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ARE THERE ANY ABSOLUTE RIGHTS?

BY ALAN GEWIRTH

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

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

strophic situation where a nuclear war or some other unmitigated disaster can be avoided only by infringing some innocent person's right to life.

Despite such cases, I shall argue that certain rights can be shown to be absolute. But first the concept of an absolute right must be clarified.

## I

1. I begin with the Hohfeldian point that the rights here in question are claim-rights (as against liberties, powers, and so forth) in that they are justified claims or entitlements to the carrying out of correlative duties, positive or negative. A duty is a requirement that some action be performed or not be performed; in the latter, negative case, the requirement constitutes a prohibition.

A right is *fulfilled* when the correlative duty is carried out, i.e., when the required action is performed or the prohibited action is not performed. A right is *infringed* when the correlative duty is not carried out, i.e., when the required action is not performed or the prohibited action is performed. Thus someone's right to life is infringed when the prohibited action of killing him is performed; someone's right to medical care is infringed when the required action of providing him with medical care is not performed. A right is *violated* when it is unjustifiably infringed, i.e., when the required action is unjustifiably not performed or the prohibited action is unjustifiably performed. And a right is *overridden* when it is justifiably infringed, so that there is sufficient justification for not carrying out the correlative duty, and the required action is justifiably not performed or the prohibited action is justifiably performed.

A right is *absolute* when it cannot be overridden in any circumstances, so that it can never be justifiably infringed and it must be fulfilled without any exceptions.

The idea of an absolute right is thus doubly normative: it includes not only the idea, common to all claim-rights, of a justified claim or entitlement to the performance or non-performance of certain actions, but also the idea of the exceptionless justifiability of performing or not performing those actions as required. These components show that the question whether there are any absolute rights demands for its adequate answer an explicit concern with criteria of justification. I shall here assume what I have elsewhere argued for in some detail: that these criteria, insofar as they are valid, are ultimately based on a certain supreme principle of morality, the Principle of Generic Consistency (*PGC*).<sup>2</sup> This principle requires of every agent that he act in accord with the generic rights of his recipients as well as of himself, i.e., that he fulfil these rights. The generic rights are rights to the necessary conditions of action, freedom and well-being, where the latter is defined in terms of the various substantive abilities and conditions needed for action and for successful action in general. The *PGC* provides the ultimate

<sup>2</sup>Alan Gewirth, *Reason and Morality* (Chicago, 1978), pp. 135 ff., 197-198, 343-44.

justificatory basis for the validity of these rights by showing that they are equally had by all prospective purposive agents, and it also provides in general for the ordering of the rights in cases of conflict. Thus if two moral rights are so related that each can be fulfilled only by infringing the other, that right takes precedence whose fulfilment is more necessary for action. This criterion of degrees of necessity for action explains, for example, why one person's right not to be lied to must give way to another person's right not to be killed when these two rights are in conflict. In some cases the application of this criterion requires a context of institutional rules.

2. The general formula of a right is as follows: "A has a right to X against B by virtue of Y". In addition to the right itself, there are four elements here: the *subject* of the right, the right-holder (A); the *object* of the right (X); the *respondent* of the right, the person who has the correlative duty (B); and the *justificatory basis* or *ground* of the right (Y). I shall refer to these elements jointly as the *contents* of the right. Each of the elements may vary in generality. Various rights may conflict with one another as to one or another of these elements, so that not all rights can be absolute.

One aspect of these conflicts is especially important for understanding the question of absolute rights. Although, as noted above, the *objects* of moral rights are hierarchically ordered (according to the degree of their necessity for action), this is not true of the *subjects* of the rights. If one class or group of persons inherently had superior moral rights over another class or group (as was held to be the case throughout much of human history), any conflict between their respective rights would be readily resolvable: the rights of the former group would always take precedence, they would never be overridden (at least by the rights of members of other groups), and to this extent they would be absolute.<sup>3</sup> It is because (as is shown by the *PGC* as well as by other moral principles) moral rights are equally distributed among all human persons as prospective purposive agents that some of the main conflicts of rights arise. This is most obviously the case where one person's right to life conflicts with another person's, since in the absence of guilt on either side, it is assumed that the two persons have equal rights. Thus the difficulty of supporting the thesis that there are absolute rights derives much of its force from its connection with the principle that all persons are equal in their moral rights.

3. The differentiation of the elements of rights serves to explicate the various levels at which rights may be held to be absolute. We may distinguish three such levels. The first is that of *Principle Absolutism*. According to this, what is absolute, and thus always valid and never overridden, is only some moral principle of a very high degree of generality which, referring to

<sup>3</sup>Cf. Friedrich Nietzsche, *The Will to Power*, sec. 872: "The great majority of men have no right to existence, but are a misfortune to higher men" (trans. Walter Kaufmann (New York, 1967), p. 467). See also Nietzsche, *Beyond Good and Evil*, sec. 260 (trans. Kaufmann (New York, 1966), p. 206).

the subjects, the respondents, and especially the objects of rights in a relatively undifferentiated way, presents a general formula for all the diverse duties of all respondents or agents toward all subjects or recipients. The *PGC* is such a principle; so too are the Golden Rule, the law of love, Kant's categorical imperative, and the principle of utility. Principle Absolutism, however, may leave open the question whether any specific rights are always absolute, and what is to be done in cases of conflict. Even act-utilitarianism might be an example of Principle Absolutism, for it may be interpreted as saying that those rights are absolute whose fulfilment would serve to maximize utility overall. These rights, whatever they may be, might of course vary in their specific contents from one situation to another.

At the opposite extreme is *Individual Absolutism*, according to which an individual person has an absolute right to some particular object at a particular time and place when all grounds for overriding the right in the particular case have been overcome. But this still leaves open the question of what are the general grounds or criteria for overriding any right, and what are the other specific relevant contents of such rights.

It is at the intermediate level, that of *Rule Absolutism*, that the question of absolute rights arises most directly. At this level, the rights whose absoluteness is in question are characterized in terms of specific objects with possible specification also of subjects and respondents, so that a specific rule can be stated describing the content of the right and the correlative duty. The description will not use proper names and other individual referring expressions, as in the case of Individual Absolutism, nor will it consist only in a general formula applicable to many specifically different kinds of rights and duties and hence of objects, subjects, and respondents, as in the case of Principle Absolutism. It is at this level that one asks whether the right to life of all persons or of all innocent persons is absolute, whether the rights to freedom of speech and of religion are absolute, and so forth.

The rights whose absoluteness is considered at the level of Rule Absolutism may vary in degree of generality, in that their objects, their subjects, and their respondents may be given with greater or lesser specificity. Thus there is greater specificity as we move along the following scale: the right of all persons to life, the right of all innocent persons to life, the right of all innocent persons to an economically secure life, the right of children to receive an economically secure and emotionally satisfying life from their parents, and so forth.

This variability raises the following problem. For a right to be absolute, it must be conclusively valid without any exceptions. But, as we have seen, rights may vary in generality, and all the resulting specifications of their objects, subjects, or respondents may constitute exceptions to the more general rights in which such specifications are not present. For example, the right of innocent persons to life may incorporate an exception to the right of all persons to life, for the rule embodying the former right may be

stated thus: All persons have a right not to be killed except when the persons are not innocent, or except when such killing is directly required in order to prevent them from killing somebody else. Similarly, when it is said that all persons have a right to life, the specification of 'persons' may suggest (although it does not strictly entail) the exception-making rule that all animals (or even all organisms) have a right to life except when they are not persons (or not human). Hence, since an absolute right is one that is valid without any exceptions, it may be concluded either that no rights are absolute because all involve some specification, or that all rights are equally absolute because once their specifications are admitted they are entirely valid without any further exceptions.

The solution to this problem consists in seeing that not all specifications of the subjects, objects, or respondents of moral rights constitute the kinds of exception whose applicability to a right debar it from being absolute. I shall indicate three criteria for permissible specifications. First, when it is asked concerning some moral right whether it is absolute, the kind of specification that may be incorporated in the right can only be such as results in a concept that is recognizable to ordinary practical thinking. This excludes rights that are "overloaded with exceptions" as well as those whose application would require intricate utilitarian calculations.<sup>4</sup>

Second, the specifications must be justifiable through a valid moral principle. Since, as we saw above, the idea of an absolute right is doubly normative, a right with its specification would not even begin to be a candidate for absoluteness unless the specification were morally justified and could hence be admitted as a condition of the justifiability of the moral right. There is, for example, a good moral justification for incorporating the restriction of innocence on the subjects of the right not to be killed; but there is not a similarly good moral justification for incorporating racial, religious, and other such particularist specifications. It must be emphasized, however, that this moral specification guarantees only that the right thus specified is an appropriate candidate for being absolute; it is, of itself, not decisive as to whether the right *is* absolute.

A third criterion is that the permissible specification of a right must exclude any reference to the possibly disastrous consequences of fulfilling the right. Since a chief difficulty posed against absolute rights is that for any right there can be cases in which its fulfilment may have disastrous consequences, to put this reference into the very description of the right would remove one of the main grounds for raising the question of absoluteness.

The relation between rights and disasters is complicated by the fact that the latter, when caused by the actions of persons, are themselves infringe-

<sup>4</sup>See R. M. Hare, "Principles", *Proceedings of the Aristotelian Society*, 73 (1972-73), pp. 7 ff. This paper is also relevant to some of the other issues of "exceptions" discussed above. See also Marcus G. Singer, *Generalization in Ethics* (New York, 1961), pp. 100-103, 124-133, and David Lyons, "Mill's Theory of Morality", *Noûs*, 10 (1976), pp. 112-13.

ments of rights. This point casts a new light on the consequentialist's thesis that there are no absolute rights. For when he says that every right may be overridden if this is required in order to avoid certain catastrophes—such as when torture alone will enable the authorities to ascertain where a terrorist has hidden a fused charge of dynamite—the consequentialist is appealing to basic rights. He is saying that in such a case one right—the right not to be tortured—is overridden by another right—the right to life of the many potential victims of the explosion. This raises the following question. Can the process of one right's overriding another continue indefinitely or does the process come to a stop with absolute rights?

In order to deal with this question, two points must be kept in mind. First, even when catastrophes threatening the infringement of basic rights are invoked to override other rights, at least part of the problem created by such conflict depends, as was noted above, on the assumption that all the persons involved have equal moral rights. There would be no serious conflict of rights and no problem about absolute rights if, for example, the rights of the persons threatened by the catastrophe were deemed inferior to those of persons not so threatened.

Second, despite the close connection between rights in general and the rights threatened by disastrous consequences, it is important to distinguish them. For if the appeal to avoidance of disastrous consequences were to be construed simply as an appeal for the fulfilment or protection of certain basic rights, then, on the assumption that certain disasters must always be avoided when they are threatened, the consequentialist would himself be an absolutist. We can escape this untoward result and render more coherent the opposition between absolutism and consequentialism if we recognize a further important assumption of the question whether there are any absolute rights. Amid the various possible specifications of Rule Absolutism, the rights in question are the normative property of *distinct individuals*.<sup>5</sup> In referring to some event as a "disaster" or a "catastrophe", on the other hand, what is often meant is that a large mass of individuals *taken collectively* loses some basic good to which they have a right. It is their *aggregate* loss that constitutes the catastrophe. (This, of course, accounts for the close connection between the appeal to disastrous consequences and utilitarianism.) Thus the question whether there are any absolute rights is to be construed as asking whether distinct individuals, each of whom has equal moral rights (and who are to be characterized, according to the conditions of Rule Absolutism, by specifications that are morally justifiable and recognizable to ordinary practical thinking), have any rights that may never be overridden by any other considerations, including even their catastrophic consequences for collective rights.

<sup>5</sup>Cf. H. L. A. Hart, "Are There Any Natural Rights?", *Philosophical Review*, 64 (1955), p. 182, and Hart, "Bentham on Legal Rights", in *Oxford Essays in Jurisprudence*, 2nd Series, ed. A. W. B. Simpson (Oxford, 1973), p. 193.

## II

4. We must now examine the merits of the prime consequentialist argument against the possibility of absolute moral rights: that circumstances can always be imagined in which the consequences of fulfilling the rights would be so disastrous that their requirements would be overridden. The formal structure of the argument is as follows: (1) If  $R$ , then  $D$ . (2)  $O(\sim D)$ . (3) Therefore,  $O(\sim R)$ . For example, (1) if some person's right to life is fulfilled in certain circumstances, then some great disaster may or will occur. But (2) such disaster ought never to (be allowed to) occur. Hence, (3) in such circumstances the right ought not to be fulfilled, so that it is not absolute.

Proponents of this argument have usually failed to notice that a parallel argument can be given in the opposite direction. If exceptions to the fulfilment of any moral right can be justified by imagining the possible disastrous consequences of fulfilling it, why cannot exceptionless moral rights be justified by giving them such contents that their infringement would be unspeakably evil? The argument to this effect may be put formally as follows: (1) If  $\sim R$ , then  $E$ . (2)  $O(\sim E)$ . (3) Therefore,  $O(R)$ . For example, (1) if a mother's right not to be tortured to death by her own son is not fulfilled, then there will be unspeakable evil. But (2) such evil ought never to (be allowed to) occur. Hence, (3) the right ought to be fulfilled without any exceptions, so that it is absolute.

Two preliminary points must be made about these arguments. First, despite their formal parallelism, there is an important difference in the meaning of 'then' in their respective first premises. In the first argument, 'then' signifies a consequential causal connection: if someone's right to life is fulfilled, there may or will ensue as a result the quite distinct phenomenon of a certain great disaster. But in the second argument, 'then' signifies a moral conceptual relation: the unspeakable evil is not a causal *consequence* of a mother's being tortured to death by her own son; it is rather a central moral constituent of it. Thus the second argument is not consequentialist, as the first one is, despite the fact that each of their respective first premises has the logical form of antecedent and consequent.

A related point bears on the second argument's specification of the right in question as a mother's right not to be tortured to death by her own son. This specification does not transgress the third requirement given above for permissible specifications: that reference to disastrous consequences must not be included in the formulation of the right. For the torturing to death is not a disastrous causal consequence of infringing the right; it is directly an infringement of the right itself, just as not being tortured to death by her own son is not a consequence of fulfilling the right but *is* the right. This distinction can perhaps be seen more clearly in such a less extreme case as the right not to be lied to. Being told a lie is not a causal *consequence* of infringing this right; rather, it just is an infringement of the right. In each case, moreover, the first two requirements for permissible specifications of



moral rights are also satisfied: their contents are recognizable to ordinary practical thinking and they are justified by a valid moral principle.

5. Let us now consider the right mentioned above: a mother's right not to be tortured to death by her own son. Assume (although these specifications are here quite dispensable) that she is innocent of any crime and has no knowledge of any. What justifiable exception could there be to such a right? I shall construct an example which, though fanciful, has sufficient analogues in past and present thought and action to make it relevant to the status of rights in the real world.<sup>6</sup>

Suppose a clandestine group of political extremists have obtained an arsenal of nuclear weapons; to prove that they have the weapons and know how to use them, they have kidnapped a leading scientist, shown him the weapons, and then released him to make a public corroborative statement. The terrorists have now announced that they will use the weapons against a designated large distant city unless a certain prominent resident of the city, a young politically active lawyer named Abrams, tortures his mother to death, this torturing to be carried out publicly in a certain way at a specified place and time in that city. Since the gang members have already murdered several other prominent residents of the city, their threat is quite credible. Their declared motive is to advance their cause by showing how powerful they are and by unmasking the moralistic pretensions of their political opponents.

Ought Abrams to torture his mother to death in order to prevent the threatened nuclear catastrophe? Might he not merely pretend to torture his mother, so that she could then be safely hidden while the hunt for the gang members continued? Entirely apart from the fact that the gang could easily pierce this deception, the main objection to the very raising of such questions is the moral one that they seem to hold open the possibility of acquiescing and participating in an unspeakably evil project. To inflict such extreme harm on one's mother would be an ultimate act of betrayal; in performing or even contemplating the performance of such an action the son would lose all self-respect and would regard his life as no longer worth living.<sup>7</sup> A mother's right not to be tortured to death by her own son is beyond any compromise. It is absolute.

<sup>6</sup>Cf. Aristotle, *Nicomachean Ethics*, III. 1. 1110a5, 27, and H. V. Dicks, *Licensed Mass Murder: A Socio-Psychological Study of Some S.S. Killers* (London, 1972). For similar extreme examples, see I. M. Crombie, "Moral Principles", in *Christian Ethics and Contemporary Philosophy*, ed. Ian T. Ramsey (New York, 1966), p. 258; Paul Ramsey, "The Case of the Curious Exception", in *Norm and Context in Christian Ethics*, ed. Gene H. Outka and P. Ramsey (New York, 1968), pp. 101, 127 ff.; Donald Evans, "Paul Ramsey on Exceptionless Moral Rules", *American Journal of Jurisprudence*, 16 (1971), pp. 204, 207; John M. Swomley, Jr., in *The Situation Ethics Debate*, ed. Harvey Cox (Philadelphia, 1968), p. 87. I have elsewhere argued for another absolute right: the right to the non-infliction of cancer. See Alan Gewirth, "Human Rights and the Prevention of Cancer", *American Philosophical Quarterly*, 17 (1980), pp. 117-25.

<sup>7</sup>This reference to the minimal moral conditions of a worthwhile life is, of course, an ancient theme; see Aristotle, *Nicomachean Ethics*, III. 1. 1110a 27; IV. 3. 1124b 7; IX. 8. 1169a 20 ff. For an excellent contemporary statement, see Alan Donagan, *The*

This absoluteness may be analysed in several different interrelated dimensions, all stemming from the supreme principle of morality. The principle requires respect for the rights of all persons to the necessary conditions of human action, and this includes respect for the persons themselves as having the rational capacity to reflect on their purposes and to control their behaviour in the light of such reflection. The principle hence prohibits using any person merely as a means to the well-being of other persons. For a son to torture his mother to death even to protect the lives of others would be an extreme violation of this principle and hence of these rights, as would any attempt by others to force such an action. For this reason, the concept appropriate to it is not merely 'wrong' but such others as 'despicable', 'dishonourable', 'base', 'monstrous'. In the scale of moral modalities, such concepts function as the contrary extremes of concepts like the supererogatory. What is supererogatory is not merely good or right but goes beyond these in various ways; it includes saintly and heroic actions whose moral merit surpasses what is strictly required of agents. In parallel fashion, what is base, dishonourable, or despicable is not merely bad or wrong but goes beyond these in moral demerit since it subverts even the minimal worth or dignity both of its agent and of its recipient and hence the basic presuppositions of morality itself. Just as the supererogatory is superlatively good, so the despicable is superlatively evil and diabolic, and its moral wrongness is so rotten that a morally decent person will not even consider doing it. This is but another way of saying that the rights it would violate must remain absolute.

6. There is, however, another side to this story. What of the thousands of innocent persons in the distant city whose lives are imperilled by the threatened nuclear explosion? Don't they too have rights to life which, because of their numbers, are far superior to the mother's right? May they not contend that while it is all very well for Abrams to preserve his moral purity by not killing his mother, he has no right to purchase this at the expense of their lives, thereby treating them as mere means to his ends and violating their own rights? Thus it may be argued that the morally correct description of the alternative confronting Abrams is not simply that it is one of not violating or violating an innocent person's right to life, but rather not violating one innocent person's right to life and thereby violating the right to life of thousands of other innocent persons through being partly responsible for their deaths, or violating one innocent person's right to life and thereby protecting or fulfilling the right to life of thousands of other innocent persons. We have here a tragic conflict of rights and an illustration of the heavy price exacted by moral absolutism. The aggregative consequentialist who holds that that action ought always to be performed which maxi-

*Theory of Morality* (Chicago, 1977), especially pp. 156-57, 183. For other recent discussions of the relation of the agent's character and intentions to moral absolutism, see John Casey, "Actions and Consequences", in *Morality and Moral Reasoning*, ed. J. Casey (London, 1971), pp. 155-7, 195 ff.; R. A. Duff, "Absolute Principles and Double Effect", *Analysis*, 36 (1976), pp. 73 ff.; P. T. Geach, *The Virtues* (Cambridge, 1977), pp. 113-17.

mizes utility or minimizes disutility would maintain that in such a situation the lives of the thousands must be preferred.

An initial answer may be that terrorists who make such demands and issue such threats cannot be trusted to keep their word not to drop the bombs if the mother is tortured to death; and even if they now do keep their word, acceding in this case would only lead to further escalated demands and threats. It may also be argued that it is irrational to perpetrate a sure evil in order to forestall what is so far only a possible or threatened evil. Philippa Foot has sagely commented on cases of this sort that if it is the son's duty to kill his mother in order to save the lives of the many other innocent residents of the city, then "anyone who wants us to do something we think wrong has only to threaten that otherwise he himself will do something we think worse".<sup>8</sup> Much depends, however, on the nature of the "wrong" and the "worse". If someone threatens to commit suicide or to kill innocent hostages if we do not break our promise to do some relatively unimportant action, breaking the promise would be the obviously right course, by the criterion of degrees of necessity for action. The special difficulty of the present case stems from the fact that the conflicting rights are of the same supreme degree of importance.

It may be contended, however, that this whole answer, focusing on the probable outcome of obeying the terrorists' demands, is a consequentialist argument and, as such, is not available to the absolutist who insists that Abrams must not torture his mother to death whatever the consequences.<sup>9</sup> This contention imputes to the absolutist a kind of indifference or even callousness to the sufferings of others that is not warranted by a correct understanding of his position. He can be concerned about consequences so long as he does not regard them as possibly superseding or diminishing the right and duty he regards as absolute. It is a matter of priorities. So long as the mother's right not to be tortured to death by her son is unqualifiedly respected, the absolutist can seek ways to mitigate the threatened disastrous consequences and possibly to avert them altogether. A parallel case is found in the theory of legal punishment: the retributivist, while asserting that punishment must be meted out only to the persons who deserve it because of the crimes they have committed, may also uphold punishment for its deterrent effect so long as the latter, consequentialist consideration is subordinated to and limited by the conditions of the former, antecedentalist consideration.<sup>10</sup> Thus the absolutist can accommodate at least part of the consequentialist's substantive concerns within the limits of his own principle.

Is any other answer available to the absolutist, one that reflects the core of his position? Various lines of argument may be used to show that in refusing to torture his mother to death Abrams is not violating the rights

<sup>8</sup>"The Problem of Abortion and the Doctrine of Double Effect" (see n. 1), p. 10.

<sup>9</sup>See Jonathan Bennett, "Whatever the Consequences", *Analysis*, 26 (1966), pp. 89-91.

<sup>10</sup>See Gewirth, *Reason and Morality*, pp. 294-9.

of the multitudes of other residents who may die as a result, because he is not morally responsible for their deaths. Thus the absolutist can maintain that even if these others die they still have an absolute right to life because the infringement of their right is not justified by the argument he upholds. At least three different distinctions may be adduced for this purpose. In the unqualified form in which they have hitherto been presented, however, they are not successful in establishing the envisaged conclusion.

One distinction is between direct and oblique intention. When Abrams refrains from torturing his mother to death, he does not directly intend the many ensuing deaths of the other inhabitants either as end or as means. These are only the foreseen but unintended side-effects of his action or, in this case, inaction. Hence, he is not morally responsible for those deaths.

Apart from other difficulties with the doctrine of double effect, this distinction as so far stated does not serve to exculpate Abrams. Consider some parallels. Industrialists who pollute the environment with poisonous chemicals and manufacturers who use carcinogenic food additives do not directly intend the resulting deaths; these are only the unintended but foreseen side-effects of what they do directly intend, namely, to provide profitable demand-fulfilling commodities. The entrepreneurs in question may even maintain that the enormous economic contributions they make to the gross national product outweigh in importance the relatively few deaths that regrettably occur. Still, since they have good reason to believe that deaths will occur from causes under their control, the fact that they do not directly intend the deaths does not remove their causal and moral responsibility for them. Isn't this also true of Abrams's relation to the deaths of the city's residents?

A second distinction drawn by some absolutists is between killing and letting die. This distinction is often merged with others with which it is not entirely identical, such as the distinctions between commission and omission, between harming and not helping, between strict duties and generosity or supererogation. For the present discussion, however, the subtle differences between these may be overlooked. The contention, then, is that in refraining from killing his mother, Abrams does not kill the many innocent persons who will die as a result; he only lets them die. But one does not have the same strict moral duty to help persons or to prevent their dying as one has not to kill them; one is responsible only for what one does, not for what one merely allows to happen. Hence, Abrams is not morally responsible for the deaths he fails to prevent by letting the many innocent persons die, so that he does not violate their rights to life.

The difficulty with this argument is that the duties bearing on the right to life include not only that one not kill innocent persons but also that one not let them die when one can prevent their dying at no comparable cost. If, for example, one can rescue a drowning man by throwing him a rope, one has a moral duty to throw him the rope. Failure to do so is morally

culpable. Hence, to this extent the son who lets the many residents die when he can prevent this by means within his power is morally responsible for their deaths.

A third distinction is between respecting other persons and avoiding bad consequences. Respect for persons is an obligation so fundamental that it cannot be overridden even to prevent evil consequences from befalling some persons. If such prevention requires an action whereby respect is withheld from persons, then that action must not be performed, whatever the consequences.

One of the difficulties with this important distinction is that it is unclear. May not respect be withheld from a person by failing to avert from him some evil consequence? How can Abrams be held to respect the thousands of innocent persons or their rights if he lets them die when he could have prevented this? The distinction also fails to provide for degrees of moral urgency. One fails to respect a person if one lies to him or steals from him; but sometimes the only way to prevent the death of one innocent person may be by stealing from or telling a lie to some other innocent person. In such a case, respect for one person may lead to disrespect of a more serious kind for some other innocent person.

7. None of the above distinctions, then, serves its intended purpose of defending the absolutist against the consequentialist. They do not show that the son's refusal to torture his mother to death does not violate the other persons' rights to life and that he is not morally responsible for their deaths. Nevertheless, the distinctions can be supplemented in a way that does serve to establish these conclusions.

The required supplement is provided by the principle of the intervening action. According to this principle, when there is a causal connection between some person A's performing some action (or inaction) X and some other person C's incurring a certain harm Z, A's moral responsibility for Z is removed if, between X and Z, there intervenes some other action Y of some person B who knows the relevant circumstances of his action and who intends to produce Z or who produces Z through recklessness. The reason for this removal is that B's intervening action Y is the more direct or proximate cause of Z and, unlike A's action (or inaction), Y is the sufficient condition of Z as it actually occurs.<sup>11</sup>

An example of this principle may help to show its connection with the absolutist thesis. Martin Luther King Jr. was repeatedly told that because he led demonstrations in support of civil rights, he was morally responsible for the disorders, riots, and deaths that ensued and that were shaking the American Republic to its foundations.<sup>12</sup> By the principle of the intervening

<sup>11</sup>Cf. H. L. A. Hart and A. M. Honoré, *Causation in the Law* (Oxford, 1959), pp. 69 ff., 127 ff., 292 ff. For an application of this principle in a related context, see Gewirth, "Human Rights and the Prevention of Cancer" (n. 6 above), pp. 118-9.

<sup>12</sup>See, e.g., Charles E. Whittaker in Whittaker and William Sloane Coffin Jr., *Law, Order and Civil Disobedience* (Washington, D.C., 1967), pp. 11 ff.

action, however, it was King's opponents who were responsible because their intervention operated as the sufficient conditions of the riots and injuries. King might also have replied that the Republic would not be worth saving if the price that had to be paid was the violation of the civil rights of black Americans. As for the rights of the other Americans to peace and order, the reply would be that these rights cannot justifiably be secured at the price of the rights of blacks.

It follows from the principle of the intervening action that it is not the son but rather the terrorists who are morally as well as causally responsible for the many deaths that do or may ensue on his refusal to torture his mother to death. The important point is not that he lets these persons die rather than kills them, or that he does not harm them but only fails to help them, or that he intends their deaths only obliquely but not directly. The point is rather that it is only through the intervening lethal actions of the terrorists that his refusal eventuates in the many deaths. Since the moral responsibility is not the son's, it does not affect his moral duty not to torture his mother to death, so that her correlative right remains absolute.

This point also serves to answer some related questions about the rights of the many in relation to the mother's right. Since the son's refusal to torture his mother to death is justified, it may seem that the many deaths to which that refusal will lead are also justified, so that the rights to life of these many innocent persons are not absolute. But since they are innocent, why aren't their rights to life as absolute as the mother's? If, on the other hand, their deaths are unjustified, as seems obvious, then isn't the son's refusal to torture his mother to death also unjustified, since it leads to those deaths? But from this it would follow that the mother's right not to be tortured to death by her son is not absolute, for if the son's not infringing her right is unjustified, then his infringing it would presumably be justified.

The solution to this difficulty is that it is a fallacy to infer, from the two premises (1) the son's refusal to kill his mother is justified and (2) many innocent persons die as a result of that refusal, to the conclusion (3) their deaths are justified. For, by the principle of the intervening action, the son's refusal is not causally or morally responsible for the deaths; rather, it is the terrorists who are responsible. Hence, the justification referred to in (1) does not carry through to (2). Since the terrorists' action in ordering the killings is unjustified, the resulting deaths are unjustified. Hence, the rights to life of the many innocent victims remain absolute even if they are killed as a result of the son's justified refusal, and it is not he who violates their rights. He may be said to intend the many deaths obliquely, in that they are a foreseen but unwanted side-effect of his refusal. But he is not responsible for that side-effect because of the terrorists' intervening action.

It would be unjustified to violate the mother's right to life in order to protect the rights to life of the many other residents of the city. For rights cannot be justifiably protected by violating another right which, according

to the criterion of degrees of necessity for action, is at least equally important. Hence, the many other residents do not have a right that the mother's right to life be violated for their sakes. To be sure, the mother also does not have a right that their equally important rights be violated in order to protect hers. But here too it must be emphasized that in protecting his mother's right the son does not violate the rights of the others; for by the principle of the intervening action, it is not he who is causally or morally responsible for their deaths. Hence too he is not treating them as mere means to his or his mother's ends.

8. Where, then, does this leave us? From the absoluteness of the mother's right not to be tortured to death by her son, does it follow that in the described circumstances a nuclear explosion should be permitted to occur over the city so that countless thousands of innocent persons may be killed, possibly including Abrams and his mother?

Properly to deal with this question, it is vitally important to distinguish between abstract and concrete absolutism. The abstract absolutist at no point takes account of consequences or of empirical or causal connections that may affect the subsequent outcomes of the two alternatives he considers. He views the alternatives as being both mutually exclusive and exhaustive. His sole concern is for the moral guiltlessness of the agent, as against the effects of the agent's choices for human weal or woe.

In contrast, as I suggested earlier, the concrete absolutist is concerned with consequences and empirical connections, but always within the limits of the right he upholds as absolute. His consequentialism is thus limited rather than unlimited. Because of his concern with empirical connections, he takes account of a broader range of possible alternatives than the simple dualism to which the abstract absolutist confines himself. His primary focus is not on the moral guiltlessness of the agent but rather on the basic rights of persons not to be subjected to unspeakable evils. Within this focus, however, the concrete absolutist is also deeply concerned with the effects of the fulfilment of these rights on the basic well-being of other persons.

The significance of this distinction can be seen by applying it to the case of Abrams. If he is an abstract absolutist, he deals with only two alternatives which he regards as mutually exclusive as well as exhaustive: (1) he tortures his mother to death; (2) the terrorists drop a nuclear bomb killing thousands of innocent persons. For the reasons indicated above, he rejects (1). He is thereby open to the accusation that he chooses (2) or at least that he allows (2) to happen, although the principle of the intervening action exempts him from moral guilt or responsibility.

If, however, Abrams is a concrete absolutist, then he does not regard himself as being confronted only by these two terrible alternatives, nor does he regard them or their negations as mutually exclusive. His thought-processes include the following additional considerations. In accordance with a point suggested above, he recognizes that his doing (1) will not *assure* the non-occurrence of (2). On the contrary, his doing (1) will probably lead to further threats of the occurrence of (2) unless he or someone else performs

further unspeakably evil actions (3), (4), and so forth. (A parallel example may be found in Hitler's demand for Czechoslovakia at Munich after his taking over of Austria, his further demand for Poland after the capitulation regarding Czechoslovakia, and the ensuing tragedies.) Moreover, (2) may occur even if Abrams does (1). For persons who are prepared to threaten that they will do (2) cannot be trusted to keep their word.

On the other hand, Abrams further reasons, his not doing (1) may well not lead to (2). This may be so for several reasons. He or the authorities or both must try to engage the terrorists in a dialogue in which their grievances are publicized and seriously considered. Whatever elements of rationality may exist among the terrorists will thereby be reinforced, so that other alternatives may be presented. At the same time, a vigorous search and preventive action must be pursued so as to avert the threatened bombing and to avoid any recurrences of the threat.

It is such concrete absolutism, taking due account of consequences and of possible alternatives, that constitutes the preferred pattern of ethical reasoning. It serves to protect the rights presupposed in the very possibility of a moral community while at the same time it gives the greatest probability of averting the threatened catastrophe. In the remainder of this paper, I shall assume the background of concrete absolutism.

### III

9. I have thus far argued that the right of a mother not to be tortured to death by her son is absolute. But the arguments would also ground an extension of the kind of right here at issue to many other subjects and respondents, including fathers, daughters, wives, husbands, grandparents, cousins, and friends. So there are many absolute rights, on the criterion of plurality supplied by Rule Absolutism.

It is sometimes held that moral obligations are "agent-relative" in that, at least in cases of conflict, one ought to give priority to the welfare of those persons with whom one has special ties of family or affection.<sup>13</sup> Applied to the present question, this view would suggest that the subjects having the absolute right that must be respected by respondents are limited to the kinds of relations listed above. It may also be thought that as we move away from familial and affectional relations, the proposed subjects of rights come to resemble more closely the anonymous masses of other persons who would be killed by a nuclear explosion, so that a quantitative measure of numbers of lives lost would become a more cogent consideration in allocating rights.

These conclusions, however, do not follow. Most of the arguments I have given above for the mother's absolute right not to be tortured to death apply to other possible human subjects without such specifications. My purpose in beginning with such an extreme case as the mother-son relation was to focus the issue as sharply as possible; but, this focus once gained, it may be

<sup>13</sup>See Derek Parfit, "Innumerate Ethics", *Philosophy and Public Affairs*, 7 No. 4 (1978), p. 287.



widened in the ways just indicated. Although the mother has indeed a greater right to receive effective concern from her son than from other, unrelated persons, the unjustifiability of violating rights that are on the same level of necessity for action is not affected either by degrees of family relationship or by the numbers of persons affected. Abrams would not be justified in torturing to death some other innocent person in the described circumstances, and in failing to murder he would not be morally responsible for the deaths of other innocent persons who might be murdered by someone else as a consequence.

These considerations also apply to various progressively less extreme objects of rights than the not being tortured to death to which I have so far confined the discussion. The general content of these objects may be stated as follows: All innocent persons have an absolute right not to be made the intended victims of a homicidal project. This right, despite its increase in generality over the object, subject, and respondents of the previous right, still conforms to the requirements of Rule Absolutism. The word 'intended' here refers both to direct and to oblique intention, with the latter being subject to the principle of the intervening action. The word 'project' is meant to indicate a definite, deliberate design; hence, it excludes the kind of unforeseeable immediate crisis where, for example, the unfortunate driver of a trolley whose brakes have failed must choose between killing one person or five. The absolute right imposes a prohibition on any form of active participation in a homicidal project against innocent persons, whether by the original designers or by those who would accept its conditions with a view to warding off what they would regard as worse consequences. The meaning of 'innocent' raises many questions of interpretation into which I have no space to enter here, but some of its main criteria may be gathered from the first paragraph of this paper. As for 'persons', this refers to all prospective purposive agents.

The right not to be made the intended victim of a homicidal project is not the only specific absolute right, but it is surely one of the most important. The general point underlying all absolute rights stems from the moral principle presented earlier. At the level of Principle Absolutism, it may be stated as follows: Agents and institutions are absolutely prohibited from degrading persons, treating them as if they had no rights or dignity. The benefit of this prohibition extends to all persons, innocent or guilty; for the latter, when they are justly punished, are still treated as responsible moral agents who are capable of understanding the principle of morality and acting accordingly, and the punishment must not be cruel or arbitrary. Other specific absolute rights may also be generated from this principle. Since the principle requires of every agent that he act in accord with the generic rights of his recipients as well as of himself, specific rights are absolute insofar as they serve to protect the basic presuppositions of the valid principle of morality in its equal application to all persons.