequences. But these are not problems to be discussed here. It is enough to have shown that the problem these cases present is not the problem of the moral difference between action and omission. One can sacrifice a person by killing him, or by letting him die.

I conclude that there is no moral difference (a fortiori no essential moral difference) between action and omission. The tendency to think otherwise results from the commission of various errors and fallacies, which have been described in this chapter. They can be very briefly

⁴¹For further discussion of this point, see above, Ch. III, pp. 67-69 (on treating a person as a means), and below, Ch. V, pp. 140-41.

summed up as follows. (a) Comparing cases that are asymmetrical with respect to features other than action/omission. (b) Not distinguishing clearly between necessary and practical differences, with the result that what is at most a practical difference is generalized so that it functions as a necessary one. (This applies to the question of the ease or difficulty of discharging obligations.) (c) Mistaking what is morally significant about a case or a class of cases. (E.g., taking causal agency per se to be morally significant; or thinking that what is wrong with sacrificing a person is that it involves killing.) (d) Mistakenly thinking that the equivalence in principle of action and omission implies something one is unwilling to accept. (E.g., that one who causes harm is under no greater obligation to alleviate it than one who does not; or that nothing short of total devotion to the well-being of others is morally possible.⁴²)

That action and omission are morally equivalent is supported at one level by the consistency of this view with a coherent theory of obligation: viz. that obligation is a function of two variables, (1) the connection between an agent's conduct and a certain consequence, and

⁴²Concerning the latter question, nothing at all follows from the equivalence in principle of action and omission. If changes need to be made in our way of life or our attitudes, they will follow from practical differences. See Ch. V.

(2) the amount of sacrifice to an agent that is required by the fulfillment of a would-be obligation. At a more fundamental level, the idea that action and omission are equivalent is strengthened by its connection with the very condition of moral responsibility: the possibility of choosing, given a set of circumstances, how to act.

CHAPTER V

THE MORAL EQUIVALENCE OF ACTION AND OMISSION:

B. THEORY AND PRACTICE

If, as was argued in the last chapter, there is no necessary difference between action and omission, is there still a practical difference of sufficient magnitude to warrant the conclusion that negative obligations are more stringent than positive ones? Though the question arises naturally, it is badly put; for it suggests taking the class of actions as a whole, and comparing it with the class of omissions as a whole, to see how each correlates with features that are morally relevant. What we need to do instead is to begin with a criterion or criteria of moral relevance on the basis of which to order actions and omissions. Then we can ask what actions are like what omissions. The question of the practical difference between action and omission can be understood as the question whether for a given space along the spectrum of obligatoriness (defined by the criteria of moral relevance) more actions than omissions, or more that are significant, lie within that space.

In the last chapter I suggested the theory that two variables together determine the obligatoriness of acting or refraining: the probability of the connection

between omitting to act or acting and some harm; and the sacrifice or cost to an agent in having to act or forbear. This doesn't mean that a precise formula could even in principle be given that would represent the contribution of each of these variables. There isn't that kind of truth in ethics; here discovery gives way to decision. Developing the theory involves showing how consideration of these two factors operates in moral reasoning. It needs to be shown that the theory accounts for or at least is consistent with our central moral beliefs. But this does not mean that it will necessarily vindicate conventional morality; and it will be argued that the consistent application of these principles may require a significant shift in behavior and moral attitude.

In an important sense, the question of the connection between conduct and consequence is logically prior to the question of cost to the agent, though this has nothing to do with their relative weight in moral judgments. For it is only when some connection between a strand of behavior and a consequence is established that the question of obligation arises; and it is only then that issues concerning the cost to an agent--how much is involved, and whether this is reasonable--need be raised. Distinguishing various degrees of connectedness between behaviors and consequences provides a way of arranging actions and omissions along a continuum. Then it can be asked how

questions about cost should function, at different points along the continuum, to qualify judgments as to the obligatoriness of acting or refraining. So in what follows I begin with a discussion of the connection between conduct and consequence. This will give rise to a distinction between conduct that results directly in harm, and conduct that results indirectly (and often only in conjunction with the conduct of others) in harm. In the next sections actions and omissions exemplifying the direct and the indirect connection will be presented and compared, in light of varying assumptions (both possible and probable) about costs in fulfilling the would-be obligations.

1. The Connection Between Conduct and Consequence

In what has been said so far it has been assumed that the connection relevant to determining obligatoriness is that between a harmful or undesirable action or omission--i.e., what would be prohibited--and its consequence, and not that between the corresponding forbearance or positive action--i.e., what would be required--and its consequence. In other words, the obligation to act arises not (simply) when one's acting would make someone better off, but when, unless one acts (if one does not act), someone will be harmed or will continue to be harmed. The latter connection differs from the former in two ways. First, it implies a closer relation between the conduct of

a particular individual and some consequence. For it is not just that I can make someone better off by acting, but that if I don't act, he will be harmed. The extent to which the 'I' can legitimately be emphasized makes the action relatively more obligatory. So the case where only I am in a position to give aid increases my moral responsibility. The other way in which the second condition differs from the first is that it makes reference to a non-relative state of harm, and not just to the possibility of being made better off. I am obligated to act when certain specifiable harms will otherwise occur, and not just because someone's lot will be improved by my acting.

What warrants taking the second connection rather than the first as the relevant one? For an account of a wider area of morality than what is encompassed by obligation there would seem to be no reasonable way of distinguishing them. In other words, when considering not just what is obligatory but more generally what is desirable, what kind of conduct ought to be promoted, the broader condition seems plausible: other things being equal, act in a way that makes someone better off. The crucial factor of cost enters here to stop the slide down the slippery slope; for, apart from everything else, since each succeeding act involves an increasing marginal cost, each is (other things being equal) less obligatory than

the preceding one. So as it stands the principle is less in danger of leading to a morality of self-sacrifice in the devotion to others' welfare than of being trivialized by the "other things being equal" rider.

But in any case this is not a study in the broad area of desirable conduct but in what is obligatory, i.e. in the minimum conditions of acceptable behavior. The realm of the obligatory is essentially negative; it concerns that behavior (actions and omissions) which is prohibited.¹ It makes sense that to find out what behavior is (ought to be) prohibited we look at the behavior in question and its consequences, rather than at the "negation" of the behavior and its consequences. Just as physical violence is prohibited because of its consequences (rather than because of the consequences of refraining from violence), so certain omissions ought to be prohibited because of their consequences, rather than because of the consequences of the corresponding positive actions. These considerations warrant taking the narrower of the two connections stated as the one relevant to determining obligatoriness. For it

¹See above, ch. II, sec. 2, and Findlay, ch. 8, "Duty and Moral Value," esp. p. 339. Findlay distinguishes hortatory 'oughts', which present objectives in an enticing light and thereby move us towards them, from minatory 'oughts', which "present objectives in menacing or repugnant light," and so impel us away from them. The hortatory/minatory distinction doesn't coincide with action/omission; according to Findlay, that towards which or away from which we are moved may be positive actions or omissions.

specifies a relation that must hold between some harmful conduct (rather than its negation) and a consequence. And this serves to identify the cases that are most pressing--to demarcate the realm of the obligatory--in a way the more general connection does not. The demand for a person's action is greater to the extent that his omission is sufficient for the harm to occur or continue. When his action is only one of a number of persons' that could prevent or alleviate the harm, his omission has less weight; just as when a person's forbearance is only one of a number of persons' that could prevent a harm, his action has less weight.² In such cases fairness seems to dictate dividing the responsibility.

Ignoring for the present those cases where one's action or omission is harmful only on the assumption of similar behavior by others, the relevant connection can be described, for action and omissions respectively, as follows:

If A does x, (harmful) y will occur.

If B does not do z, (harmful) y will occur.

²I.e., situations in which harm is produced only above a certain threshold. In the next sections cases will be presented where (a) a person's action or omission is sufficient for a harm to occur, and (b) where his action or omission is harmful only in conjunction with or on the assumption of other people's acting similarly. This distinction coincides roughly with the distinction between actions and omissions that result directly, and those that result indirectly, in harm.

To the extent that the consequent can be predicted to follow if the antecedent is fulfilled, forbearance or positive action is relatively more obligatory. But this means that a great deal depends on how the antecedent is described. Two problems are of particular concern: (1) how, in the case of omission, we choose a description--from a very large number of possibilities--of what it is a person isn't doing or is omitting to do; (2) what the significance is of the fact that different descriptions of a person's action will suggest more or less probable connections with a harmful consequence. The cases that are of particular interest here are those actions (e.g. killings) that are typically described in such a way that their consequences are incorporated into the description, so that the connection between action and upshot is logically necessary, and therefore more certain than any contingent connection.³

(1) In considering how one arrives at a description of what a particular individual is not doing or is omitting to do, two questions are relevant: what isn't being done, and who isn't doing it.

The description of what isn't being done is arrived

³This problem was mentioned in ch. IV, p. 98f. Some may object to calling the connection between, say, cutting off a person's head and his death contingent, as if there were a chance that death might not ensue. 'Contingent' may be an unfortunate word; the point is just that the connection is not logically necessary. But if such nonlogical connections may be, practically speaking, just as certain as logical ones, the more pragmatically minded may find the problem discussed here academic.

at by reference to what needs to be done, i.e. what means are necessary to achieve a given end. Where a person is drowning, and needs to be saved, the relevant description is 'not saving'; i.e. if the person is not saved, he will drown. Of course this presupposes some conception of what is valuable (e.g. the preservation of human life) and of what is necessary in order to achieve valued things or states. But such evaluative assumptions will in many cases be uncontroversial and do not, in any case, beg the question of whether someone is obligated to meet the need or prevent the harm. One may agree that, for example, life is valuable and therefore that someone who is drowning or starving needs aid without drawing any conclusions about what anyone is obligated to do.

The negative description can only sensibly be ascribed to someone who is in a position to do the thing. Thus it would be bizarre to say of a person in New York that he was not saving someone drowning in a lake in Minnesota, or that if the New Yorker did not save the Minnesotan, the latter would drown. In the context of deciding what a person's moral responsibility is, a precondition of describing him as not doing something is that he could do what he is not doing. This is a rather weak condition; and for many contexts it would be odd to describe a person as not doing x even though it is clear that he could do x. The ability to do something is

not, then, in general the only precondition for describing someone as not doing it (leaving aside the obvious precondition that he not be doing it). But for the moral issue under consideration this condition seems adequate; for wherever action is needed to avoid a harm and a person is in a position to act, it is not inappropriate to describe him as not doing what needs to be done--though of course this does not settle the question whether it is wrong for him not to do what needs to be done.

(2) Although the connection whose probability determines obligatoriness is between an event (or the absence of an event) and a certain consequence (i.e. another event), how events are described significantly affects their perceived connectedness. But the relation works the other way as well: the degree of connectedness between events legitimizes describing one in terms of another.

A description of what a person does is rarely a description of his bodily movements, or them alone; it typically makes reference to some consequence or consequences of those bodily movements.⁴ How far from the bodily movement or basic action may the description range? Extrapolating from ordinary linguistic practice, Eric D'Arcy puts forward this condition: 'Doing x with the

⁴See the legal and philosophical literature on acts and on the definition of an act, as in Herbert Morris, ed., Freedom and Responsibility (Stanford: Stanford University Press, 1961), ch. 3, "Act," for the reasoning behind, and difficulties inherent in, thinking of acts in terms of bodily movements alone.

consequence y' may be redescribed as 'doing y' "to the extent that y is the anticipatable consequence of an act such as x."⁵ This does not mean that the agent need necessarily have anticipated the consequence of his action; where he has not anticipated it, the question arises whether his ignorance or failure to anticipate is culpable. And of course in some cases it will not be at all clear whether

⁵D'Arcy, p. 32. See also Bennett, pp. 216-17. Bennett presents three conditions he takes to be relevant in deciding whether an upshot is to be covered by a description of what a person did: (a) Was the person confident when making the movement that the upshot would follow? (b) How certain was it that the upshot would follow?, or how confident ought the person have been that it would follow? (c) Did the person make the movement in order to achieve the upshot? These questions concern expectation, inevitability, and intention, respectively. The inevitability condition closely resembles D'Arcy's anticipability condition, but it is less satisfactory. For no matter how inevitably a consequence follows from an action, unless one could be expected to anticipate it, it would, I think, be unfair or seriously misleading in most contexts to describe the action in terms of the consequence. The questions of a person's expectation and his intention seem relevant in a somewhat different way than the question of anticipability. An agent representing a proposed action to himself (or to someone else) is likely to describe what he is about to do in terms of his aims and expectations in acting ("I am going to . . ."). But here the action is in the future tense; in the past tense, a great deal will depend on how successful the agent was. (Beforehand you may say "I am going to kill him" if you want to or intend to kill him; later you may say "I killed him" only if you succeeded. The reason is that announcements of intentions or hopes and other uses of the future tense are not descriptions of events that happen not to have happened yet.) The anticipability condition seems adequate for describing actions from the external point of view; this is what is of interest for the question of prohibiting or requiring courses of conduct. For the further problem of evaluating agents, Bennett's additional conditions are clearly relevant.

a consequence was or was not anticipatable given a certain action.

But for the clearest cases of prohibited behavior (such as actions involving physical violence), any person who is not seriously defective (intellectually) is expected to appreciate the connection between certain kinds of actions and their harmful consequences. Indeed, the statement of what is forbidden may make reference only to those consequences, leaving it to the individual to recognize what actions will lead to them. We say that one may not kill someone; and this can be understood to mean that one may not perform those actions known to result (directly and immediately) in someone's death. The connection between any two events is, as always, contingent. But where we can be "morally certain" that given a particular action, a harmful consequence will follow, and where it is the production of that consequence that fundamentally concerns us, the action may be redescribed in terms of its consequence--thus rendering the connection necessary. If you kill someone, he can't fail to die.

The point of these observations has just been to show that the connection between an action and a consequence isn't essentially different (only closer) where the action is described in terms of its consequence from connections whose descriptions keep action and consequence conceptually distinct. Two further points are in order. First, there

is nothing in principle preventing our describing some omissions in a way that connects them with harmful upshots. The description 'lets die' is of this sort, though it doesn't imply that the person who lets someone die is the only one able to prevent the death; his omission may not be sufficient for the death to occur. But it is rare that a single omission is sufficient for death to occur; by contrast, many actions are sufficient.

The second point is that those actions that are typically described in terms of their harmful consequences seem to be limited to cases of physical aggression. But it is clear that not all the actions we want to prohibit involve direct aggression; some are harmful only indirectly. (Examples of these are discussed below.) Here as elsewhere the extreme case of physical aggression is misleading as an instance of harmful action.

Thus not only harmful actions can be described in terms of their consequences (some omissions can be so described); and not all harmful actions can (sensibly) be so described. To be able to decide whether certain kinds of actions or omissions ought to be prohibited, we will have to go beyond their characteristic descriptions.

One can imagine a "continuum of obligatoriness" consisting of actions and omissions arranged in terms of their probable connection with specified kinds of harms. At one end are those actions and omissions that are

extremely likely to result in harm; moving away from this end the connection between the fulfillment of the antecedent 'If A does (or omits to do) x' and the consequent 'harmful y will occur' becomes less probable. Corresponding to different places on the continuum we can speak of actions and omissions that result directly in harm, and those that result only indirectly in harm. The terms 'direct' and 'indirect' are not precise, and neither refers to a single property of actions and omissions. Instead they cover a family of properties which typically occur together; but one or more may be absent in any particular case. Actions and omissions resulting directly in harm are those where the gap--in both space and time--between a person's conduct and a harmful consequence is relatively small. This means that normally he will be aware of the connection between his conduct and the harm; and he will see the harm before him. It also means that the person who will be harmed if he acts or doesn't act is in some sense known to him; the suffering that is involved is personalized. Many directly harmful actions, and some such omissions, involve in addition the intention to cause or to permit harm.

By contrast, with actions and omissions resulting only indirectly in harm there is a much larger gap, in space and in time, between conduct and harmful consequence. So a person may easily fail to be aware of the connection between his behavior and its effects. He may not see the

effects at all; and therefore they may not be "embodied" in a being known to him. Even if the effects are not altogether invisible, the desire not to see them or the discomfort produced by seeing them is likely to further endis-
tance a person from these conditions. A further highly significant feature of those actions and omissions resulting indirectly in harm that are of interest here is that it is not a single individual's action or omission alone that results in significant harm, but rather the like behavior of a large number of people. In addition, such actions and omissions do not in general involve the intention to bring about harm or to let it happen.

In the following sections I will consider (first) conduct resulting directly, and (next) conduct resulting indirectly, in harm, comparing actions and omissions for each category.

2. Actions and Omissions Resulting

Directly in Harm

The most extreme case of harmful action is exemplified by one person's knowingly and willingly killing another, say by shooting or stabbing him. Two kinds of cases can be distinguished: where one acts with the intention of bringing about the other's death; and where one acts without this intention, though in full awareness of what one is doing and its consequences.

Intentional killing is usually done with some purpose beyond the death of the victim, e.g. to profit materially. Killings of this kind may be compared to failures to save that are similarly motivated. Regina Giddens in Lillian Hellman's The Little Foxes, who waits to get her husband's medicine when he suffers a heart attack until it is too late, is the moral equivalent of a murderer. She happens to be lucky: circumstances conspire in accordance with her purposes, permitting her not to have to take matters into her own hands. Yet for every incident of this kind, there must be scores or hundreds of killings. This is because the events of nature rarely fall in so conveniently with human aims; if one wants someone dead, one ordinarily has to make it happen.

Compare killing someone in order to collect on his life insurance policy with letting him die in order to collect on it. We can imagine that the cost in time and effort to refrain or to act and thereby prevent the death is in both cases minimal. But, someone might say, what about the cost involved in foregoing that \$100,000 one would have received had the person died? If it were legitimate to count this as part of the total cost involved in fulfilling the obligation, the wrongness of murder would diminish directly as the gains to be made from it increased. Such costs seem very different from other material costs that (legitimately) enter into

calculations of obligatoriness. If I would have to give up my \$100,000 life's savings to save your life, that counts toward diminishing my obligation; if I would have to forego the \$100,000 benefit on your life insurance policy, that does not count. The difference is that in the latter case I use you as a means to my welfare (whether by killing you or by letting you die), while in the former case I do not.⁶ So killing someone to collect on his insurance policy is like letting him die to collect on it; but these are unlike letting a person die because saving him would take one's life's savings. The case of forbearance analogous to the latter is, as was argued in the last chapter, imaginary, and perhaps only that: it doesn't happen that great monetary sacrifices are required to avoid killing people, except the illegitimate sort involved in gaining from their deaths.⁷ This is both a powerful reason for the prohibition against killing, and a justification of the moral difference between killing and not saving when saving is very costly.

⁶A fuller account needs to be given of what conduct constitutes treating someone as a means. It seems clear that behaving with the aim of achieving a person's death or personal deformity (physical or mental) involves using him as a means. Nozick suggests that depriving a person of his property also treats him as a means. (Nozick, *passim*, esp. pp. 167-174.) But this implies that a person is to be identified with his material property in just the way he is identified with his body. This seems wrong; for possible suggestions why, see below, pp. 159-62.

⁷See above, Ch. IV, pp. 105-8.

If the profit to be reaped from a person's death does not count toward justifying causing or permitting the death to occur, still it explains the impulse to kill or let die. Material gain is for us a perfectly understandable and unproblematic reason for action (or inaction). (Indeed, if the person whose reason it is is in dire enough straits, his culpability may be diminished somewhat.) In contrast, the case of a person who kills or lets die knowingly and willingly but with no reason or motive is baffling and inexplicable. Examples of such conduct are more the stuff of fiction (e.g. Camus's Clamence in The Fall) and philosophers' imaginings (Trammell's apathetic Jones, who knowingly kills a man who walks in the line of fire where he is practicing shooting his gun⁸) than of real life. This is because human beings are not on the whole moral monsters; when they conduct themselves to others' detriment it is usually because they think they have something to gain by doing so, or something to lose by not doing so. So the person who is not moved by these reasons, could prevent a death with no cost to himself, and does not is in an important sense beyond the moral pale.⁹

⁸"Tooley's Moral Symmetry Principle," p. 308; and see above, Ch. IV, p. 110.

⁹Obviously I am not including having to put down one's gun until the passerby gets out of the line of fire, or holding out one's hand to the drowning man, as costs that have to be counted in the total reckoning.

It is sometimes suggested that this moral monstrosity--not preventing harm to others when no sacrifice is required--is more common than I am acknowledging. As evidence, the pessimists cite the many examples of bystanders who do nothing when others' lives are threatened. These cases are also used by opponents of the view that action and omission are morally equivalent as part of a reductio ad absurdum of that view: it is implied that if action and omission are equivalent, the typical bystander is morally on a par with the aggressor whose attacks he witnesses. Both these stances suffer from a distorted conception of the typical bystander situation.

In the world we actually inhabit, in contrast to the world of desert islands and people drowning within arm's length, the setting of the bystander case is likely to be the hostile big city, and the threat to a person's life is likely to be a human one. In such situations not only the victim of an attack but anyone present may be in danger. The person who intervenes on behalf of the victim doesn't merely sacrifice something (a little time, some effort); he may well be risking his life.¹⁰ The risk is

¹⁰It's not clear whether we should say he does risk his life, or only that he risks risking it. The enormous uncertainties about what will happen if he intervenes suggest the latter, as against the case where someone enters a burning building to save a person's life. Here we would say unhesitatingly he risks his life. The risk to the bystander may not be so great--but how is he to know?

even greater if he is the only other person present; it decreases as the number of others increases. The aggressor, by contrast, in addition to having radically different intentions, sacrifices nothing of remotely comparable significance in refraining.

What a particular bystander's obligation is, or how excusable his inaction is, depends, of course, on the particular circumstances in which he finds himself. But to think the typical bystander is like the murderer is to overlook the crucial differences between real cases and the ideal ones which support the conclusion that in themselves action and omission are morally equivalent. Risking one's life or serious bodily harm is the most significant kind of personal sacrifice one can make; the need for such a sacrifice radically alters the moral situation on which obligation depends.

At the extreme end of the continuum, then, where the connection between conduct and harmful consequence is closest, lie many more actions than omissions. Few omissions are comparable to murder or even to killing. That this is so goes some way toward explaining the widespread belief that "acting badly" is worse than "omitting badly." For our attention has been focussed almost exclusively on this part of the spectrum. This emphasis is

understandable--pragmatically, psychologically, historically.¹¹ For it is conduct that is certain to result in harm that is the original and primary source of moral concern. But this has no bearing on the question of a necessary difference between action and omission. And, more to the point of this chapter, it is irrelevant to the question of the comparability of actions and omissions at other places further along the spectrum.¹² Such conduct must be of increasing moral concern as the world shrinks and becomes more and more a closed system, as will be argued below.

These actions and omissions are the subject of the next section. But some of them exhibit a close enough connection with a harmful upshot to be included here; the connection is more or less direct.

The actions and omissions referred to are among those the law would describe as reckless or negligent.¹³ In such cases the connection with a harmful upshot is not certain but only more or less probable, the degree of

¹¹For further discussion of the historical and psychological reasons for this focus, see below, sec. 3, esp. pp. 163-71.

¹²Cf. Wittgenstein's remark in the Philosophical Investigations, 593 (p. 135e): "A main cause of philosophical disease--a one-sided diet: one nourishes one's thinking with only one kind of example." The disease isn't confined to philosophers.

¹³See, e.g., Clerk and Lindsell, Torts (London: Sweet & Maxwell, 1975), Ch. 1, "Principles of Liability in Torts"; and Joel Feinberg, "Sua Culpa," in Doing and Deserving, p. 192ff.

recklessness or negligence depending on how probable the harm is and (in the case of recklessness) how probable it was thought to be by the agent. But the connections between some reckless and negligent conduct and harms resemble those discussed above (and differ from the indirect connections discussed below) in that when harm does occur, it may be immediate and visible to the agent, and thus "embodied" in a known person. Furthermore, unlike the actions and omissions of the next section, a single individual's conduct may be sufficient for harm to occur. This feature renders the connection significantly more direct.

One difficulty in comparing actions and omissions that are reckless or negligent is that while much of what is called negligence involves omissions (lapses, failures to take precautions), an omission is likely to be negligent within the context of or subsequent to the performance of some positive action. In such cases the conceptual distinction between action and omission becomes blurred. My failure to put the childproof cap back on the bottle of barbiturates is part of the larger action of handling and opening the bottle; one might say that in embarking on such a course of action (where children are present) I incur the obligation to take the proper precautions. But someone might then argue that such omissions are not the sort whose moral equivalence to actions is in dispute;

they are not genuine or ex nihilo omissions. Since no one claims that the prohibition of contextual omissions needs special justification, the argument continues, such examples will not suffice to establish my conclusion--that genuine (ex nihilo) omissions are morally equivalent to otherwise comparable actions.

This objection can be avoided by supposing that in the relevant cases some other person (no longer on the scene) has performed the original action in virtue of which the omission is an omission. A visitor has taken the bottle of barbiturates down from the shelf and opened it; he leaves it on the sink. He departs, I come in and find the open bottle. Here my failing to close the bottle and put it back in a safe place cannot be negligent (if it is negligent) because I opened the bottle; for I didn't open the bottle. To avoid another possible criticism, we should suppose that the children present aren't mine; so any responsibility I have does not arise from my relationship with them.¹⁴

It seems clear that my failing to close the bottle and put it safely away is negligent in just the way a person's action would be if he carelessly gave children

¹⁴Legally, one would be obligated to act only if there were some prior duty, as for example one established by a parental relationship. A person who stands by and watches his neighbor's children poison themselves is legally untouchable. See, e.g., Hughes.

barbiturates thinking them vitamins. (An action of this sort would probably be due to an omission--not reading the label--but it is the action that would be the source of culpability.) To the extent that a person is aware of the risks involved in acting or omitting his conduct may be described as reckless and not merely negligent; to the extent that he ought to have been aware of the risks his conduct becomes increasingly negligent. As examples of conduct that is more clearly reckless, one might compare drunken driving with failing to inform a driver that his brakes are faulty. In both cases known risks are willfully ignored. Moving away from the extreme end of the continuum to the place occupied by such reckless and negligent conduct, significant omissions begin to be found in greater numbers.¹⁵

It is notable that the comparability of action and omission is more easily seen as one moves away from the end of the continuum, i.e. as one moves away from the paradigm of intentional physical violence. This suggests that the task of the last chapter was made more difficult by framing the comparison in terms of killing and letting die. For the associations and emotional overtones of killing (and the natural and usually warranted assumption

¹⁵This way of talking is probably too literal; but it seems useful and not seriously misleading.

that the killing was intentional, i.e. aimed at) may obscure the point at issue. This kind of interference should, therefore, be allowed for. And since the equivalence of action and omission can be tested with cases falling anywhere along the continuum--as long as the action and omission to be compared lie at the same place--some of the examples of this chapter are not only relevant to the practical comparison of action and omission but may also be taken as further tests of their equivalence in principle.

3. Actions and Omissions Resulting

Indirectly in Harm

Among those who are not at the outset morally or ideologically committed to denying the equivalence of action and omission, there is often the feeling that still there must be some way of drawing the distinction between negative and positive duties if we are to avoid the conclusion that the only morally consistent stance is total devotion to the well-being of others. For there are millions or perhaps billions of people in the world who are in dire need of assistance. If the obligation to give aid is as stringent and extensive as the obligation not to cause harm, doesn't this mean that the "haves" ought to be doing much more for the "have-nots" than they are now doing--and that they ought to be doing much more than is

now generally held to be reasonable and obligatory?¹⁶ And once the descent down the slippery slope is begun, how can it be stopped short of a morality of total self-sacrifice?

A number of complex and difficult issues must be disentangled and resolved if we are to answer these questions; I hope to make some progress toward this end here. First, it should be made clear in what ways the omissions in question can be said to result indirectly in harm; for some of their features will turn out to be highly relevant to determining both obligation and also our thoughts and feelings about obligation.

In contrast to most of the cases discussed so far, for these cases there is no immediate or visible connection between a person's omission and a harm, nor even necessarily between his positive action (giving aid) and the alleviation of that harm. This is for several reasons. First, those who need aid are usually separated geographically from those who would give it. They are unseen and unknown as individuals. So whether I act or not, no significantly different consequences will be experienced by me, in contrast to the ideal cases of the last chapter and the bystander cases described above, where if I don't

¹⁶ Generally held, that is, by those in a position to give aid. There is a suspiciously high correlation between what a person is doing and what he thinks it is reasonable for him to do; and it is extremely rare for someone to admit that he is obligated to do something he is not doing.

act I will see someone suffer or die. In addition, the connection between a person's omission and a consequence is indirect because it is not an individual's omission alone that can be said to result in or permit the perpetuation of harm, but only his omission in conjunction with the like behavior of a very large number of others who are equally in a position to act. And, furthermore, there will be no appreciable alleviation of the harm unless a very large number of people act in a coordinated fashion. These facts have crucial psychological ramifications which moral philosophy cannot afford to ignore; I will discuss some of these below. It is only in light of these psychological realities that the distinction between direct and indirect connections can be fully justified, and its moral significance understood.

Ignoring these complications for the present, let us examine the "How much sacrifice?" problem in more detail. John Kleinig states it as follows:

No great personal resources are normally required to refrain from killing others. However, immeasurably more effort would be required were the requirement that we render aid accorded equal stringency. We are constantly surrounded by need, great need at that, and though the cost in any particular case might not be very great, it would become prohibitive were the same cost required in every relevantly similar case. If I am walking down a Bombay street, the requirement that I render aid may be fulfilled fairly easily if there is only one beggar. But if there are 250, then what is easy for one becomes impossible if extended to all. And so it is generally. Even though our aid in a particular case might mean the difference between life

and death, if it is as stringently required in all relevantly similar cases then we will require of ourselves an impossible moral herculeanism.¹⁷

Certainly we can agree that when "what is easy for one becomes impossible if extended to all," then extending it to all cannot be morally required. But what is unacceptable in Kleinig's description of the problem--and what obscures the means of its resolution--is the idea that when I encounter 250 Bombay beggars I encounter 250 "relevantly similar cases."¹⁸ This is to define what the "case" is too narrowly. For a person who must act or refrain from acting is not a justice-dispensing machine to which cases arrive fully described. What the case is depends in part on what the cost is to the person who would have to

¹⁷Kleinig, p. 396. See also Trammell, "Saving Life and Taking Life," p. 133: "The positive duty to love one's neighbor or help those in need sets a maximum ethic which would never let us rest except to gather strength to resume the battle. But it is a rare case when we must really exert ourselves to keep from killing a person. . . . Denial of the distinction between negative and positive duties leads straight to an ethic so strenuous that it might give pause even to a philosophical John the Baptist"; also, as quoted above, Ch. IV, p. 92.

¹⁸Kleinig, it should be noted, is defending Good Samaritan legislation. His mistake may be part of the effort to state the opposing case as fairly and forcefully as possible.

This fallacy is also committed by Russell, who (in discussing the same kind of example) refers to "the formal principle of justice that enjoins treating relevantly similar cases in similar ways" (p. 93).

act. Giving my last dollar to a beggar is radically unlike giving one of a large wad, no matter how similar the plights of the beggars. Of course nothing follows from this point alone about how much sacrifice one is obligated to make. But the means of answering this question becomes more clear as soon as it is realized that no principle of justice or fairness commits us to moral herculeanism. It then becomes a matter of drawing the line, deciding how much sacrifice is reasonable. This may not be easy, but it is not mysterious and involves no inconsistency.

Yet there is still an appeal in the kind of argument Kleinig and Trammell make, because it looks as if they have somehow avoided the untidy problem of drawing lines. This is implicit in Kleinig's statement that "No great personal resources are normally required to refrain from killing others" and Trammell's almost identical assertion. The implication is that since it is easy not to kill people, the acknowledgement of negative duties does not raise the question "How much sacrifice?" as the acknowledgement of positive duties clearly does. But suppose significant sacrifices are needed for people to avoid harming or killing others. Then the negative and positive cases are again analogous; decisions about the extent of forbearance or assistance must be made in light

of the likelihood and seriousness of harm, and the cost to those who would be obligated to refrain or to act.

Thinking the negative and positive cases not analogous and that no significant sacrifices are involved in fulfilling negative duties comes from focussing on only one kind of negative duty (or one kind of harmful action), viz. that which is involved in physical aggression. But physical aggression is, first, not typical of harmful action; and second, not comparable to failing to aid the starving of the world (much less failing to aid all those who need it). If we look instead at harmful actions that are more typical and are comparable, the same issues will be seen to be relevant as in the case of positive duties.

What kinds of actions, then, are comparable to failing to aid the starving and malnourished of the world? Good examples include various polluting activities and what may be called acts of overconsumption (of nonreplenishable resources).¹⁹ Consider, for instance, the facts that in the eighteen richest nations (population 680 million) steel consumption is 300-700 kilograms per capita per year; while in thirteen other nations (population 1400 million)--still not the poorest group--steel consumption

¹⁹Of course there are many other activities dangerous enough that prohibiting them would prevent some from being killed, and where the cost of prohibition is not individually very burdensome, e.g. driving at high speeds.

is 10-25 kilograms per capita per year.²⁰ In a finite world of very limited resources, one group's consuming a vastly disproportionate share of those resources clearly makes others worse off, now and in the future. So likewise with polluting the air or water, which involves putting something harmful into the environment, rather than taking something valuable out.

With such actions substantial harm is done as a result of the behavior of large numbers of people, whose individual actions by themselves have a very small impact. What does this mean in terms of the way an individual can or will reason about what he ought to do? Imagine a person in the United States trying to decide whether he ought to reduce his consumption and live more simply. He knows that whether he continues as before or not, his behavior alone will not make a significant or visible difference to the outcome of things. Yet it seems reasonable for him to think that if he significantly reduces his dependence on nonreplenishable resources, this will affect the prospects of some, albeit few, people. After all, the larger harm is just the sum of individual harmful actions.²¹

²⁰Harrison Brown, "Human Materials Production as a Process in the Biosphere," Scientific American, September 1970.

²¹Clearly there is an assumption here that the person's action or forbearance will affect the way others (in this case those who appropriate the resources) act. This is another way in which the connection between one's behavior and a consequence may be indirect.

Analogously, imagine a similarly situated person trying to decide whether he ought to do something, e.g. give some fraction of his income, to aid the starving and malnourished. He too knows that it is not his omission alone, but his omission in conjunction with similar behavior by many others (who are in a position to act) that results in harm. Given the magnitude of the problem, his individual act of aid-giving will not make a significant or visible difference to the outcome. Still, he can help a few people.

The positive and negative cases have other things in common as well. Unlike direct harmful action, overconsuming and polluting do not involve the intention that others are harmed; neither does failing to give aid. And because there is no visible connection between one's behavior and harm, it is quite possible to be ignorant of the effects of one's actions, as it is not (realistically and barring severe personality disturbance) possible to be ignorant of the effects of physical violence. So if there is a problem in expecting someone to know when he is not doing something he ought to be doing, there may equally be a problem in expecting someone to know that what he is doing is harmful.

This comparison leads to the conclusion that the crucial unanswered question for both the positive and negative cases concerns how much sacrifice (and what kinds

of sacrifices) it is reasonable to expect people to make to avoid causing harm or to alleviate it. By taking as the paradigm of prohibited behavior cases of direct harmful action, and by distinguishing morally between action and omission (sometimes precisely for reasons having to do with the question of sacrifice), this problem has often been avoided.²² The traditional emphasis may have been warranted in the past: for it is only relatively recently in human history that it has become possible either to harm people or to prevent harm to them "at a distance." But it is clear that modern technology and the vast increase in world population have altered the framework within which decisions have to be made. Making significant sacrifices can no longer be relegated to the realm of the supererogatory.

²²The utilitarian tradition is the notable exception. But by developing a general and abstract theory, rather than beginning with the individual who must decide how to act, utilitarians have always been easy targets of the kind of criticism made by Kleinig and Trammell. The impartial observer (the embodiment of the theory) treats everyone's happiness equally. But the individual (a partial participant) can't be expected to do likewise. So if we begin with the standpoint of the individual deciding how to act, what is and isn't reasonable to expect him to sacrifice must be an integral part of the theory. This question is discussed below. But for reasons discussed in the last part of this chapter, it may not be reasonable to expect people to make certain kinds of sacrifices unless other people do likewise.

To see just how far a standard utilitarian view may lead in the direction of sacrifice, see Peter Singer, "Famine, Affluence, and Morality," Philosophy & Public Affairs 1 (1972).

Where does this conclusion leave the kind of criticism made by Kleinig and Trammell? Since they rested their argument partly on the assumption that negative duties don't involve great sacrifices, the falsity of this assumption leaves them two alternatives. They may decide that negative duties are not, after all, as strict as they had seemed; or that positive duties are stricter. Perhaps they will adopt both alternatives to some degree. Their error was in conceiving negative duties too narrowly; conceived more broadly, it makes sense that on the whole negative duties are not as strict as, say, the duty not to shoot someone between the eyes. The crucial point is that not only is the reasoning about the negative and positive cases in principle the same; given the range of sacrifices that may be involved in each, the lines will, if we are consistent, be drawn similarly.

Something needs to be said about the kinds of costs and degree of sacrifice it is reasonable to expect people to make to avoid harming others or to help them, although this is a large subject requiring its own investigation. What is said here applies to the case where most members of a community or society make the sacrifices deemed necessary or appropriate. For, as will be argued below, it may not be reasonable to expect people to make these sacrifices unless most other people do likewise.

There may be times when we expect people to sacrifice their lives (by dying) for something, but in general this is not morally required, and perhaps it never is. This point was expressed by Hobbes, who asserted an absolute right of self-preservation.²³ It was made in a somewhat different way by Hume in his discussion of the conditions that make justice both necessary and possible. Where there is extreme scarcity, "the strict laws of justice are suspended . . . and give place to the stronger motives of necessity and self-preservation."²⁴ But although we do not and perhaps cannot demand that a person do something that he knows will result in his death, many commonly accepted moral obligations involve a serious risk of death.

It also seems unrealistic to demand that a person sacrifice some minimum condition of health or bodily well-being. This has partly to do with the way such sacrifices would affect a person's prospects for a reasonable life; partly it reflects a kind of primal terror of pain and mutilation (such as would be involved if people had to give up bodily parts for transplants).²⁵

²³Leviathan, pt. 1, ch. 14.

²⁴An Inquiry Concerning the Principles of Morals, sec. 3, "Of Justice," pt. 1.

²⁵One way of testing for what sacrifices are reasonable is to ask what individuals suitably ignorant would agree to, as Rawls does. It seems plausible that they would not agree to give up bodily parts, even knowing

Just as it is too much to expect a person to sacrifice his life by dying, it seems unreasonable to expect him to sacrifice it by devoting most of his time and energy to the well-being of others. For in a crucial sense to give one's time is to give one's life. If this were the only way one could aid others, the obligation to give aid would be severely limited. But fortunately there are other ways, which both involve less sacrifice and may be more effective as well. Since given the means people can usually do more for themselves than others can do for them, the obligation to give aid can in general be discharged most effectively by giving those who need aid the material means to achieve their own well-being. Like refraining from consuming a disproportionate share of the world's resources, this obligation may require substantial material sacrifices. Are such sacrifices nevertheless reasonable?

I think that they are, for several reasons. First, because it is only below a certain level that material welfare or the lack of it crucially and necessarily--i.e. irrespective of the kind of society one lives in--affects

there was a significant chance they might need them. For some interesting suggestions concerning these issues, see Nozick's discussion of the reasons for prohibiting certain risky activities rather than permitting them and providing compensation. The reasons have partly to do with the nature of fear. (Ch. 4, "Prohibition, Compensation, and Risk," esp. pp. 65-71.)

one's prospects for a decent life. One might think of a line above which material goods are related only externally to a person, below which they are related internally to him. Goods whose presence or absence determine a person's health are in the latter category; they fix a person's very self. Those who would benefit from the material sacrifices of people in the developed nations are well below the level at which material goods cease to make a crucial difference; those who would have to make the sacrifices are far above it. There may be disagreements about just how far we should go;²⁶ but given current consumption patterns, such disagreements can only seem like evasions.

A good part of the reason material sacrifices (above a certain level of well-being) are thought to be highly significant (and therefore become significant) depends on the nonmaterial forms of gratification material welfare provides in certain societies. How important material things are to a person depends largely on what other people have, on what is available and visible, on what is prized. These are things that can be altered, as

²⁶ See, e.g., Singer, who thinks those in the developed nations ought to reduce themselves to the level of subsistence--unless this would depress incentives to the extent that the general welfare would suffer further. Questions about the need for a profit-motive are of course highly relevant to determining where to draw the line.

the relation between, say, health and a decent life cannot be. A collective change in the way we live (rather than individual acts of ascetism) would bring with it a change in the meaning and value of material things. Apart from an explicit shift in values, the mere absence of great inequalities in wealth tends to diminish the significance of material things as sources of self-respect and other values that are essential ingredients of a decent life. As more people make material sacrifices, the sacrifices to each person become smaller.²⁷

Another kind of sacrifice that may be involved in fulfilling obligations is the sacrifice in freedom. It has become a commonplace that positive requirements limit freedom much more than do negative ones. In P. J. Fitzgerald's words, a requirement not to act "merely closes off one avenue of activity"; a requirement to act "closes off all avenues but one."²⁸ Although this view is superficially plausible, it does not stand up to serious scrutiny. If I am prohibited from speaking freely,

²⁷But this isn't the only reason for distinguishing morally between an individual's changing his behavior in isolation from the rest of society and his changing it in the context of a collective shift. For other important reasons, see below, pp. 167-71.

²⁸"Acting and Refraining," Analysis 27 (1967), p. 138. For a fuller discussion of losses in freedom as they arise in connection with coercing people to act or to refrain, see ch. VI.

it is absurd to say that there is only one thing I can't do or say or only one avenue that is closed off to me. At any given moment the number of things I can't say is very large (perhaps infinite). And this isn't true merely in some technical sense; there may be many things I want to say (on many occasions) that I am not free to say. By contrast, the feature of positive obligations that Fitzgerald finds oppressive--that a person "can do nothing else whatsoever till he has done this act"²⁹--is paradoxically the means to becoming liberated from it, because once I have done what I am obligated to do, I am constrained (by this obligation) no further. On a psychological level, since most desires are positive (desires to be, have, or do, not to not-do), negative prohibitions may be felt as more constraining than positive injunctions.³⁰

In spite of the arguments of this and the last chapter, some people will still find the conclusion that there is a far-reaching obligation to give aid--to use the prevailing euphemism--"counterintuitive." They don't feel guilty about the way they live; their consciences don't make demands that the sense of such an obligation makes.

²⁹Ibid.

³⁰See also ch. IV, n. 29 for a similar point about the argument sometimes made that action requires an output of effort. The implication that forbearance doesn't require effort is at best naive.

This is in contrast to the more commonly accepted moral rules, transgression of which is associated with unpleasant feelings. So at best the recognition of the obligation to give aid is intellectual; reason, in Hume's words, "exerts itself without producing any sensible emotion."³¹ But without the appropriate emotions, the transition to action with which morality is essentially concerned doesn't take place. So it needs to be explained why the appropriate sentiments may be lacking, and whether this condition can be remedied.

One obvious but very powerful reason the recognition of a far-reaching obligation to give aid may leave us cold is that it isn't in our interest (at least not our short-range material interest, which exerts a powerful influence) to recognize it. Of course when it comes to moral matters there are no genuinely disinterested parties; even if one's interests aren't directly at stake in a given case, the principles relevant to settling it will have application to situations where one's interests are at stake. But where the only point against a conclusion supported by argument is that it doesn't accord with the objector's feelings, reactions, "intuitions," and where these clearly

³¹A Treatise of Human Nature, bk. 2, pt. 3, sec. 3, "Of the influencing motives of the will"; also see bk. 3, pt. 1. On some theories, the absence of appropriate sentiments is evidence against the existence of an obligation. But one might take it just to show the "futility" of obligations unless accompanied by feelings with the power to move. Although the precise relation between sentiment and morality is a crucial question for ethical theory, for purposes of this discussion it can be ignored. What matters is that the sentiments may be lacking.

correspond to his material interests, one need not be too disturbed by the charge. (This doesn't mean, however, that a conclusion that violated a person's essential and necessarily abiding interests could be similarly acceptable.)

But there is another reason the appropriate sentiments may be absent regarding obligations to aid others or to refrain from harming them, as by overconsuming or polluting. In contrast to the reason just cited, which applies generally, this one, which has been alluded to above, concerns the particular features of these obligations. Specifically it has to do with the distance between an agent (or his conduct) and the harmful conditions which his action or forbearance is supposed to remedy. This distance is a product of several related factors.

First, it is a product of the spatial-geographical and temporal gap between an agent and both (1) the harmful conditions, whether he was causally responsible for them or not; and (2) the alleviation of those conditions through his forbearance or positive action. In the case of harmful action, the gap is primarily temporal: harm is evident substantially later than the time the actions are performed. In the case of omissions, the gap is primarily geographical: those who need aid are far away from those who would give it--or at least they are not in view. So there is no natural conditioning in these circumstances, as there is in the direct cases discussed in the last section, where the

immediacy of harm or suffering (whether produced by the agent or not) impinges on those present and in general functions to reinforce behavior that brings the suffering to an end. In these cases, the possibilities of both genuine ignorance and self-deception--to which corresponds an absence of revulsion, guilt, shame, etc.--are much smaller.

But not only is this kind of natural conditioning lacking in the indirect cases, there is no pervasive social conditioning either. This can no doubt be attributed to the relative novelty of our situation. The growth of modern technology makes possible both harming-at-a-distance and aiding-at-a-distance to an unprecedented degree. In conjunction with vast population growth in a world whose resources are limited, this greatly increases the interdependence of the earth's inhabitants, and enlarges the realm to which their sympathies appropriately extend. Economic development and technology are also responsible for the existence, for the first time in history, of a significant mass of affluent people who can, without unreasonable sacrifice, alter conditions in a way that will improve the material situation of others. The absence of these circumstances through most of human history largely explains the dearth of those feelings that typically accompany the recognition of moral wrong. Our "intuitions," in short, haven't caught up with the facts.

But it isn't simply the spatiotemporal gap between conduct and conditions that accounts for the insufficiency of feeling to move people to change the way they live. The distance is compounded and the issue crucially complicated by the dimensions of the problems, which affect not only the role an isolated individual can have but also his perception of the significance of, and therefore his attitude toward, how he acts in relation to the existence and solution of those problems. For example, though a person might be reasonably certain that he could help to remedy the severe malnutrition of a small number of people, it is very hard to appreciate the difference between a billion anonymous and unseen malnourished people and a billion less a hundred anonymous and unseen malnourished people in the way that is necessary if one is to be moved to act to reduce the number from a billion to a billion less a hundred. (It's like the Cartesian-inspired problem of imagining a chiliagon and then imagining a chiliagon-minus-one-side.) But what if instead a person knew that with the same amount of sacrifice malnutrition could be entirely eliminated in the world? It seems clear that in this case his feelings about acting and not acting, his willingness to make the sacrifices, and generally his motive to act would be vastly stronger. But the difference between these two situations is essentially the difference between an individual's isolated action (where most people's behavior remains the same) and the concerted

action of a large mass of people (whose individual actions don't differ from that of the individual acting in isolation).

The same reasoning applies also to forbearance. Though my restraint might crucially affect some few people's welfare, this is not sufficient, given the magnitude of the problem and the anonymity and invisibility of those who would benefit, to move me to change my behavior when everyone around me continues as before. Being strongly motivated to act or refrain seems to depend partly on the expectation of a highly visible and massive change in the conditions which make action or forbearance necessary; a minimal (though in itself still significant) change will not do. These observations are relevant to understanding the psychology of mass movements, where the existence of a "critical mass" transforms the way an individual perceives the significance of his own conduct by holding up the possibility of a qualitative change--the elimination of material suffering, the ending of a war--rather than just a small quantitative one.

The aim of these observations has been to make some progress toward explaining why, with respect to the conclusions reached in this and the last chapter, one might not find in oneself the feelings (or some such "springs of action") that ordinarily accompany and give life to the recognition of a moral wrong or the rational acceptance of a moral judgment. Among other things, the discussion points to the need for a collective solution to the problems

raised.³² But a collective solution is not justified solely on these psychological grounds; there are at least two other compelling reasons for it. First, there is the point made earlier that the same material sacrifices diminish in their overall cost as more people make them--as material goods lose their significance as determinants of status and self-respect. In fact, with the gain in stature of different values affluence may even come to have its own costs in terms of social disapproval and the like.

The other reason for a collective solution has to do with the efficacy (or lack of it) of isolated individual action in achieving the desired goals.³³ Throughout these pages I have talked about the obligation to give aid without ever specifying just what form aid-giving should take. There are two related reasons for this. First, what an individual should do depends in part on what others are doing--whether their behavior is held constant or is changing with that of the individual in question. Second, what anyone--whether an isolated individual or a unified collectivity--should do depends upon certain empirical facts about the connection between policies or courses of action and the conditions to be promoted. What these facts are is primarily

³² See ch. VI for a detailed discussion of the arguments for and against a coercive (and collective) solution.

³³ I.e. apart from the obvious quantitative difference between the effect of an individual's action and that of many individuals' actions.

the province of economists and other social scientists, not philosophers.

Yet it seems clear enough that the courses of action available to the isolated individual are at best stopgap measures which may (or may not) stave off the suffering of a few for a time. Permanent solutions require fundamental changes in the economic structures which give rise to or permit the conditions that make people dependent on others' aid in the first place. Merely giving people the end-products they need to live (the path of action provided by most charitable organizations) leaves them just where they were when the supplies run out and thus perpetually dependent on others' aid. Not only is this costly and inefficient, but it is antithetical to the well-being of all concerned--both the dependents and those on whom they must depend. These problems can be avoided only by providing people with access to the means of labor and letting them take care of the rest. But this goal cannot be achieved at the level of individual action.³⁴

These conclusions about the form and direction that action must take are in a certain sense implicit in the idea of giving aid. One gives aid with the aim of making aid unnecessary; so forms of aid which contain the seeds of

³⁴ This is another reason the individual may not be moved to act in spite of his recognition of an obligation: not only is the contribution he can make alone miniscule, but it is of the wrong sort.

their own destruction are superior to those that do not. The conclusions are also in keeping with the perspective underlying the thesis that action and omission are morally equivalent--the idea that everyone has an equal right to the means of self-fulfillment.³⁵

³⁵ By 'everyone' here I mean everyone innocent in certain relevant ways. Those who misbehave (either by action or omission) may forfeit certain rights. And the formulation in terms of the means of self-fulfillment rather than the ends permits us not to worry (philosophically, that is) about those who have the means but, through their own fault, don't achieve the ends.

CHAPTER VI

COERCING TO ACT AND COERCING TO REFRAIN

If the arguments of the last two chapters were successful, they established that there is no purely moral difference between action and omission: neither a necessary difference between action and omission considered solely in themselves, nor (for critical places along the continuum) a nonnecessary but significant difference arising from the correlation of action and omission with other morally relevant characteristics. But this conclusion still falls slightly short of the thesis with which I began: that if the state may coerce people not to do certain things (e.g. commit acts of aggression, cause harm), then it may also coerce them in some cases to act (e.g. to give aid). For there still might be a moral difference between coercing someone to act and coercing him to refrain from acting. The validity of this idea--as expressed in the claim that coercing someone to act violates his freedom in a way coercing him to forbear does not--is the main question of this chapter. In addition, some other possible (nonmoral) differences between coercing acts and coercing forbearances will be considered, to see how these are relevant to the justification of coercion in each case.

Before proceeding to these questions, however, something needs to be said about the use of the term 'coercion' in this context. 'Coercion' is a harsh word, and coercion by the state is clearly an evil. But though 'coercion' is not the wrong word here, its use may be somewhat misleading, for a couple of reasons. First, in a stable society most people will do or refrain from doing voluntarily what they could be coerced to do or refrain from doing. They don't act or forbear solely under the prospect of the punishment that may befall them if they fail to comply. (Of course this is partly the result of having internalized the prohibition.) To the extent that social institutions and requirements reflect or come to correspond to personal moral attitudes, the coercion attached to performance or forbearance need not seem oppressive. After all, most people don't refrain from stealing, for instance, only out of fear of the iron hand of the law; they don't feel coerced not to steal.

Second, the need for coercion in the case of at least some positive obligations (i.e. some of the crucial ones) may in fact be quite limited. For once certain changes have been achieved via the performance of specific actions, further coercion may be minimal. Where the giving of assistance is successful, the need for it is eliminated; the desired consequences then flow naturally from activity within

existing economic and institutional structures.¹ So although instituting these (or presumably any other) arrangements will require coercion, maintaining them will not in the same way.

Justifying such arrangements and institutions involves both questions of the legitimacy of coercion, and questions about prior moral issues, like those discussed in the last two chapters.

1. Freedom and Unfreedom

The essential argument for a moral difference between coercing someone to act and coercing him to refrain from acting is that the former involves a vastly greater limitation on a person's freedom than does the latter. For to be forced to act is to be forced to do one particular thing (or one kind of thing), while to be forced to not-act is only to be prohibited from doing one thing (or one kind of thing). Reiterating P. J. Fitzgerald's metaphor, a requirement not to act "merely closes off one avenue of activity"; a requirement to act "closes off all avenues but one."²

This objection to coercing people to act can be opposed on two distinct and fundamental grounds: (1) It can be questioned whether being forced to act is indeed a greater limitation on one's freedom than being coerced not

¹See above, ch. V, pp. 169-71, and below, ch. VI, pp. 200-201.

²Fitzgerald, p. 138.

to act. This approach was suggested in the last chapter,³ and will be pursued further below. (2) Assuming for the sake of argument that being forced to act is a significantly greater limitation on one's freedom than being forced to refrain from acting, it can be asked whether the freedom of the person coerced to act or refrain is the only one whose freedom is at stake. For if other people are made more or less free by the decision to coerce some person to act, and if freedom is a crucial element in determining the legitimacy of coercion, then the freedom of all those whose freedom is at stake will have to be taken into account in deciding whether a person should be coerced to act. That a person in being forced to act is made significantly less free is relevant, but not decisive: everything depends on how his being coerced (or not being coerced) affects the freedom of others. One cannot avoid performing the balancing act.

The success of this counterargument depends on showing that those who benefit from someone's being coerced to act, e.g. to give aid, are indeed thereby made more free, and that they are otherwise less free. For it is this that Berlin, Hayek, and their sympathizers deny. People who suffer material deprivations, they will say, may not be able to take advantage of their freedom, but they have it; what they don't have is a certain degree of well-being or

³Pp. 162-3.

welfare. Of course about the latter claim there is no argument. Why, then, quibble about the application of a word? First, because 'freedom' isn't just any word; it possesses a great deal of rhetorical force. So one who puts forth a moral view acknowledged to be in opposition to freedom (not just in isolated cases, but generally) makes very hard work for himself. But insisting that those who suffer severe deprivations are unfree isn't merely a tactical necessity; that alone could hardly justify the appeal to freedom. The reason 'freedom' has such rhetorical and emotional power is that it embodies, however vaguely, certain values that few people in the modern Western world can imagine giving up. And it is precisely these values that are frustrated when a person is unable to do as he wants because he lacks the necessary means. Establishing this claim will occupy the major part of this chapter.

To many--especially those unschooled in the academic controversies about freedom--it may seem obvious that one who is severely malnourished or illiterate is less free than one who is not. For the person without the means of a decent life is unable to carry out his plans, unable to realize his desires and aims. Why should anyone deny that he is to that extent unfree?

The answer to this question is complicated. It requires an understanding of the conception of freedom presupposed by those who say that being without the means of life

is not being unfree, whatever else it may be. This is so-called negative freedom, defined as the absence of interference.⁴ As the prevailing view in the liberal political tradition, it can be traced at least as far back as Hobbes, who provides a definitive statement of it:

Liberty, or Freedom, signifieth (properly) the absence of Opposition; (by Opposition, I mean externall Impediments of motion;) and may be applyed no lesse to Irrationall, and Inanimate creatures, than to Rationall. For whatsoever is so tyed, or environed, as it cannot move, but within a certain space, which space is determined by the opposition of some externall body, we say it hath not Liberty to go further. And so of all living creatures, whilst they are imprisoned, or restrained, with walls, or chayns; and of the water whilst it is kept in by banks, or vessels, that otherwise would spread it selfe into a larger space, we use to say, they are not at Liberty, to move in such manner, as without those externall impediments they would.⁵

Not everything in Hobbes's view is incorporated in the contemporary conception of negative freedom. Specifically, the external impediments considered definitive of unfreedom by thinkers such as Berlin and Hayek are only those that are humanly imposed. This important qualification will be discussed below. But Hobbes's formulation contains the germ of the contemporary conception of negative freedom. Two related features are essential to this view; each contributes to the negativity of freedom. One is the idea that freedom

⁴See, e.g., Berlin, intro., pp. xxxvii-lxiii, and the title essay; Hayek, esp. chs. 1, 9, 10; Hart, "Are There Any Natural Rights?"; Nozick, esp. chs. 3, 7, 8; also above, ch. III, sec. 3.

⁵Leviathan, pt. 2, ch. 21, "Of the Liberty of Subjects."

is just "freedom from," as if there weren't an irreducible positive element essential to our understanding of freedom and its value. The other is that what freedom is from is necessarily positive--material barriers--rather than absences or lacks. Both elements are captured in Berlin's assertion that "The defence of liberty consists in the 'negative' goal of warding off interference."⁶ To be free is just to be free of impingements on one's own space.

The view that freedom is just the absence of interference is, though important, derivative of a more fundamental idea--one that reveals itself when one asks why the absence of interference is so important. For the value of noninterference is not fully intelligible without a prior conception of the good of individual self-realization. Ultimately, to be free is to be able to achieve one's goals, to do what one wants to do, to be autonomous. No writer on freedom can avoid dependence on this conception. Berlin, who describes freedom as "the opportunity to act,"⁷ quotes approvingly from Mill: "The only freedom which deserves the name is that of pursuing our own good in our own way."⁸

⁶Berlin, p. 127.

⁷Ibid., p. xlii. "The extent of a man's negative liberty is, as it were, a function of what doors, and how many, are open to him; upon what prospects they open; and how open they are" (p. xlviii). Unless the metaphor is taken too literally, there is no reason to say that a person's prospects may not be limited by negative as well as positive factors.

⁸Ibid., p. 127; from John Stuart Mill, On Liberty (Indianapolis: Bobbs-Merrill, 1956), p. 16. Berlin's

Similarly, Hayek asserts that "the freedom of the free" always meant "the possibility of a person's acting according to his own decisions and plans . . ."⁹ However this idea may be qualified--as it is by Berlin and Hayek--it cannot be altogether rejected.¹⁰

reservations about the conception of freedom as self-realization have to do with the possibility of identifying the self with something other than a person's actual desires (p. 132), or of extinguishing his desires (p. 135), without (on this conception) violating his freedom. But his fears, which may very well be historically justified, only serve to emphasize how crucial a person's actual desires are to his being genuinely free. Generally, Berlin's objections to what he calls--and what others may, for their own reasons, have called--positive freedom don't apply to a straightforward understanding of positive freedom; indeed it is not clear that the object of his attack is any sort of freedom at all. See Marshall Cohen, "Berlin and the Liberal Tradition," Philosophical Quarterly 10 (1960), p. 221ff.

⁹ Hayek, p. 12. But Hayek is here contrasting this condition with that where a person is "irrevocably subject to the will of another." He vehemently rejects the identification of freedom with the mere ability to do what one wants, precisely because it leads to the justification of socialism and so can be "used to support measures which destroy individual liberty" (p. 16). (Of course such measures need destroy more liberty than they promote only on the conception of liberty as mere absence of interference.) Whether it is only in contrast to positive domination by another that the conception of freedom as acting according to one's own decisions makes sense will be discussed below. Here the point is just that even Hayek appeals to some positive conception of freedom; his objection to it rests not on its intrinsic implausibility but on its leading to a view antithetical to his own.

¹⁰ It can be argued that even what might be called the compromise conception of freedom, incorporating both the negative and positive, contains a bias toward the positive. This is the view of freedom as a triadic relation: to be free is always to be free from something to do something. For that which one is free from comes to light primarily by reference to what one is aiming to do; hindrances are hindrances to something. But the desire to be free from

It is easy to see how this core conception of freedom as the ability to do what one wants may lead, on a simple model of human action, to the view that freedom is the absence of interference. On Hobbes's mechanistic view, for example, the subject's desire to act in some particular way is represented simply as the impulse to move through space; so it is natural to think that frustrations of this desire are physical impediments, things standing in the way of one's unimpeded motion. But this need not be the case; you may be prevented from doing what you want because you lack the necessary means, not only because something literally stands in the path between desire and fulfillment. Hobbes's first formulation--liberty as the "absence of opposition"--has the virtue of negative/positive neutrality: the nature of the "oppositions" to freedom is not implied or even suggested by the term.¹¹ And this seems in keeping with the meaning of freedom. If I want to get from point A to point B, what difference does it make (relevant to determining my freedom) if I am prevented by a boulder sitting in the road, or by the absence of a bridge linking two points separated

something doesn't always imply a positive goal (e.g. the desire to be free from pain). See Gerald MacCallum, "Negative and Positive Freedom," Philosophical Review 76 (July 1967): 312-34.

¹¹ See above ch. III, sec. 2, where it is argued that the negativity or positivity of such obstacles ought to remain an open question within a moral view. See also Cohen, p. 225: "If the value of negative liberty lies in the fulfillment of desire, why is the nature of the obstacle to the realization of desire of such crucial philosophical importance?"

by an abyss? From the primary perspective of the subject of freedom there is clearly none.

That oppositions to freedom may include absences as well as impediments doesn't mean that every kind of inability should be regarded as a limitation on one's freedom. Because the concern with freedom is a moral and political concern, we are always interested in how different states of affairs enhance or diminish a person's ability to achieve his goals. Thus what is given--fixed and unalterable features of the environment--may be regarded as irrelevant to freedom. One might say that where one could not be more free, one is not unfree. The claim of unfreedom implies a possible contrast--and not just a logically possible contrast either. It may have been this point in part that Hobbes had in mind when he distinguished freedom from power: "when the impediment of motion, is in the constitution of the thing it selfe, we use not to say, it wants the Liberty; but the Power to move; as when a stone lyeth still, or a man is fastned to his bed by sicknesse."¹² But while we may agree that limitations inherent in the nature of the thing are not limitations on its freedom, the reasoning that supports this conclusion does not apply to inabilityes that are remediable.¹³ For the latter do not rule out alternative

¹²Hobbes, pt. 2, ch. 21.

¹³Hobbes's impediments "in the constitution of the thing" itself are ambiguous in this regard. They suggest unalterable limitations in the nature of things. But it doesn't seem that Hobbes is referring only to these--as, e.g., in the example of the man fastened to his sickbed.

arrangements that enhance a person's ability to realize his desires, and therefore come within the realm of the concern with freedom.

So far I have argued (a) that the ordinary notion of freedom contains an essential positive component, because freedom is the ability to realize one's aims; (b) that a priori there is no good reason for restricting what counts as a limitation on freedom to only positive impediments; and (c) that it is reasonable to stipulate that unalterable features of the internal and external environment of a person not be considered limitations on his freedom. But here another issue must be raised, in light of which some of these claims will require further evaluation. A distinction closely related to the negative/positive one which many political theorists--among them Berlin, Hayek, and Nozick--take to be crucial to an understanding of freedom is that between impediments to a person's realizing his aims that are natural and those that are social or human. Hobbes's brute discussion of freedom and unfreedom ignores this dimension. But the contemporary writers specifically limit the sources of unfreedom to humanly imposed positive interferences. In Nozick's words, "Whether a person's actions are voluntary depends on what it is that limits his alternatives. If facts of nature do so, the actions are voluntary."¹⁴ Berlin asserts that "You lack political

¹⁴Nozick, p. 262.

liberty or freedom only if you are prevented from attaining a goal by human beings."¹⁵

In theory, the natural/social distinction is independent of the negative/positive one. (If I wake up one day to find a meteorite lodged against my front door, the impediment is positive, but natural.) But in practice the claim that only human interference and not "facts of nature" constitutes limitations on freedom serves to rule out negative oppositions.¹⁶ On this view, one who lives at the brink of starvation because his environment is agriculturally barren is not therefore unfree. (On the other hand, Nozick admits that one who subsists as a result of the appropriations of others who do not leave as much and as good for him is made less free by their actions.) For it is only "facts of nature" which limit his alternatives.

This view is given some plausibility by the connotations and suggestions of terms such as "facts of nature." Like "facts of life," it suggests the inevitable, something one must learn to live with. As was argued above, to the extent that such facts are inevitable, they are justifiably excluded as not definitive of human freedom. But Nozick is ruling out not just unalterable facts of nature, but any

¹⁵Berlin, p. 122.

¹⁶Especially since Nozick et al. are not willing to count even deliberate omissions as limitations on freedom. For these do not make a person worse off in the relevant sense. See e.g. Nozick, pp. 178-181; also ch. IV, n. 13.

states of affairs not already affected by human action. This is the view of all those who define freedom as just the absence of interference.

One way to oppose this view of freedom and the political view that goes with it is on empirical grounds. This will no doubt form part of a full moral theory of social relations. Along these lines, C. B. Macpherson argues against Berlin that it is a mistake to think that people's poverty and dependence might be solely the result of facts of nature and completely independent of human arrangements. Berlin implies "that this causal relation [between some people's poverty and others' actions and arrangements] cannot be presumed: it is only imputed by those who accept certain economic theories." But, Macpherson continues,

to say that poverty is properly described as an impediment to liberty only on some particular social and economic theory which ascribes poverty to human arrangements is to imply that there are other social and economic theories, equally credible, which do not do so.. . .[Even] free enterprise theories of any standing . . . have recognized that it is indeed arrangements made by other human beings (as well as differences in native abilities and industriousness) that determine the distribution of wealth and poverty.¹⁷

To the extent that Macpherson is right, the claim that poverty diminishes freedom need not involve any disagreement about the nature of freedom, but only about certain

¹⁷ Democratic Theory: Essays in Retrieval (Oxford: Clarendon Press, 1973), ch. 5, "Berlin's Division of Liberty," p. 100.

causal and historical questions.¹⁸ Yet one may also object that even if a person's poverty were not in part the result of other people's actions, it would still be appropriate to describe him as (relatively) unfree because of that poverty. This is in contrast to the view of Berlin and others, who distinguish sharply

between liberty and the conditions of its exercise. If a man is too poor or too ignorant or too feeble to make use of his legal rights, the liberty that these rights confer upon him is nothing to him, but it is not thereby annihilated.¹⁹

Similarly, Rawls distinguishes between liberty and the worth of liberty, the latter being the value to individuals of the liberties given in the first principle of justice.²⁰

This way of distinguishing between natural and human impediments to one's ability to realize one's aims may

¹⁸This is not to underestimate the extent of the possible disagreement. Along these lines, it is interesting to note how radically conclusions might differ between people who agreed to apply Nozick's theory to present-day American society, depending on what they thought the particular historical facts and the causal connections between various actions and events were. The "principle of rectification of injustice in holdings" might dictate very significant redistribution; certainly a great deal depends on what factual and causal assumptions are made.

¹⁹Berlin, p. liii.

²⁰John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971), p. 204. Against Rawls in particular and this distinction in general, see Norman Daniels, "Equal Liberty and Unequal Worth of Liberty," in Reading Rawls, ed. Norman Daniels (New York: Basic Books), pp. 253-81; also see Virginia Held, "Men, Women, and Equal Liberty," in Equality and Social Policy, ed. W. Feinberg (Urbana: University of Illinois Press, 1978).

explain in part the reluctance to include the former as constraints definitive of liberty. It is true that one does not cease to have legal rights even if they are of no use. If the concern with liberty were only a concern with particular liberties, it might be useful to state this fact by reference to the distinction between liberty (more accurately, liberties) and the condition of its (their) exercise. But particular liberties such as those given by law are valuable in great part because they enhance overall liberty, i.e. the ability to realize one's goals. So although one may have liberties that are of no possible use, the idea of liberty that one cannot use is absurd: to be free is to be able to do (or not do).

I conclude that the distinction between liberty and the conditions of its exercise (or its worth) is not just morally irrelevant but conceptually untenable. This is seen again by adopting the perspective of the subject of freedom himself--the perspective to which all questions concerning freedom must ultimately refer. As Norman Daniels has argued, no one would choose liberties without also choosing the conditions that make them valuable.²¹ Liberties without these conditions do not amount to liberty.

One reason Berlin and Hayek, among others, have reached the conclusions they have about freedom is that they

²¹Daniels, p. 263ff.

have conducted the discussion without explicitly distinguishing between the points of view of the various agents involved in questions of freedom and coercion. Once these perspectives are separated, we are led to the conclusion that unfreedom and coercion are not correlative. Acknowledging that a person is unfree because, for example, he is without the means of life does not imply that anyone is coercing him; acknowledging that someone is not being coerced does not imply that he is free. But this does not mean that "Coercion implies the deliberate interference of other human beings within the area in which I could otherwise act."²² Although 'to coerce' is an active verb, and coercion implies a coercing agent, it seems clear that one person can coerce another without intending to and even without being conscious that he is doing so.²³ In fact, what seems to be necessary for some behavior to be coercive is not the performance of positive actions (forbearance may be involved) but just the directedness of one's efforts towards achieving some goal for which the subservience or "cooperation" of some person or group is required. One may not even realize the connection between the goal and the subservience of that person or group.²⁴

²²Berlin, p. 122.

²³Cf. Macpherson, p. 98, who objects to Berlin's assertion that coercion must be deliberate that it does not "leave room for including in coercion a relation of dominance and subservience which may be an unintended, but which is a necessary, result of arrangements made and enforced by a class of owners."

²⁴Berlin himself is not unambiguous in his remarks

Coercion, then, is a more inclusive notion than Berlin's definition allows. But it is still not as inclusive as freedom (or unfreedom): the question of how free someone is goes beyond the question whether anyone is coercing him. You are unfree to the extent that you are unable to realize your aims, when the means exist to enable you to realize them.

Once the division between unfreedom and coercion is acknowledged, several other matters fall more easily into place. First of all, those who maintain that people at the level of subsistence are unfree can refuse to be cast in the naive and implausible role of conspiracy theorists; the claim that there is positive interference (much less deliberate or planned interference) is not implied--though it may often be true.

Second, we are now in a better position to respond to Hayek's objection to identifying freedom with power, viz. that once this is done, "there is no limit to the sophisms by which the attractions of the word 'liberty' can be used to support measures which destroy individual liberty."²⁵

One would expect such an ardent defender of individualism to

on freedom, coercion, oppression, and their interrelations. Cf. his description of oppression with that of coercion: "The criterion of oppression is the part that I believe to be played by other human beings, directly or indirectly, with or without the intention of doing so, in frustrating my wishes" (p. 123). Also see above, ch. III, pp. 73-76; and this ch., n 7.

²⁵ Hayek, p. 16.

recognize the extent to which different individuals' freedom can conflict, and that making one person or group more free may involve making others less free. Often, of course, the terms 'freedom' and 'liberty' are invoked for purely rhetorical purposes, when no one's freedom will be enhanced by the policy or course of action being promoted, except perhaps that of the person promoting it. But this irrelevant appeal to freedom aside, there is no reason why a concern for one person's or group's liberty (e.g. one's own) need involve a concern for anyone else's. So it isn't a defect in the definition of 'liberty' (rather in the nature of things) that permits it to be invoked in support of measures that destroy liberty--my liberty may indeed require your suppression. And even intrapersonally, a greater freedom in one realm may involve a lesser freedom in another.

Hayek himself can be accused of advocating economic policies that are incompatible with the liberty of some groups in society, as a result of adopting a view of liberty that is too narrow. The only way to safeguard against the danger of a partial concern is by beginning with a sufficiently broad conception of freedom, and applying it to all members of a society. The danger Hayek speaks of comes not from the identification of freedom with power, but from the disregard or unequal consideration of some people's freedom or of some kinds of freedom.

Ultimately, the objection to the positive conception of freedom advocated here concerns the demands it places on other people. At this juncture the arguments concerning freedom must be brought together with those of the last two chapters in support of the equivalence of action and omission. For the latter embrace the perspective of the person who would be obligated, thereby engaging the objections to the positive view of freedom.²⁶ Determining how rights and obligations are distributed requires an appreciation of both perspectives. On the one hand, that a person will starve unless aided--whether because of natural or social circumstances (or, as is probably more common, a combination of both)--is a kind of brute datum from which moral reasoning begins. On the other hand, the arguments for the equivalence of action and omission with respect to features internal to the person who would be obligated--motives, intentions, knowledge; possible sacrifices involved in fulfilling the obligation--indicate that the fact that the enhancement of someone's freedom requires positive action on the part of another doesn't mean that greater sacrifices need be involved than where forbearance is required. In addition, those arguments reinforce the irrelevance of the

²⁶ In fact, a good part of the reason for the emphasis in this dissertation on the person who would be obligated to act or refrain is precisely that meaningful talk of rights or freedom requires making explicit their "cash value" in terms of the obligations of others.

positive/negative distinction generally, a conclusion that bears upon the nature of freedom. So the reasoning through these chapters concerning both perspectives forms a coherent pattern.

This brings me to the other argument concerning freedom that needs to be made against those who say that forcing people to give aid requires an illegitimate curtailment of liberty. So far it has been argued that this claim rests on construing freedom too narrowly; when the expansion of possibilities of those who would benefit from aid is counted as an increase in freedom, it becomes clear that overall liberty may be increased when some people are forced to give aid, although the aid-givers themselves may suffer a loss of liberty. But we may also question the assumption that forcing someone to act is inevitably a greater limitation on his freedom than forcing him not to act. For it is often implied that there is a qualitative difference between them, and that coercing restraint is not a significant limitation on a person's freedom.

As I argued above, these assumptions are fostered by the picture captured in P. J. Fitzgerald's superficially appealing metaphor: a requirement not to act "merely closes off one avenue of activity"; a requirement to act "closes off all avenues but one."²⁷ And there is the corresponding

²⁷Fitzgerald, p. 138; also see above, ch. V, pp. 162-63.

view that negative duties are more easily discharged than positive ones.²⁸

The inaccuracy of this picture can be seen in several ways, though much will depend on the particular prohibitions and injunctions involved. First, it can be argued on psychological grounds that in fact negative prohibitions are felt as more restrictive than positive injunctions. The child's earliest experiences of opposition to his will primarily involve being told what he can't do (that he wants to do). Positive desires make themselves felt much more strongly than negative ones. It may be for such psychological reasons that the paradigms of rules of decorum and morality are negative--"Do not's" rather than "Do's."

It is safe to assume that in general what must be prohibited are actions that people have some inclination to perform; what must be positively commanded are actions that people are somewhat disinclined to perform. But this points to another way in which negative prohibitions are more demanding than positive commandments. Prohibitions are, as it were, always with us; contrary to the conventional view, they must continually be discharged. This can be taken as a merely technical point only by considering prohibitions against actions that a person has no inclination to perform. In such cases complying with the order not to act may require no effort and no sacrifice, and will therefore not be felt

²⁸See, e.g., Trammell, "Saving Life and Taking Life," p. 133; Kleinig, p. 396; above, ch. IV, pp. 92-94.

as a limitation on one's freedom. But where what is forbidden is something one is strongly inclined to do (like speak or write freely), there is no end to the demands made. For there is a whole range of things one cannot do, and a whole range of moments during which one cannot do them. If the wish to act in the prohibited ways continues undiminished, such prohibitions will involve a great deal of oppression.

By contrast, positive injunctions need not involve this kind of continual, unceasing compliance. For some classes of positive requirements, such as those involved in Good Samaritan legislation, the circumstances giving rise to the obligation are sufficiently circumscribed to limit the occasions where action is demanded to a relatively small number. More generally, the principle of aid-giving is limited not only by the condition that fulfillment not require an undue sacrifice, but also by the goal internal to aid-giving itself of acting in such a way as to make further action unnecessary, i.e. of making the object of aid self-dependent. Even where this goal is not achieved, however, and the need for assistance does not come to an end, the occasions for action are discrete and are likely not to impinge continuously on one's liberty.²⁹

²⁹ This kind of aid is likely to take the form of a tax. It may be argued that the monetary loss involves a diminution of freedom. But given a certain level of affluence, this loss is not comparable to that involved when one is denied civil liberties or is subject to physical attack. More to the point, making this argument presupposes the connection between wealth and freedom--which those who might be inclined to make it can't consistently do. They will have to find some other ground for their objection.

Fitzgerald's metaphor, then, is inaccurate in its depiction of typical requirements not to act, and misleading at best in its depiction of typical requirements to act. Negative prohibitions close off many options at any given time, innumerably many more over time. The fulfillment of a positive obligation, on the other hand, may only close off all other options for the moment it takes to perform the action--e.g. to hold out one's hand to the drowning man. Typically, of course, requirements to act will be more restrictive than this--but not so restrictive as Fitzgerald implies nor more oppressive than requirements to refrain from acting.

Ironically, these considerations not only dispel the notion that positive requirements necessarily involve greater incursions into a person's free action than negative prohibitions; they also may explain in part the libertarian's reluctance to allow the state the power to coerce people to act. For knowing how severely negative prohibitions limit one's freedom (by closing off many desired options through time), and drawn by the superficial appeal of the view that positive requirements are significantly more restrictive, the libertarian concludes that being coerced to act is unacceptable. But further reflection leads to the conclusion that being coerced to act is compatible with a great deal of negative freedom; being coerced not to act may be more restrictive of negative freedom.

When one considers the overall distribution of (negative and positive) freedom within a community or society, it seems likely that an equitable distribution can be achieved only if some people are forced to act to benefit others.³⁰

2. Concluding Arguments

On the basis of the arguments of this and the last several chapters, the conclusion seems warranted that there is no essential or significant moral difference between action and omission, or between coercing someone to act and coercing him to refrain from acting. Thus the moral foundations of political systems such as that advocated by Nozick are undermined, while those of socialist systems are greatly strengthened. But it is important to realize what this does and does not mean.

There may always be practical considerations which weaken the force of one's moral conclusions. So, for example, though a person might acknowledge both the moral obligation of the bystander to intervene to save someone when he can without risk to himself, and the right of the state to force him to do so, problems of evidence and proof might make him reluctant to advocate implementation of a

³⁰ But to the extent that positive action is owed to people on the basis of their having been actually harmed in the past, what is owed is not pure aid but rather compensation (for the distinction, see ch. I, pp. 6-11). See Macpherson's argument above, pp. 184-5.

strong or extensive Good Samaritan law.

More generally, it is sometimes argued that the enforcement of positive obligations is much more expensive than the enforcement of restraint. This view seems to be based on the premise that forbearances are, from a material point of view, "free," while actions generally involve a positive outlay.³¹ Even if this were true, it would not follow that enforcing forbearances is likewise free, or even less expensive than enforcing positive action. There is no reason to believe that enforcing action requires anything significantly different than is already contained in the enormous apparatus of police, courts, prisons, etc. used primarily to enforce restraint. In addition, it seems extremely likely that once the economic transfers and transformations involved in giving aid are accomplished, crime and its costs will diminish. If in the long run the enforcement of positive action gets at the sources of crime, it more than pays for itself--it pays for the enforcement of restraint as well.

Another practical problem that should be mentioned concerns the need for material incentives, and thus the extent to which enforced aid-giving reduces the incentive

³¹And this assumption is questionable. Although a forbearance itself might be materially "free," its fulfillment may not be. If, in order to avoid driving through your property, I must drive around it, greater material costs will be incurred: gas, wear-and-tear on my car, etc. So it is deceptive to think that forbearance has no material cost.

to work.³² What the truth is about this question is very important, but it is also very hard to ascertain. This is partly because the problem is inherently complex and can't be solved by any simple test or experiment, and partly because the facts in a particular set of circumstances are determined in great part by people's values, beliefs, culture, and the like, which are themselves subject to revision (for, e.g., moral reasons). (In addition, the ideological significance of the problem makes fairness and objectivity especially difficult to attain.) The problem of incentives has not been touched upon here except insofar as it bears on decisions about what it is reasonable to expect a person to sacrifice--a question which itself leaves open the possibility and desirability of shifts in values and cultural conditions.

One point should be made about the problem of incentives, which applies as well to other practical and empirical problems that affect the viability of social and economic policies. Even if it turned out that, for example, the facts about the need for incentives limited an otherwise more extensive redistribution, at a certain level the "moral facts" would remain undisturbed. The complex of arguments--

³²I.e., the incentive to work of those who would have to give aid. What about the incentive of those who would receive aid? Since the desired solution involves providing people with access to the means of labor, rather than its end products, their incentive to work will not be undermined.

moral and empirical--necessary to establish any practical policy or arrangement may make it easy to convince oneself and others that one has provided moral support for a conclusion when one has instead provided empirical support for it (or empirical evidence against the viability of an opposing conclusion).³³ So it is easy to revert to an attitude of moral righteousness even though the grounds for such righteousness have been undermined.

To say this is not, however, to acknowledge that any problematic conclusions about the need for incentives have been established.

It can be taken as axiomatic that it is always preferable that people do or refrain from doing something (that ought to be done or not done) voluntarily than that they be coerced to do or not do it. This is not only because coercion is an evil, but also because our interest in how people act comes only partly from our practical concern about how things turn out in the world; it also represents an interest in character and the expression of individuality. In terms of both a person's moral nature and other aspects of his personality, we can fully appreciate who someone is only by seeing what he does freely.

Under some circumstances, however, the value of voluntariness and the disvalue of coercion are overridden;

³³See above, ch. I, pp. 1-6.

coercion is thought justified to achieve certain ends or secure basic individual rights. Elaboration of the conditions under which coercion is justified is a vast topic, one which has not been undertaken here. To the extent that the question of this dissertation requires resolution of problems about the justifiability of coercion, the approach here has been indirect. The method has been to show that whatever justifies coercion in the cases of physical aggression, theft, and the like--the areas covered by the most minimal acceptance of coercion--likewise justifies the use of force to ensure positive action directed to certain ends. But through this mode of argument some of the principles underlying the "politicization of the moral" in general are revealed.

Where some condition is essential to the possibility of a person's having a decent life, and where the fulfillment of that condition by others requires no sacrifice comparable to that suffered by the person if the condition is not fulfilled, a case for enforcing the fulfillment of that condition is established. Such conditions, and the correlated sacrifices of all involved parties, may be negative or positive: freedom from aggression or freedom from severe deprivation. In some circumstances, where the means of labor (e.g. land) exists in abundance, enforcement of negative rights--rights against interference--may be adequate to permit all but the infirm to attain a reasonable life.

But when the means of labor and of life are scarce--whether because of natural shortages, or because some people have appropriated unfairly, or whatever--then the enforcement of positive rights may become necessary.³⁴

In addition, the appropriateness of coercion depends upon the degree to which the achievement of desired conditions requires concerted action (or restraint) and the extent to which the motivation to act or forbear is affected by the knowledge that others are or are not doing likewise.³⁵ The difficulty of sufficient motivation is in part a problem inherent in "the logic of collective action";³⁶ but it is

³⁴It is "a very important feature of a moral right that the possessor of it is conceived as having a moral justification for limiting the freedom of another and that he has this justification not because the action he is entitled to require of another has some moral quality but simply because in the circumstances a certain distribution of human freedom will be maintained if he by his choice is allowed to determine how that other shall act." (Hart, "Are There Any Natural Rights?," p. 56.) I am inclined to accept a more modified view of the relation between rights and coercion than Hart's words suggest: having a right is at least a strong prima facie reason for the use of coercion. But this may be what Hart means. See above, ch. II, sec. 3. The connection of rights and obligations with coercion can be understood as a logical extension of their use in drawing the line between the permissible and the impermissible: what may and may not be done and omitted gives rise to coercion to prevent what may and may not be done and omitted. For further discussion, see ch. II.

³⁵See above, ch. V., pp. 163-71.

³⁶See Mancur Olson, Jr., The Logic of Collective Action, rev. ed. (New York: Schocken Books, 1971); also J. S. Mill, Principles of Political Economy (London: Longmans, Green, 1873), bk. 5, ch. 11, "Of the Grounds and Limits of the Laissez-Faire or Noninterference Principle."

further exacerbated by the gap between what even motivated individuals would do if acting individually and what they would do as part of a collectivity. Individuals who must act solely as individuals, in relative isolation, will be frustrated in their attempt to achieve long-range solutions; their motivation to act at all will consequently be diminished.

It seems inevitable that in order to achieve a more equitable distribution of the means of self-fulfillment, coercion in some degree will be required. But, as was argued earlier, its limits may be found in the ends that make the giving of aid necessary and that also partly determine the form it should take. Aid in the form of welfare payments does imply continual coercion, since by giving recipients the end-products of production no way is provided for breaking out the cycle of dependence; so the aid-giving must continue. Forms of aid which instead redistribute the means of labor permit recipients of aid to become self-dependent; in so doing, those who have had to give aid are eventually freed of their obligations. The resulting arrangements hold out the prospect of a reasonable life for those who now have no such prospects. And--who knows?--even those who do may find themselves better off.

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