

## CHAPTER II

### OBLIGATIONS, DUTIES, RIGHTS

In this chapter we shall examine several concepts that will be prominent throughout the remainder of the dissertation. Of these concepts the most significant are *obligation*, *duty*, and *rights*. As the analysis proceeds, a few points will be introduced and briefly discussed only to be set aside in order to move on to other topics. I trust that any disorder will be more apparent than actual, for, at the close of the chapter, I will coordinate many points developed earlier. Still other loose ends will be picked up in the following chapter as I attempt to chart the logical and conceptual landscape of the posterity problem. The principal purpose of this chapter and the next will be to dispel some of the abundant conceptual confusions and perplexities that commonly attend the question of duty to posterity. We will be less concerned about the *truth* or *defensibility* of claims concerning duties and rights or our moral relationship to posterity than we will be interested in the intelligibility of such claims. In other words, our discourse will be less normative and more metaethical. Once those concepts are assembled and coordinated, we will be better prepared, in the succeeding chapters of the dissertation, to present and evaluate Rawls's account of the duty to posterity.

I do not mean to suggest, however, that factual and normative considerations will be totally excluded from these analyses. Such an exercise in logical purity would be tedious, unproductive, and quite unnecessary. Unlike some classical logical positivists, I do not hold that a determination of the *meaning* of a proposition need be totally prior to, and independent of, a search for the *truth* thereof. Instead, I contend that the intelligibility of an assertion might be defended by presenting arguments in support of its truth<sup>1</sup> (i.e., by the "paradigm case" strategy). I will, therefore, not hesitate to defend the *intelligibility* of the duty to posterity by presenting arguments in behalf of the normative validity of this duty.

At times, the reader may feel that the work at hand is more *philological* than *philosophical*, that it is merely a survey of ordinary linguistic usage. At other times, it may appear that I am setting down a series of arbitrary stipulations. A word on method may therefore be in order. Admittedly, at the outset I will, at times, be reporting usage and at other times stipulating meanings to be used in later writing. I begin with a lexical survey of the common usage of such terms as "obligation," "duty," and "right" to assure that the precise definitions that I am to adopt are not widely at variance with ordinary usage. There are, I believe, at least three good reasons for one to adopt this procedure. First, variant definitions create confusion as they run counter to established linguistic habits. Second, the accumulated insights accruing to terms in ordinary discourse should not be casually set aside. Finally, the fact that certain terms are regularly employed in ordinary discourse provides *prima facie* indication that such terms convey meaningful concepts. Common discourse, then, suggests the general family of meanings from which we might choose our definitions. This, however, is merely a beginning. For such terms as "obligation," "duty" and "right," as they are used in common discourse, are generally too vague and ambiguous for precise use in philosophical inquiry. Accordingly, we will also need to search within the often inexact domain of common discourse to locate, clarify, and

explicate philosophically significant senses of such terms as "obligation," "duty," and "right," particularly as these concepts might have intelligible application to the question of the moral relationship to future persons. It is in this sense that the early portions of the forthcoming inquiry will be stipulative. Beyond this, I will attempt to examine, in a philosophically appropriate manner, the logical relationships *among* these explicated concepts and the implications that might be drawn therefrom. All this will be directed toward the central problem of our inquiry, namely, to determine whether the notion of "the duty to posterity" is an intelligible concept.

## 6. Obligations and Duties

Recently, *The Monist* published a thoughtful article by Martin P. Golding entitled "Obligations to Future Generations" (1972). As the title of this dissertation indicates, I prefer to use the word "duty." While these words are often quite properly used interchangeably, each has distinct connotations and ranges of application. The questions which will occupy us in this chapter are: what is the distinction between these terms? Which term is more appropriately applied to posterity? Do *duties* and *obligations* entail *rights*; or *vice versa*?

*Moral and non-moral contexts.* In his admirable and comprehensive paper, "The Concepts of Obligation and Duty" (1964), which will receive a major share of our attention in this section, R. B. Brandt points out that these terms apply to both moral and non-moral contexts. Among the non-moral contexts are the *social* and the *legal*. For example, failure to reply to an RSVP invitation would be a breach of etiquette; that is, of a *social* obligation. *Legal* duties are characterized by the threat of institutionalized sanctions: "If a person fails to do a certain thing, legal machinery may be used to coerce him" (p. 381). Thoreau's refusal to pay his poll tax was a violation of his *legal* duty. However, in his classic essay, "Civil Disobedience," Thoreau argued that the same act was prompted by a transcending *moral* duty. In brief: *legal* obligations have *external* sanctions, while *moral* obligations have *internal* sanctions (i.e., of guilt and shame).<sup>2</sup> The very fact that "moral duties" and "legal duties" are distinct is manifested in the intelligibility of the phrase "immoral law;" i.e., a statute legally correct, but morally wrong. We will devote most of our attention to the moral use of the terms "obligation" and "duty."

How are we to characterize *moral* duties and obligations? Brandt (1964) identifies four distinctive features. "In order to speak properly" of a "moral" duty or obligation, he says:

- (a) It must be *a matter of conscience*. That is, in part, failure to perform will, unless there is adequate justification or excuse, arouse guilt feelings in the agent and moral disapproval in observers, if they know the facts and are sensitive. . . .
- (b) Failure to perform, without excuse, will reflect on *character* – this being spelled out by reference to traits like honesty, respect for the rights of others, and so on.
- (c) The requirement is not one just of prudence or convenience, but *a matter of principle*.
- (d) The requirement must be construed (if the question is raised) to have *stringency* superior to that of claims of manners, customs, taste, law, and courtesy [my lettering and italics].<sup>3</sup> (pp. 381-382)

*Paradigm uses and extended uses.* The above criteria of *moral* obligations and duties provide a useful beginning of our analysis, but they are only a beginning. Having identified the moral context, we must now move to the task of clarifying and distinguishing the concepts of *obligation* and *duty*. To do this, we must first introduce a couple of Brandt's analytical devices: the notions of "paradigm use" and "extended use." The "paradigm uses" of a term, says Brandt, "are felt to be especially natural uses of the term: there is no better word for the occasion and there are no better occasions for the word" (p. 385).

Applying this notion to the problem at hand, Brandt observes that among phrases employing the terms "duty," "obligation," "wrong," "ought," and so on in certain contexts, the vast majority of speakers would prefer the same phrase, among them, to any of the others. However, for "other contexts where one of these words can be applied with perfect correctness, speakers would have no preference for one phrase over another. . . ." (p. 385). In addition, "the contexts in which a given term is felt to be especially appropriate have certain features in common, and the term has come, to some extent, to *suggest* these features" (p. 385).

Brandt speculates that the paradigm use of a word in a certain context may have historical or psychological roots, and possibly both. Historically, the word may have "had close associations with that context for a long time." Psychologically, the paradigm context may have been "the setting for a child's first familiarity with the term" (p. 385-386).

In contradistinction, "extended uses" of words are "paler or abstracter; they connote less, because the situations in which they are applied have fewer features in common, as compared with the historically earlier or paradigm type of use" (p. 389). In their "extended uses," says Brandt, the terms "duty" and "obligation," by departing from some of the criteria of the "paradigm uses," have become virtually synonymous in many contexts of ordinary discourse.

*Obligation.* We are ready now to consider Brandt's account of the concepts of *obligation* and *duty*. First, an examination of the "paradigm uses" of "obligation" reveals the following features:

- (a) A roughly specifiable service is 'required' of one person.
- (b) Two parties are involved: the one who is required to perform a service, and the one for whom, or at the bidding of whom, the service is to be performed.
- (c) A prior transaction, the promise of benefaction, is the source of the relationship. (p. 387)

H. L. A. Hart (1955), in a passage cited by Brandt, identifies the following three features of "obligations":

- (1) That [they] may be voluntarily incurred or created,
- (2) that they are owed to special persons (who have rights),
- (3) that they do not arise out of the character of the actions which are obligatory but out of the relationship of the parties. (p. 179n)

(Those conditions, Hart cautions us, are "rough" and not consistently encountered in ordinary use.) Of Hart's conditions, (2) might (with some residue) be subsumed under Brandt's list. Item (3) of Hart's list is vague and, if I understand the gist of it, probably false. After all, does not the "character of actions" often significantly affect the "relationship of parties." Does not the obligation incurred, for example by a promise, derive both from the "action" and the "relationship?" Indeed, in what sense is the "character of the action" separable from the "relationship of the parties?" These questions lead me to doubt the suitability of Hart's third criterion of the concept of obligation, and I will therefore not adopt it. Hart's first item (that obligations are "voluntarily incurred") seems to be absent from Brandt's list. I see no warrant for this omission. Indeed, if we accept condition (b) of Brandt's list *without* specifying that the requirement "to perform a service" follows, and is the result of a voluntary act, then we might have a case not of *obligation*, but of *coercion*. With this addition to and qualification of Brandt's list, we are ready to move ahead to the "extended uses" of obligation.

Brandt, we must recall, is not suggesting that the "paradigm meaning" of "obligation" defines the word; rather, he claims that three features "are characteristic of the situation in which the word is most naturally applied." However, these features are too restrictive for normal use, since there are "perfectly correct uses of 'obligation' where these three factors are not all present" (p. 387). If we are properly to define these "extended uses," some of the restrictive criteria must be stricken. In particular:

We must strike out the notion that obligation is an obligation *to* someone. . . . Second, we must strike out the idea that the bond derives from some prior act or event, such as an agreement or the acceptance of a benefaction. . . if not all obligations derive from prior events (often acts), then it is not essential to an obligation that it can be brought about by an act of the person obliged or someone else. Some obligations are (to keep a promise), but some are not (to help others in dire need). (p. 390)

But haven't we thus abandoned the concept that we have labored to define? Not entirely, says Brandt, for there remain two significant aspects in the extended definition of "obligation":

First, what one is obligated to do is always to achieve some positive goal. One's obligation always concerns a state of affairs to be reached, something to be planned for along with one's personal goals. . . . It is a goal which may be reached in various ways but is prescribed as a goal to be reached in some way. As such, the obligatory is distinguished from the prohibited. (p. 390)

The second common feature of the "extended use" of "obligation" involves the concept of personal worth:

'Obligation' is never used just to talk about what ideally ought to be, or even about what ideally someone ought to do. When we say someone has an obligation to do something, and fails to do it without a suitable excuse or justification, there is a reflection on him as a person, and he is properly subject to sanctions, at least to criticism and disapproval. (p. 391)

In the case of "*moral* obligation," these "sanctions" include the moral sentiments of *guilt* and *shame*.

*Duty*. The term "duty," we find, is quite distinct from "obligation" in its "paradigm use," and virtually synonymous in its "extended use." Its paradigm use, says Brandt, is connected "with tasks associated with occupancy of an office or station in some organization in which the office confers rank, rights, or privileges" (p. 387). "Paradigm" contexts of "duty" exhibit the following features:

- (a) An individual occupies an office or station in an organization or some kind of system.
- (b) A certain job is deemed of some value for the welfare of the organization.
- (c) This job is associated, somehow or other, with the office occupied by the individual.
- (d) Performance is expected and 'required' of him. (p. 388)

In extended uses of "duty," two features of the paradigm use fall out. First, what is said to be one's "duty" is not necessarily "a task associated with a position or station in life." Furthermore, a duty need not be "*to* an association or group (or to someone within this group, perhaps the head) for whose organized activity the job is deemed significant" (p. 392). What remains that is common to the extended uses of "duty?" We find that these uses are very similar to "obligation":

Like 'obligation,' one's duty is always to do something conceived positively as a goal to be aimed at. We rarely speak of a duty *not* to do so-and-so. Again, like 'obligation,' 'it is your duty to' typically has more force than 'you ought to.' . . . Failure to do one's duty without suitable justification or excuse is a reflection on one, and is the object of sanctions, at least unfavorable attitudes, on the part of the relevant group of people. (p. 392)

Later, I will have a great deal to say about so-called "duties of forbearance," i.e., duties "not to interfere" or "not to trespass, etc. But isn't this an "odd use" of "duty," according to Brandt? Perhaps, as Brandt observes, "We rarely speak of a duty *not* to do so-and-so." Even so, this does not rule out "duties of forbearance"; it only suggests, correctly, I think, that such duties are ordinarily *phrased positively*. Thus, a duty "not to interfere with another's right to speak" might be phrased as a duty "to permit him to speak," or "to hear him out." Similarly, a duty "not to trespass," is more likely to be expressed as a "duty to stay off his property." In other contexts, such duties of forbearance might not be phrased as duties at all, but rather as *rights* (e.g., of the speaker, or of the landowner).

*Provisional explications of "obligation" and "duty."* Brandt's analysis of "obligations" and "duties" has been helpful, but it is by no means sufficient. Because we seek a precise and distinct sense of these terms, the nearly synonymous "extended uses" will not do. On the other hand, the "paradigm uses" are too restrictive. For instance, a glance at Brandt's lists of criteria for the paradigm uses will indicate that, according to these senses of the terms, one cannot properly speak either of "obligations" or "duties" to posterity. Surely, such a portentous conclusion should be reached on more substantial grounds than an arbitrary decision to accept these narrowly-drawn "paradigm" definitions of the terms "obligation" and "duty."

Apparently, we will have to seek a middle ground between Brandt's paradigm and extended uses. Here, then, is my provisional list of criteria of moral *obligation* and *duty*. First, concerning moral *obligations*:

1. They are designed and accepted voluntarily.
2. They are incurred by joining associations of mutual advantage, or entering into binding personal agreements.
3. They are owed to specific, identifiable persons or quasi-persons (such as corporations).
4. Their content is acknowledged by all contracting parties.

Concerning moral *duties*:

1. They apply to persons by reason of the morally relevant aspects of their offices, status, roles, or opportunities.
2. Upon accepting or acquiring such offices, status, or roles, or upon entering upon circumstances presenting such opportunities, duties are *assumed*, are *not voluntary*, and are morally *binding*.
3. They are owed to persons generally, as these persons have occasion to fall under the moral purview of one's office, status, role, or circumstance.

The adjective "moral" attaches to both obligations and duties the four conditions listed by Brandt: namely, *conscience*, reflection on *character*, *principle*, and *stringency* (see pp. 11-12, above). The most significant differences in the two terms are that obligations, unlike duties, are *voluntary*, *mutually acknowledged*, and owed to *identifiable persons* or *quasi-persons*.

Some concluding observations and caveats are in order. (a) I have excluded from these lists any mention of "rights" or "rights-claims" as being correlative to *obligations* and *duties*. This question of correlativity is crucial and controversial, and must not be validated by mere stipulation. (The correlativity question will be examined in detail later in this chapter in §§8-10.) (b) The items on these lists are not to be considered, in each case, as *sine qua non* defining characteristics of *obligation* or *duty*. Rather, I accept what is called by Hospers (1967, pp. 69-74), "the quorum feature" of definition: the presence of most of the criteria in a given case might be sufficient to merit the use of the term. (c) As we will see (in §29, above), the above conceptions of "obligation" and "duty" are quite similar to those employed by Rawls in *A Theory of Justice* (Rawls, §§18-19). (d) Finally, we must be flexible as we encounter these terms "duty" and "obligation" in various philosophical contexts. For instance, in another work (*Ethical Theory*, 1959), Brandt uses "obligation" to mean, generally, what Feinberg intends by "duty" in his writings (particularly, "Duties, Rights and Claims,"

1966). Mothersill (1967) quite correctly observes that "many philosophers use 'duty' quite indiscriminately to refer to particular obligations, moral principles, or indeed to anything which is held to be a requirement of conscience. . . . The rules for its use vary from one writer to another" (p. 442). This unfortunate circumstance greatly complicates the use of the terms "duty" and "obligation" in philosophical discourse.

For the sake of brevity, I have left out a third member of this family of concepts: *responsibility*. Feinberg offers what seems to me to be an apt account:

A responsibility, like a duty, is both a burden and a liability; but, unlike a duty, it carries considerable discretion . . . along with it. A goal is assigned and the means of achieving it are left to the independent judgement of the responsible party. (1966, p. 141)

Similarly, Golding (1972, p. 88) writes that the term "responsibility" connotes "discretion and flexibility." Webster's New World Dictionary (1966, p. 452) makes the following distinctions:

*Duty* refers to the general conduct required by one's sense of justice, morality, etc., or by the dictates of one's conscience [duty to one's fellow men]; obligation refers to what one is bound to do to fulfill a particular contract, promise, social requirement, etc., [you are under *obligation* to care for her]; *responsibility* refers to a particular task, trust, etc. for which one is accountable or answerable [the garden is her responsibility].

The dictionary accounts of "duty" and "obligation" are part of our explication.

The sense of "responsibility" differs from that of Feinberg. I believe that the best formulation would combine both of these senses.)

## 7. A Taxonomy of Rights

It is difficult to analyze the concepts of *obligation* and *duty* in more than a casual manner without also encountering the concept of *rights*. Indeed, as we shall see (in §8), some philosophers believe that the propositional form "X has rights-claims upon Y" is equivalent to "Y is duty-bound (or obligated) to X." Accordingly, some philosophers have formulated the posterity problem, not in terms of the *duty* of the present generation toward posterity, but of the rights of posterity.<sup>4</sup> If we are to deal effectively with "duty-questions" posing as "rights-questions," we will have to devote some attention to the concept of rights.

The following is a list of some important distinctions and categories that are to be found within the general concept of rights. In reviewing this list, it is important to keep in mind that many of these categories are not exclusive; for example, the compound notion of a "*prima facie*, natural, human right" is quite intelligible. It is also interesting to note that many of the following concepts (e.g.,

*prima facie*) and distinctions (e.g., legal vs. moral) apply quite as readily to obligations and duties as they do to rights.

*Moral and non-moral rights.* As with obligations and duties, the term "rights" has application in both moral and non-moral contexts. The most significant category of non-moral rights is that of *legal* rights. Ideally, all legally-recognized rights should have moral justification; albeit no legal system can, or should, be so comprehensive as to codify and protect all moral rights. In the actual world, of course, there may be laws that protect (legal) "rights" that are immoral (e.g., the right to own slaves); conversely, as noted above, moral rights are often unprotected by law (e.g., the right to expect a friend to be truthful or to keep an informal, verbal promise). As with obligations and duties, the primary concern in this dissertation will be with *moral* rights.<sup>a</sup>

*General and special rights.* In a thoughtful and widely-quoted paper, "Are There Any Natural Rights?" (1955), H. L. A. Hart distinguishes between *general rights* and *special rights*. "To have a right," says Hart, "entails having a moral justification for limiting the freedom of another person and for determining how he should act." The phrase, "I have a right to . . ." is made to claim a *general* right "when the claimant is concerned to resist or object to some interference by another person as having no justification (I have a right to say what I think')." The same phrase claims a *special* right, "when the claimant has some special justification for interference with another's freedom which other persons do not have (I have a right to be paid what you promised for my services)" (1955, p. 183). In other words:

To assert a general right is to claim in relation to some particular action the equal right of all men to be free in the absence of any of those special conditions which constitute a special right to limit another's freedom: to assert a special right is to assert in relation to some particular action a right constituted by such special conditions to limit another's freedom. The assertion of general rights directly invokes the principle that all men equally have the right to be free; the assertion of a special right . . . invokes it indirectly. (p. 188)

*In rem and in personam rights.* Hart's "general rights" and "special rights" are quite similar, respectively, to Joel Feinberg's concepts of *in rem* and *in personam* rights. According to Feinberg, an *in rem* right "holds, not against some specific namable person or persons, but rather, in the legal phrase, against the world at large" (1966, p. 139). On the other hand, an *in personam* right holds "against one specific person requiring him to perform a 'positive act,' not a mere omission" (1966, p. 137). [For example: a creditor's right to be paid by a specific debtor].

*Positive and negative rights.* Feinberg (1973) describes these rights as follows:

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<sup>a</sup>In the simplest terms, I have come to regard "moral" as meaning "reflecting or referring to the worth of *persons*." "Persons," in philosophical discourse, are often referred to as "moral agents," but this synonym is useless here since it is circular. For my non-circular definition of "moral agent" see "In Search of Sustainable Values," forthcoming in *The Journal of Sustainable Values*, and available at my website: [www.igc.org/gadfly/papers/sustain.htm](http://www.igc.org/gadfly/papers/sustain.htm) .



A *positive* right is a right to other persons' positive actions; a *negative* right is a right to other persons' omissions or forbearances. For every positive right I have, someone else has a duty to do something; for every negative right I have, someone else has a duty to *refrain* from doing something. (p - 59)

An example of a positive right would be a worker's right to be paid by his employer for services rendered under agreed-upon conditions. A citizen's right to express his opinion without interference is a case of a negative right.

*Rights* may be further categorized as "*active*" and "*passive*" rights. Says Feinberg (1973), "*active* rights are rights to act or not to act as one chooses; *passive* rights are rights not to be done by others in certain ways." He provides the following examples:

Among one's active rights may be such as the rights to go where one will and say whatever one pleases, often referred to concisely as 'the right to liberty.' Among one's passive rights may be such as the rights to be let alone, to enjoy one's property, to keep one's affairs secret, or one's reputation undamaged, or one's body unharmed. These are often characterized collectively as 'the right to security.' (p. 60)

Active and passive rights are often in conflict. To use a time-worn example, my (active) right to swing my fist ends where your nose begins, due to your (passive) right not to be harmed. Establishing a just balance between active and passive rights, Feinberg (1973) observes, "is perhaps the major source of moral perplexity in the political governance of free men" (p. 60).

*Prima facie and over-all rights.* Moral philosophers commonly distinguish between what we might term "abstract rights-of-principle," and "situational rights." Examples of the former would be rights of property, assembly, free speech, the franchise, choice of spouse, etc. If a putative right of principle is morally justifiable, it then has positive value *of itself*, in all applicable circumstances, and might properly be called a *prima facie* right. Borrowing a useful phrase from Rawls (340-341), we might call this a "right-all-things-equal." Of course, in particular circumstances, the positive value of a *prima facie* right may well be (and often is) overridden by *competing* rights. In such a case, the right with the strongest weight is morally warranted, and is properly called an "over-all right." Once again, Rawls provides a felicitous phrase; a "right-all-things-considered" (p. 340-341).<sup>5</sup> To apply all this to a familiar case: the individual's *prima facie* right to shout "fire" in a crowded theater is clearly overridden by the other patrons' rights to safety of their persons. The latter right, by reason of the situation, is clearly the prevailing "over-all" right.

*Absolute rights.* A *prima facie* right that cannot, in any possible case, be overridden is an *absolute* right. This is equivalent to a *prima facie* right which is, in all possible cases, at the same time an "over-all" right. In uncritical discourse, a number of such rights are proposed (e.g., to life, or to property, etc.). Such contentious public issues as abortion, capital punishment, the income tax, land use regulation, are often argued in terms of alleged "absolute rights." However, though the idea of "absolute rights" is quite intelligible, moral philosophers have generally been hard-pressed to identify

and defend rights that are, in Feinberg's words, "categorically exceptionless." But what kinds of rights *could* be "absolute?" Feinberg (1973) suggests:

The most plausible candidates, like the right not to be tortured, will be passive negative rights, that is, rights not to be done to by others in certain ways. It is more difficult to think of active negative rights (rights not to be interfered with) or positive rights (rights to be done in certain ways) as absolutely exceptionless. The positive rights to be given certain essentials—food, shelter, security, education—clearly depend upon the existence of an adequate supply, something that cannot be guaranteed categorically and universally. (p. 88)

Feinberg proposes other possibilities, such as the rights to equal protection under the law, equal consideration, and the right to be treated with "human dignity" (1973, pp. 96-97). However, space permits no more than a mention of these points and a recommendation of his excellent analysis.

*Natural rights and human rights.* These rights are affirmed in what are perhaps the most memorable words written on this continent:

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these rights, Governments are instituted among Men . . .

Note the terms "self-evident" and "endowed by their Creator." These phrases express the fundamental epistemic and metaphysical status claimed by *natural* rights. The questions of whether *any* rights are derived directly from "natural law" and, for that matter, what "natural law" might mean in this context are, of course, issues of profound philosophical controversy.

The claim in the Declaration which states: "that to secure these Rights, Governments are instituted among Men" might be interpreted to affirm, in part, that laws should properly be judged in terms of moral precepts, but not the reverse; i.e., that moral rights are distinct from, and prior to, legal rights. This may *not* be a particularly controversial assertion, since it appears to follow from the meaning of "moral precept."

The words, "all Men are created equal," and "they are endowed . . . with certain inalienable rights" expresses the theory of *human rights*. A virtual paraphrase appears in the writings of the contemporary philosopher, Joel Feinberg: "I shall define 'human rights' to be generically moral rights of a fundamentally important kind held equally by all human beings, unconditionally and unalterably" (1973, p. 85). The assertion that "all men are created equal" (gender bias aside) has, of course, been a constant puzzle. Obviously, all men are in fact created differently, and "endowed" with uneven degrees of intelligence, creativity, energy, charm, moral insight, and perseverance, and any of an endless series of traits. Jefferson surely knew all this. Why then did he dare write those words, and why are they still honored today? In his significant article, "Justice and Equality" (1962), Gregory Vlastos explicates what was likely on Jefferson's mind: that while men unquestionably display unequal

*merit*, they are of equal human *worth* and should, from a moral point of view be treated accordingly. Writes Vlastos:

To be sincere, reliable, fair, kind, tolerant, unintrusive, modest in my relations with my fellows is not due them because they have made brilliant or even passing moral grades, but simply because they happen to be members of the moral community. . . . Our morality does not provide for moral outcasts or half-castes. (1962, p. 47)

But what justification is there for this assertion? In what sense *are* human beings "of equal worth?" *Why* should they be treated equally? (Neitzsche, for one gave some rather pointed arguments against such a "slave morality".) To pursue these questions would be to abandon our meta-ethical perspective and to enter the thicket of normative ethics, a quite unwarranted digression at this point.<sup>6</sup> Suffice it to say, that, as we will note in forthcoming chapters, John Rawls has proposed some significant answers to these questions, and has developed several impressive arguments in support of the moral principles of equal worth, equal liberty, and equal opportunity; in support, that is, of the "human rights" to "life, liberty and the pursuit of happiness." (See Rawls, §77, also §29, below.)

There are, of course, innumerable other species and distinctions within the generic category of "rights." However, the above list will be sufficient for most of our purposes.

*Rights, claims, benefactions, and human dignity.* In general, rights may be interpreted as valid claims made against particular persons, groups, and institutions, or indefinite individuals, or even "the world in general." These claims announce to others that obligations and duties to the rights-holder be honored and that his liberties and opportunities not be curtailed.<sup>7</sup> But what does the possession of *rights* contribute to the moral and personal qualities of social life? Would not human needs be quite well served in a community devoid of rights but inhabited by moral exemplars, persons lavishly endowed with kindness, benevolence, compassion, and sympathy? In such a community, "duty" would exist only in the sense that the citizens felt that they should, in general, be moral, but not because anyone could claim moral treatment as his right. Would not the exchange of personal rights for such abundant neighborly virtues be a fair trade, to say the least? Feinberg (1971, pp. 243-244) presents such a thought-experiment and concludes that the price of such an exchange would be morally unacceptable. Having rights, he argues, serves as the basis for human dignity and personal self-respect.<sup>8</sup>

Consider the alternatives. In a world without rights, says Feinberg:

Persons would no longer hope for decent treatment from others on the ground of desert or rightful claim. Indeed, they would come to think of themselves as having no special claim to kindness or consideration from others, so that whenever even minimally decent treatment is forthcoming they would think of themselves as lucky rather than inherently deserving, and their benefactors extraordinarily virtuous and worthy of great gratitude. The harm to individual self-esteem and character development would be incalculable. (1973, p. 58)

The possession of rights changes all this, for:

Rights are not mere gifts or favors, motivated by love or pity, for which gratitude is the sole fitting response. A right is something a man can *stand* on, something that can be demanded or insisted upon without embarrassment or shame. When that to which one has a right is not forthcoming, the appropriate reaction is indignation; when it is duly given there is no reason for gratitude, since it is simply one's own or one's due that one received. A world with claim-rights is one in which all persons, as actual or potential claimants, are dignified objects of respect, both in their own eyes and in the view of others. No amount of love and compassion, or obedience to higher authority, or noblesse oblige, can substitute for those values. (pp. 58-59)

Clearly, then, the question of the "membership requirements" of the community of rights-holders is a matter of considerable moral significance. Whether infants, animals, the infirm, natural objects, or posterity have rights, may well entail whether these entities are to be regarded and treated with respect and dignity. Our particular concern is with the question of the rights of posterity. The following chapter will deal with the conceptual aspects of this question.

## 8. Correlativity: Do Rights Entail Duties?

*The question of correlativity.* In the preceding sections of this chapter we have examined, separately, the concepts of *duty* (and *obligation*), and the concept of *rights*. In the following three sections, I would like to analyze a prominent philosophical belief concerning the relationship between duties and rights: "the doctrine of correlativity." Strictly speaking, this "doctrine" is *two* doctrines: (a) that all rights entail corresponding duties, and (b) that all duties entail corresponding rights. Each proposition, in turn, implies a corollary by contraposition.<sup>9</sup> The propositions may be expressed, with somewhat more precision (but less than full logical purity), as follows:

(a) If person X has a certain right, then there is at least one person, Y, who has a corresponding duty to X.

(a') (The contrapositive): If Y does not have a duty to X, then X has no rights-claim against Y. (Strictly logical: if there is no person Y with a duty to X, then person X has no rights.)

(b) If person X has a certain duty, then there is at least one person, Y, who has a corresponding rights-claim against X.

(b') (The contrapositive): If Y has no rights-claims against X, then X has no duty to Y.

The strongest version of the "correlativity doctrine," which affirms both (a) and (b), I will call "reciprocal correlativity."

Because many arguments concerning the moral relationship of the present generation to posterity are phrased in terms of "the *rights* of future generations," an examination of the correlativity doctrine may help translate "rights-talk" into the "duty-talk" which I have adopted for the dissertation.

Before we proceed with a detailed analysis of the correlativity doctrine, some points of clarification are in order. First, by "correlativity" I do *not* mean what Feinberg has called the doctrine of "*moral correlativity*" which asserts "that a person's rights ought to be contingent upon performance of his own duties" (1973, p. 62). I am interested, rather, in "logical correlativity"; namely, the belief that a person's rights "are necessarily linked with the duties of other people" (p. 62). Secondly, I will readily acknowledge, at the outset, that by far *most* duties (and obligations) have corresponding rights, and that *most* rights have corresponding duties. The question at issue is whether *all* rights and duties *necessarily* have correlatives. (As, for example, "left of" has, as a necessary correlate, "right of." Other correlated terms would be: "older than," "implies," etc.) Third, correlativity might have been easily secured if, in the earlier discussions of the meaning of "duty" and "rights," I had introduced the counterpart terms into the explications of these concepts (if, for example, I had introduced "rights" or "claims" among the defining characteristics of "duties"). This, however, would have a cheap, "rigged" victory. Correlation, if it is to be found, must be found in the operation, in the *uses*, or the concepts in moral discourse. Finally, all alleged cases of "correlativity" are understood to be *prima facie*. The correlate to any duty or right might be correctly overridden by countervailing, "over-all" circumstances. (For example, a promise to repay a small debt at a certain time, may be overridden if, on his way to the appointment, the debtor interrupts his journey to come to the aid of an accident victim.) Such breaches of *prima facie* duties and violations of *prima facie* rights are then said to be "excusable." With these qualifications on record, let us move on to our analyses.

*Do rights entail correlative duties?* R. B. Brandt (1959) is among those who emphatically answer this question in the affirmative. Indeed, he affirms *both* types of correlation. He states:

'X has a *prima facie* right to enjoy, have, or be secured in Y' means the same as 'it is someone's objective *prima facie* obligation [duty] to secure X in, or in the possession of, or in the enjoyment of Y, if X wishes it.' (p. 439)<sup>10</sup>

I take the phrase "means the same as" quite literally: as meaning equivalence. It follows, then, that the formula can be validly converted and, thus, that Brandt is stating the doctrine of reciprocal correlativity. But if, as Brandt claims, "have a right to" can be translated in terms of "morality obligated," why, then, do we need both concepts in moral discourse, as we surely do? We need both concepts, Brandt says, for the same reason that our grammar utilizes both the active and the passive voice: namely, *convenience*. Thus:

'I have a right to be paid \$10 by him' can naturally be replaced by 'He has a moral obligation to pay me \$10.' But, 'I have a right to be heard' can only with awkwardness be replaced by something like 'The people doing that shouting have an obligation to be quiet and let me speak.' When we come to 'Everyone has a right to an education,' it is by no means easy to formulate a corresponding statement in terms of 'obligation.' (p. 434)

The doctrine of reciprocal correlation, then, states that a full statement of the correlatives "X has an obligation to" or "Y has a right to" would fit either of these equivalent assertion-forms:

(c) X has an obligation, P, to meet the right-claim of Y.

And the converse:

(c') Y has a right-claim against X that requires X to meet obligation P to Y.

If we were required, every time we used the words "obligation" or "right," to employ these full formulae, we would soon be persuaded that it might be more convenient to separate these terms. Obviously, and fortunately, in ordinary discourse the correlative concepts are detached and used separately, even though, in particular cases, they may describe the same moral relationship seen from opposite perspectives. And with this detachment in use and in moral perspective, the concepts come to have distinct connotations. And so, the employment of such critical skills as are learned at Oxford, Cambridge, and Cornell are often required to put together that which ordinary language and personal bias have torn asunder (Brandt, 1959, pp. 435, 440-1).

As I suggested earlier, it is not at all difficult to cite examples of correlativity between rights and duties. We have already encountered several cases: for instance, the right to expect a promise to be kept, the creditor's right-claim against a borrower, the property owner's right to require all others to refrain from trespassing, and so on. However, it is not enough to cite confirming cases. Because the doctrine claims that there are no exceptions, further confirmation must come from an unsuccessful attempt to find disconfirming cases.

In my study of the question of correlativity, I have encountered a few putative examples of moral rights without corresponding duties. Among them is what Feinberg calls "manifesto rights." These are claims, based upon basic human needs, which simply cannot, under present conditions, be met. A prominent example of such "manifesto rights" is the United Nations Universal Declaration of Human Rights, which includes such items as: "the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay." Even more basic, and quite unobtainable, is the "right" to adequate nutrition for all four billion members of the human race. Concerning "manifesto rights," Feinberg (1973) observes:

Young orphans everywhere in the world need good upbringing, balanced diets, education, and technical training, but unfortunately there are many places where those goods are in such short supply that it is impossible to provide them for all who need them. (p. 66)

Feinberg has made a telling point here. But, having made it, he seems uncertain about what to do with it. First, he suggests that these might be rights without correlative duties. (But note the tentativeness of the opening conditional clause.):

If we persist in speaking of those needs as constituting rights and not merely claims, we are committed to the conception of a right which is an entitlement *to* some good, but not a valid claim *against* any particular individual, for in conditions of scarcity there may be no determinate individual who can plausibly be said to have a duty to provide the missing goods to those in need. (1971, pp. 66-67)

Feinberg finally agrees to accept "manifesto rights" as a "valid exercise of rhetorical license." Thus, interpreted, Feinberg (1971) admits:

I have a certain sympathy with the manifesto writers, and I am even willing to speak of a special 'manifesto sense' of 'right,' in which a right need not be correlated with another's duty. Natural needs are real claims if only upon hypothetical future beings not yet in existence. . . . A person in need, then, is always 'in a position' to make a claim, even when there is no one in the corresponding position to do anything about it. Such claims, based on need alone, are 'permanent possibilities of rights,' the natural seed from which rights grow. When manifesto writers speak of them as if already actual rights, they are easily forgiven, for this is but a powerful way of expressing the conviction that they ought to be recognized by states here and now as potential rights and consequently as determinants of *present* aspirations and guides to *present* policies. (p. 255)

Both the tone and substance of these passages suggest that Feinberg is uncertain here. Yet it seems to me that the final sentences quoted above suggest a forthright answer to the analysis of "manifesto rights"; namely, that they can properly be said to be "rights," and that contrary to Feinberg, these rights entail corresponding duties. Consider the most touching example of all, the right of every child to be well fed. Let us now assume that, under present conditions, that is not possible; that there are too many children and not enough food supplies, let alone adequate storage and transportation facilities. Well, if it can't be done, then according to the rule "ought implies can," no one is duty-bound to feed the children. Right? *Wrong!* If the right for every child to be well fed cannot *now* be met, the correlative duty is not abolished; it is transformed. Our duty splits into (a) "feed as many as you can" and (b) "do what you can to bring about conditions that will eventually allow all children to be well fed." Thus, for example, a wealthy American who supports fertility research and contributes to the Planned Parenthood Federation is, in a perfectly valid sense, responding to a duty correlative to the right of all children to be well fed. This "transferral" of duties is of particular significance to us, for, in the case of "manifesto rights," the claims of present persons may prompt dutiful action directed toward the benefit of future generations.

Are there not other cases of alleged rights which do not entail another's duty? Perhaps. We might find these "rights" among *powers* and *immunities*, such as the power to offer for sale, or the immunity of congressmen from libel proceedings. Aren't these properly termed "rights?" If so, says Stanley Benn, "then some rights are neither correlative to sanctioned duties nor expressions of the absence of such duties" (1967, p. 196). Admittedly, both cases are properly termed "rights." But they are *legal* rights, and we are considering *moral* rights. Once the moral justifications of these legal "powers" and "immunities" are brought to light, I suspect that the *moral* rights therein will be found

to be correlated with *duties*. Thus, for example, the "power" to offer for sale is based (among other things) upon the right to the free use of one's property and to the voluntary disposal thereof. Correlated to this right is the duty of others not to cause one to lose his property by force, fraud, or negligence. Perhaps the "right" to legislative immunity is derived less from moral rights than from the practical advantages of unrestrained parliamentary debate. Even so, we might say that the people have a "right" to full and candid deliberation by their representatives, which entails a duty not to curtail these deliberations by threats of libel. Of course, with the right to immunity, the legislator assumes a moral (but not a legal) duty not to abuse this privilege. But this is not, properly speaking, a correlative duty, since the right and the duty apply to the same individual. The search for the moral bases of legal powers and immunities is a very complicated and time-consuming exercise which I cannot pursue further. I can only suggest that when such analysis identifies supporting moral rights, these rights will be found to entail moral duties.

Consider next my alleged "right" to leave my desk at this moment to prepare a snack or go for a stroll or whatever. In what sense do these options entail *duties*? In reply, I would ask another question: in what sense are these options *moral*? If they are not, then the question of entailed duties does not apply. I suggest that these options become moral only if they entail restrictions upon another's freedom or the use of another's property. Those things that I am free to do, and which at the same time no one is morally justified to forbid, are what Hart calls "general rights" (1955, p. 183). But to say that interference by others is morally unjustified is equivalent to saying that others have a moral *duty* to forebear from interference. To return to the paradigm case: if my freedom to leave my desk has no moral significance, then this freedom is not properly called a "moral right." It would, perhaps, be more correct to say that I am "at liberty" to leave my desk. In general, then, the question of moral rights and duties enters only if an intended action has bearing upon the circumstances of another's life, requiring at least one person to "give way" to at least one other person. And since the "giving way" entails both a "yielder" and a correlated "yielder," in a morally relevant instance of the "yielder" "claiming a right" the "yielder" can be properly said to be performing a correlative moral duty.

Let us examine one final class of counterexamples against the proposition that rights entail duties. These are the alleged "rights" of rivals in zero- and minus-sum contests.<sup>11</sup> For example, imagine that two strangers are walking toward each other and that they simultaneously spot a ten dollar bill midway between them. Assuming that it is impossible to find the original owner, does not each of these individuals have a "right" to the bill? And yet, surely neither has a corresponding "duty" to let the other have it. Similar cases could be drawn from political campaigns (the right of the candidates to be elected), or games (the right of the contestants to win). The difficulty is that, by definition, the contestants cannot all secure that to which they have an alleged "right." But can there be a "right" to that which is impossible? One might reply that the very point of a contest is to determine which participant can secure this right. But when a person wins a contest, can it be said that by so doing he has deprived the others of their "rights" to something to which they were entitled? The solution, I think, lies in interpreting the phrase "the right to win," not at face value, but as an elliptical form of the phrase "the right to *attempt* to win." Thus stated, each contestant has such a right, whether or not in fact he wins. Furthermore, the right entails a duty among all participants not to deprive their rivals of this right (to attempt to win) through force, bribery, cheating, etc.



But does this apply to moves *within* the contest? I believe that it does. Consider the presumed "right" of one boxer to strike another in the ring. Clearly, there is no corresponding "duty" to allow oneself to be struck. But what if the opposing boxer is sufficiently agile that he dodges, parries and blocks each attempted punch? Is he depriving his opponent of his rights? No, he is not. Clearly, the hapless opponent cannot properly be said to have the "right" to land his punches, albeit he has the right to make the attempt. In this case, the right to *attempt* is not denied by a failure to succeed in the attempt. (Of course, the law does *not* generally recognize even a right to attempt *battery*, outside a boxing ring.) Corresponding to this right is the duty not to prevent the attempt by drugging the opponent or by bribing the referee to interfere.

It is time to conclude this prolonged analysis of the claim that moral rights entail duties. To arrive at the strong affirmative conclusion that there is such an entailment, I have had to engage in the time-consuming strategy of refuting a series of what I believe to be the most plausible counterexamples. However, in the process of doing so, we have also been able to identify some formal conditions of duties and rights, which will have important bearing upon subsequent discussion in this dissertation. For instance, our discussion of the "liberty to leave one's desk" (p. 25, above) yielded the conclusion that "moral rights and duties [apply] only if an intended action has bearing upon the circumstances of another's life . . ." The contest paradigm raised the point that one has "rights" only to that which is possible. To generalize: the domain of moral rights and duties is bounded by the *asocial* and *uncontrollable*. Robinson Crusoe, before he met Friday, lived a life in which "rights" had no application.<sup>12</sup> (This is not entirely so, since he had no right to wantonly despoil an island that might later be settled.) As for the factor of "control," we have no "right" to physical immortality, to the tides, or to find oil on our property. But while we have no "right to digest" or "right to breathe," we do have rights not to be poisoned and to breathe clean air, to the degree that these latter conditions are within the control of human agency. Similarly, we have no right to be free of illness or accidental injury, but we do have the right to be protected from, and compensated for, injuries caused by negligence or malice. In short, the term "rights" has no application to things or conditions unaffected by whatever anyone (including the agent) may sustain, bring about, or refrain from doing --either because these things or conditions are *inevitable* or *impossible*. Furthermore, the word "rights" does not apply to actions which in no way cause or threaten to cause restrictions upon the liberties and well-being of others. This leaves for consideration the domain of voluntary human actions which restricts the free activities of others. Within this domain, I would conclude that "to have a moral right" *means* that one is morally justified in restricting the freedom of others who are, correlatively, morally required to accept these restrictions, either by performing required activities or by refraining from other activities. If these required acts and forbearances are properly designated "moral duties," then it follows that "*moral rights entail moral duties.*"

## 9. Duties Which Entail Rights

*Do duties entail rights?* Once again. I can supply a ready non-controversial reply: in most cases, yes. However, as before, I am posing the stronger question: is the entailment *unexceptional*?

In his paper, "Duties, Rights, and Claims," Joel Feinberg (1966) identifies ten species of duties. Of these, he finds that seven have correlative "rights" and that three do not.<sup>13</sup> The "correlated" senses, he suggests, are more likely to be related to the original sense of duty as actions "due to" someone else (e.g., such *obligations* as keeping promises or repaying debts, etc.)<sup>14</sup> However, as the word "duty" has extended its range of application, it has "come to be used for *any* action understood to be *required*, whether by the rights of others, or by law, or by higher authority, or by conscience, or whatever." Thus, Feinberg (1971) continues, "In this widespread but derivative usage, 'duty' tends to be used for any action we feel we *must* (for whatever reason) do. It comes, in short, to be a term or moral modality merely" (p. 244). In this "extended" sense, Feinberg argues, duties often do not entail rights.

I quite agree with Feinberg's general suggestion that some "duties" can properly be said to be required by general moral principles, rather than exclusively by the rights-claims of others. However, I have several specific disputes with Feinberg, a discussion of which will yield some important principles and issues. In particular, of the seven types of alleged "rights-with-duties" discussed by Feinberg, most of which we have encountered already, six seem to me to be beyond dispute, and I will say little more about his analysis of them. In the seventh case (the so-called "duties of need-fulfillment"), I find that I disagree with Feinberg in that I recognize no clear correlative right. In two of the three cases of supposedly uncorrelated duties (duties of obedience and status), I believe that Feinberg is mistaken, and I will attempt to show that both duties do, in fact, entail corresponding rights. Feinberg's third category of allegedly uncorrelated duties ("duties of compelling appropriateness") is, in fact, a mixed bag, too vague and various to permit effective analysis. However, within this collection is the problematic "duty of supererogation" which, under analysis, will yield some significant insights concerning the relationship between duties and rights. We turn now to an analysis of these various duties.

(a) Do "duties of obedience" to such authorities as "the law" have corresponding "rights?" Feinberg (1966) thinks not:

Many duties of obedience are 'owed' to impersonal authority like 'the law,' or a painted stop sign. Here it is especially difficult to find an assignable person who can claim another's stopping as his due. Some duties of obedience, then, seem to entail no correlative rights; and if my suspicion is correct, none of them do. . . . The authority to whom one 'owes' obedience [e.g., a policeman] is not a claimant in the manner of (say) a creditor, but rather simply the one who may properly command performance of duty and apply sanctions in case of failure. (p. 142)

I believe that Feinberg is quite wrong here. If the law is *morally* justifiable, then one's *moral* duty to obey it is owed to all citizens who benefit by the just rule of law. In the case of the stop sign, the duty to stop is admittedly *not* owed to the policeman who might enforce the law. However, the policeman serves to protect the right of *all* drivers and pedestrians to have and to maintain a safe and efficient system of traffic regulation. Feinberg is correct to point out that it is "difficult to find an assignable person who can claim another's stopping as his due." But the rights correlated with the duty to obey

a stop sign are not rights due "assignable persons," they are rights due all cooperating citizens. Does it follow, then, that a driver approaching an unobstructed intersection, with no other person (much less a policeman) in sight, is at liberty to waive his "duty" to obey the stop sign. It does not, for the driver is obligated to the community to maintain safe driving habits, and such occasional violations would weaken these habits.

(b) "Duties of Status" comprise another class of duties believed by Feinberg to obtain, on occasion, without corresponding rights. As the phrase suggests, the duties are attached to a person's occupational or social status. Of course, while status duties are often correlated with the rights of such persons as employees, customers, or contractees, in today's complex civilization, status duties are increasingly owed to such impersonal entities as corporations, associations, or governmental bureaus. In such cases, asks Feinberg (1966), "does it still make sense to ask to *whom* one's duty of status is owed?" He goes on to answer his own question:

We can no longer always expect a simple answer mentioning some specific person, such as 'one's feudal lord,' or 'one's employer.' To whom does the left tackle on a football team owe his assigned duty to block the player opposing him? In a case like this it is odd to say that the duty is owed to anyone but 'the team.' (p. 140)

Indeed, Feinberg continues, in the case of a janitor sweeping the corridor of a large office building, "it might plausibly be urged that the duty is owed *to no one at all*, although it is no less a duty for that" (p 140).

What are we to make of all this? In his analysis of "duties of obedience" and "duties of status," Feinberg seems to be saying that for a *right* to be properly correlated to a duty, the right must be owed to particular, identifiable persons. Thus, if the lineman's duty to block the opposing player is not "owed to anyone but 'the team,'" there is presumably no corresponding right. Similarly, if the janitor's duty to sweep the corridors of the corporate or government building is owed only to "the corporation" or "the state," the duty is owed "to no one at all." I suggest that the teammates, stockholders, or taxpayers involved might take strenuous objection to this analysis, for their rights are affected by the performance of the lineman or the janitor. After all, aren't teams, corporations, or governments supposed to be, in Rawls's words, "mutually advantageous cooperative ventures" in which a group of persons engage "according to rules, and thus restrict their liberty in ways necessary to yield advantages for all?" (p. 112) If so, they fall under Rawls's "principle of fairness," according to which all who submit to the rules of the venture "have a right to a similar acquiescence on the part of those who have benefitted from their submission" (p. 112). Is the lineman's duty to "the team?" Very well. But does that not mean that *each person* on the team has a right to expect the lineman to do his duty? And, if however indirectly, the stockholders or taxpayers pay the janitor, do they not each have a right to have clean corridors in "their" building?

Feinberg (1971) seems to insist that correlated duties can only be properly said to be owed to determinate individuals. But, this is strange in view of his willingness to recognize and distinguish

*in personum* and *in rem* rights, and to interpret the latter as claims against "the world at large" (p. 256). In his defense of the concept of *in rem* rights, Feinberg (1971) writes:

If a general rule gives me a right of noninterference in a certain respect against everybody, then there are literally hundreds of millions of people who have a duty toward me in that respect; and if the same general rule gives the same right to everyone else, then it imposes on me literally hundreds of millions of duties--or duties towards hundreds of millions of people. I see nothing paradoxical about this, however, The duties, after all, are negative, and I can discharge all of them at a stroke simply by minding my own business. And if all human beings make up one moral community and there are hundreds of millions of human beings, we should expect there to be hundreds of millions of moral relations holding between them. (p. 256)

But, if there are *in rem* rights, can there not, analogously, be *in rem* duties owed generally to all members of a cooperative venture, which a person voluntarily joins, or from which he receives benefits (Cf. Rawls 518). As I hope the earlier sections of this chapter have indicated, this notion of "*in rem* duties" owed to classes of indeterminate individuals is implicit in the writings of such moral philosophers as Rawls, Brandt, and Hart. (Indeed, the propriety of the notion of "*in rem* duties" to the "indefinite unborn" is presupposed by the title of this dissertation, and it is affirmed in Feinberg's recent paper, "The Rights of Animals and Unborn Generations" [1974].) I conclude, therefore, that Feinberg's argument against the correlativity of the duties of obedience and status fails, and I will hereafter assume that all such duties entail rights.

A third group of duties believed, by Feinberg, to be uncorrelated with rights are dubbed "the duties of compelling appropriateness." Says Feinberg (1966), this "class probably includes such philosophically puzzling specimens as 'duties of perfection,' 'duties of self-sacrifice,' 'duties of love,' 'duties of vicarious gratitude,' and so on" (p. 141). Quite frankly, I am unable to find a clear, unifying concept in this list and am, thus, disinclined to admit that it is a "class" of duties at all. In any case, as Feinberg admits, these "specimens" are "perhaps only duties in an extended sense." There is, however, one "duty" among the "duties of compelling appropriateness" that clearly deserves out attention; it is the "duty of supererogation" [my term]. Feinberg has little more to say about the other vague and various duties in this list; I will follow his example and say no more about them.

(c) The notion of a "duty of supererogation" carries a sizeable burden of conceptual confusion. Even so, once this confusion is unraveled, a significant residue remains. This residue might suggest to us how, in an important sense, moral duties might not correspond to rights. This, at least, will be my contention. But first, let's clear away some of the rubbish.

On its face, the phrase "duty of supererogation" appears to be flatly self-contradictory, for it seems to mean "a duty beyond the call of duty." A resolution of the inconsistency might be attempted by *equivocation*; that is, by interpreting a supererogatory act as a response to a "duty" (as perceived by the agent) beyond the call of "duty" (as defined by the agent's community). This exercise of logical legerdemain also provides us with an apparent sample of a duty without a corresponding right. Consider, for example, a literary case cited by H. B. Acton (1950):

The man who, in Malraux's novel, gave all his supply of poison to his fellow prisoners to enable them by suicide to escape the burning alive which was to be their fate and his, probably did not think that they had more right to the poison than he had, though he thought it his duty to give it to them. (pp. 107-108)

Is this a duty without a corresponding right? Acton believes so. He continues:

Some of these supererogatory acts may be a form of disguised egoism, the agent regarding himself as worthy of a much stricter code of behavior than the majority of people. Others are the result of compassion or benevolence, and in that way, perhaps outside the sphere of rights and duties. But some of the more impressive acts of moral heroism appear to be performed at the behest of an exacting sense of duty without their being corresponding rights on the part of the beneficiaries. (pp. 107-108)

I suspect that much of this apparent "uncorrelated duty" rests upon the equivocation, mentioned earlier, between the agent's moral point-of-view (call it the "A-perspective") and the community's prevailing norms (call it the "C-perspective"). Thus, Malraux's hero may have felt that he had an "A" duty to give his comrades the poison, but that they had no more "C" right to it than he did. However, once we adopt a constant moral perspective, the analysis might change. For instance, from the hero's A-perspective, perhaps the other prisoners did have more of an A-right to the poison (because he figured that he would suffer less, or that his exalted moral principles would forbid such a selfish act, or any of a number of possible reasons). Conversely, from the perspective of the community, perhaps the hero acted, not from "C" duty, but from compassion or benevolence or even rashness. I suspect that the equivocation of moral perspective serves no purpose except to provide the critics of the correlativity doctrine the sought for example of an uncorrelated duty. Such a tactic is, of course, philosophically indefensible.

Well, what has all this accomplished? I have suggested that, if we avoid the basic equivocation, then *perhaps* we might be able to defend the correlativity doctrine. In particular, if we assume the point of view of the agent, *perhaps* we have an example of a duty correlated with a right. On the other hand, if the situation is viewed from the perspective of the community, *perhaps* we have an example of neither a duty nor a right. "*Perhaps?*" Can't we make any more sense of the situation than this. Must we first consult with a few saints or heroes in order to assess their motives or their mode of moral reasoning. While such an enterprise would doubtless be revealing and uplifting, it may not be necessary for our purposes. If it can be demonstrated that, when viewed from a *constant* perspective, the supererogatory acts of saints and heroes are (a) responsive to the demands of duty, but (b) that this duty is not based upon the rights-claims of the beneficiaries of these acts, then I believe that I can make sense of the notion of an uncorrelated duty, as perceived from an unequivocal moral perspective. I will presently suggest how this might be so.

## 10. Duties Without Correlative Rights

In the previous pages, I have attempted to show, contrary to Feinberg, that the duties of obedience and status entail correlative rights. The case for correlativity, however, is by no means secure; for within the confusing notion of the "duty of supererogation" we find some promising contraindications. In this section, I would like to develop, and eventually defend, the idea that moral duties might not entail rights.

Let us consider, first, the ancient, yet still-respected Aristotelian notion of "natural duty"; i.e., the duty to obey "natural law," or to strive to achieve a "natural end." Thus, according to this philosophical tradition, men should live in well-ordered communities, since "man is a political animal." Men should seek knowledge for its own sake, since "man by nature desires to know." Men should develop their intellects, since rationality is the highest faculty appropriate to man. Finally, each person should actualize his own personal talents ("potentials"), be they artistic, intellectual, athletic, or whatever. I will call this last requirement, (d) "the duty of self-fulfillment."

But suppose, in some rural area, there is a "mute, inglorious Milton" who would rather go fishing than write poetry. Does he, nonetheless, have a duty to develop and utilize his talent? To whom, or what, is it owed? Himself? The "literary tradition?" Posterity? If he steadfastly refuses to write, will his generation, and those thereafter, be deprived of their *rights*? Perhaps. Yet, I sense here a conceptual distinction between our poet's duties and humanity's "rights" such that a purely logical and conceptual analysis might not suffice to establish an entailment from the former to the latter; that, in other words, it might make sense to speak (rightly or wrongly) of a duty of self-fulfillment without a corresponding right. I will have more to say about this shortly; but, for the moment, let's move on to the next duty.

(e) The "duty of need-fulfillment" appears to be quite similar to the "duty of self-fulfillment." Feinberg (1966) proposes the following example of the former duty:

'Mr. Churchill feels that he owes this legacy to the world,' said a 1964 advertisement for a set of recordings by Winston Churchill of public and private speeches, letters, and reminiscences. Presumably Sir Winston did not feel that he must simply return what he had borrowed or keep some sort of promise, expressed or implied. I suspect rather that he felt a duty to give to the world some thing that it needs, but which he, at age 90, no longer had reason to keep [in] his exclusive possession. (pp. 138-139)

Feinberg believes that such a duty "give[s] rise to positive *in personam* rights, often in many claimants." However, while I will not question Sir Winston's sense of duty, I must wonder about the world's "right" to this legacy. Or consider an opposite case: soon after Sir Richard Burton, the English explorer and linguist, died in 1890, his widow burned his unpublished notes and manuscripts. Literary scholars at the time might properly have charged that this was a violation of her duty to the cause of humane scholarship. But was it also a violation of the scholars' *rights* to have access to this material? Are not literary legacies *gifts*? If so, wherein is the *right* to these gifts?

(f) The duty to be charitable, to which Feinberg believes there is no correlative right (1971, p. 244), is strikingly similar to the "duty of need-fulfillment" which, we found, he believes *does* have a corresponding right. Of all the alleged examples of "duties without right," few have attracted as much comment as this matter of "duties of charity." One might, in this case, defend the correlativity doctrine by insisting that acts of benevolence are prompted, not from a sense of duty, but rather that they are motivated by sympathy, humane concern, or some other sentiment. Accordingly, those who receive benefactions should properly be *grateful*, but should not feel that they are receiving their duty "by right." In brief, in cases of charity, there are neither duties nor rights.

A defense of the doctrine of correlativity might also be attempted on the opposite grounds that benevolence is, in fact, a duty and as such, it *follows* that the recipients are entitled to benefactions as their right. However, this flat interpretation is inadmissible in that it assumes correlativity, which is the very point at issue.

Rather than attempt to explain away the seemingly uncorrelated duty of charity, let us try instead to account for it and, by implication, for the duties of self-fulfillment, need-fulfillment, and supererogation, as well. We might begin by asking a couple of questions. First, when we are told that we "ought to," or "should," or "must" be charitable, what is the supposed basis of the moral force of these imperatives? The next question: when we fulfill duties of charity, in behalf of *whom*, or *what*, are the duties performed? If the answer to the first question is necessarily "the right-claims of others," or, if the answer to the second must be "in behalf of those who have a right to these claims," then we have affirmed that duties of charity are correlative to rights of others. If, however, we can plausibly suggest that the basis of a duty of charity might be something other than the putative rights of the needy, and if, furthermore, we can affirm that these duties might be performed in behalf of the beneficiaries, apart from any necessary reference to their rights, then the doctrine of correlativity fails. But upon *what* grounds might the duties of charity be based, if not the rights-claims of the needy? The history of Western moral philosophy suggests a wealth of abstract principles upon which one might base an uncorrelated sense of duty.<sup>15</sup> Furthermore, common discourse provides numerous additional possibilities. Thus, one's sense of duty to perform charitable acts might, for instance, be based upon a moral principle or law, upon conscience, or upon an intuitive "sense of justice." And, even if one's benevolent act is performed in behalf of the needy, the moral imperative might, nonetheless, be intelligibly justifiable in terms other than those of the rights of the needy. If, within the range of acceptable usage, we can thus make sense of the assertion that "X has a moral duty to be charitable, but the recipient Y has no correlative right to the benefits resulting from the performance of this duty," we have devised an exception to the "doctrine of correlativity." Recall that we do not have to *agree* with the normative substance of the argument. We need not, for instance, be Stoics or Kantians. We need only acknowledge that, right or wrong, the assertion is intelligible. I contend that a duty of charity can, quite meaningfully, be said to be grounded upon some principle that does not logically entail the "rights of the needy."

The foregoing argument for the non-correlativity of the duty of charity will, I suggest, apply quite as well to the duties of supererogation, of need-fulfillment, and of self-fulfillment. In other words, each of these other duties can be substituted in the preceding paragraph for "duties of charity," without

diminishing the force of the argument. If this contention is correct, then these duties, too, are based not upon the rights of the beneficiaries, but upon independent and abstract moral principles and, furthermore, these duties may be justified without reference to such alleged rights. It appears, then, that despite my particular disputes with Feinberg's analyses of the correlativity of various duties and rights, I can, at length, concur with his observation that duty has "come to be used for any action understood to be *required*, whether by the rights of others, or by law, or by higher authority, or by conscience, or whatever" (1971, p. 244. Cf. p. 27, above).

How are these uncorrelated duties distinguishable from those that do entail rights? In addition to the qualification that these duties are based upon general moral principles, I perceive three important features. First, the uncorrelated duties are not based upon voluntary agreements and contracts with the benefitting parties (i.e., they are not "obligations"). Second, the benefits are not reciprocal; that is to say, while saintly and charitable acts may be good for the soul and the development of talents personally rewarding, these benefits to the agent are not received in exchange for benefits given to the recipients (i.e., the needy or the audience). (In the case of the talented performing artist, I am referring to his duty to develop his talents, not his duty to perform at a contracted time and place.) And finally, the beneficiaries of the duties are indefinite, being identifiable neither as individuals nor as members of well-defined, organized groups (e.g., as stockholders or dues-payers).<sup>16</sup>

It seems, then, that the closer we are to the "paradigm use" of "obligation," the stronger the entailment with rights. On the other hand, the closer we are to the "extended use" of "duty," the more plausible becomes the claim that there is no corresponding *right*. In these latter cases, the duties might well be based not on the rights-claims of the beneficiaries, but upon abstract moral principles. As we shall be in the following, concluding section of this chapter, this finding suggests important implications for the posterity problem.

## **11. Correlativity and the Question of Posterity's Rights**

In the next chapter we will examine several conceptual arguments concerning duties to, and rights of, posterity. At that time, many of the concepts developed and clarified in this chapter will be put to appropriate use. For the moment, the foregoing detailed analysis of the correlativity doctrine might help us to grasp the significance of the claim that posterity has, or does not have, *rights*, which is to say, moral claims upon predecessor generations.

In my analysis of correlativity, I concluded that there is strong conceptual indication that in moral discourse *rights* do, in fact, entail duties (in the "extended" sense); that if an individual has a moral right, it follows that other persons have duties to that individual. Further on, we found reason to doubt the converse doctrine: that moral duties always entail rights-claims. Furthermore, we found that those duties that were not correlated with rights were generally: (a) based upon independent and abstract moral principles, (b) not based upon contractual arrangements with the beneficiaries, (c) not characterized by reciprocal benefits to the duty bound, and (d) to the benefit of indefinite persons or classes of persons. Significantly, each of these conditions is clearly applicable to posterity.



What are the dividends, for the posterity question, of the analyses of this chapter? The dividends, I believe, are significant. Consider first, some implications of the findings that duties to indefinite and indeterminate individuals do not necessarily entail rights of these persons. As noted above, posterity is clearly a class of indefinite individuals whose rights might not necessarily be implied by the duties of its predecessors. Accordingly, it follows that if we wish to assert that our generation has duties to posterity, we are not also required to make clear conceptual sense of the assertion that posterity has rights-claims against us. By contraposition, if we assume that posterity cannot properly be said to have rights, it does not necessarily follow that we have no duties toward it.<sup>17</sup>

What are we to make of the finding that moral rights entail duties? In some instances, the rights of posterity might imply duties that fall directly upon us and our contemporaries. For example, if we are to presume that future generations have the right not to suffer from avoidable doses of harmful radioactivity or solar ultraviolet radiation, the *prima facie* duties falling upon the nuclear power industry and the manufacturers of aerosol propellants may be quite direct and unequivocal. Such strong implications as these, however, might be exceptional. In general, the rule that "rights entail duties," when applied to posterity, states only that so long as future generations contain beings due moral consideration (i.e., autonomous, responsible, sentient, and rational beings [Cf. p. 41, below]), these beings will have rights and will, accordingly, have rights-claims upon *someone*.

We should *not*, however, attempt to draw too much from this. This rights-claim of future persons could be directed entirely to their contemporaries (and surely they *will* be so directed to a large degree). However, some of these claims may also be directed to predecessor generations. Even so, this does not imply that *our* generation has duties to posterity since, after all, present persons are only a sub-class of the class of "predecessors." It is possible that we simply do not know, and are unable to determine, what course of action is in posterity's interest. Or, if we *are* able to make these determinations, we might be totally unable to do what is required of us and, thus, since "ought implies can," we might, thus, be absolved of our duties (Cf. §3). Even so, as our analysis of "manifesto rights" has suggested, if we do not know what to do, or are unable to do it, we may have a secondary duty to expand our knowledge and power, that is to say our sciences and technology, to the point that we might correctly formulate and effectively implement policies that might directly fulfill our duties to posterity (Cf. §41, below). If, on the other hand, we do have the knowledge and ability to make a difference, favorable or unfavorable, in the conditions of future human life, and if future generations can be said to have "rights" to these advantages, or to be spared these difficulties, then it follows that our generation has *prima facie* correlative duties to utilize this knowledge and power to posterity's advantage. In such cases, the question of the "rights of future generations" takes on considerable significance. Galen Pletcher (1973) offers a worthwhile amplification of this point:

Suppose that we are inclined to endorse the following as a right function:<sup>18</sup> Anyone has a right to clean air. We should say, I think, that the people on whom the obligations correspondent to this shall fall are all those people who are in a position at some time to deprive some person or set of persons of clean air. . . . As our understanding of the long range effects (spatial and temporal) of our actions increases, ignorance of the deleterious effects of

one's actions will no longer be an acceptable excuse for the morally irresponsible infringing of such "right-functions" as there may be. (pp. 5-6. See also §14, below)

After all, observes Robert Heilbroner, "it is one thing to appraise matters of life and death by the principles of rational self-interest and quite another *to take responsibility for our choice.*" He concludes that he "cannot imagine" certain doomsday forecasters "personally consigning humanity to oblivion with the same equanimity with which [they hypothetically] write off its demise" (1975, p. 15).

It may be objected that much of the foregoing discussion has assumed an Augustinian God's-eye view of generations, present and future, a perspective outside of time, treating all history in a timeless present. Can we do such a thing? Does it make sense to talk of the *rights* of generations that do not exist *now*, and thus cannot make claims upon the present generation *now*? These are subtle and difficult questions to which we will turn in the following chapter. The extensive discussion in this chapter of the logic and language of obligations, duties, rights, etc. will provide a useful assortment of conceptual tools with which to undertake this task.

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## NOTES

1. My partiality for more recent modes of philosophical analysis is reflected in my choice of terminology: e.g., "intelligible" for "meaningful," and "assertion" rather than "proposition."
2. Hart expresses the point well in his paper, "Legal and Moral Obligation": "The coercion characteristic of moral obligation takes the form not of the infliction of harm or the use of force but primarily of the exposure of the individual to reminders that he has failed to comply with rules regarded by the social group as a matter of serious importance and to demand that he should comply. The typical moral pressure takes the form of an appeal not to fear of harmful consequences or to futility of refusing to do what in the end one will be forced to do but to the delinquent's presumed respect for the rules he has broken. . . . What is most needed is a reminder of what the rules require and that the guilt or shame engendered by the contemplation of their breach will suffice or at least tend to inhibit future or continued failure to comply." (1958, pp. 102-103) 22
3. I have deleted the following item from Brandt's list: "The requirement must command roughly community-wide support, not merely that of some class or caste, as would be the case for certain 'codes of honor.'" This feature, I suggest, is quite out of place in that it makes morality contingent upon favorable public opinion. I will make no such concession to cultural relativism. Otherwise, I can accept the remaining four items of Brandt's list with little qualification.
4. A noteworthy case is the unpublished symposium, "Can Future Generations Correctly Be Said To Have Rights . . .?", which took place at the annual meeting of the Eastern Division of the American Philosophical Association, December, 1973. We will consider several arguments presented therein in Chapter III. be with moral rights.
5. In fact, Rawls applies these phrases to duties. Even so, the transposition to rights is quite appropriate.
6. For a thoughtful defense of "equal human worth" see Joel Feinberg's *Social Philosophy* (1973, pp. 93-94). Feinberg's strategy here is quite similar to that of Rawls.
7. Feinberg complains that most attempts to define "rights" in terms of "claims" are quickly bound into a tight verbal circle. My dictionary bears him out. In his paper, "The Nature and Value of Rights" (1971), Feinberg attempts to break this circle by treating "claiming" as a rule-governed activity, and by examining the functions of the verbal forms of "claim" (e.g., "making claim to . . ." "claiming that . . ." "having a claim . . ." (pp. 250-251)). His elegant analysis succeeds in elucidating many important aspects of the concept of rights, and it is with some regret that I must make do with this brief account. As we shall presently discover (§15), the close interconnection of the concepts of rights and claims will cause some difficulty when we analyze the intelligibility of the "rights" of (presently

non-actual) posterity – a class that may appear incapable of presenting claims against its predecessors.

8. Later, I shall point out that John Rawls urges, time and again, that having the "right" to just treatment is a fundamental basis for human dignity and self-respect. (See Rawls, §§18, 33, 40, 67, 77, 82, and 82.)
9. In the sentential calculus, the Law of Contraposition states:  $(p \rightarrow q) \equiv (\sim q \rightarrow \sim p)$ . The "correlativity propositions" (a, a', b, b') will not readily translate into strictly contrapositive formula pairs in the propositional calculus, largely due to problems of quantification. I will not attempt to introduce still more logical rigor, since such a move would be too costly in terms of ordinary conceptual content.
10. Once again, we see evidence of the virtual synonymy in some contexts of "obligation" and "duty." In his discussion of Correlativity, Brandt uses the word "obligation." However, Feinberg (1966) refers to what appears to be the same concept with the word "duty."
11. I am grateful to Dr. Bruce Landesman for reminding me of this objection.
12. I have excluded from this discussion the very difficult question of the duty to oneself, and the right to affect the course of one's life (most notably, the right to *take* one's own life). I have left out this dimension of the problem since (a) it would severely complicate the analysis, (b) it is clearly distinguishable from the issue of *social* rights, and (c) it is not immediately applicable to the posterity question. In addition, I seem to be committing myself to the view that animals and nature have no rights--a categorical restriction that I do not care to make. However, the "sociality condition" here will do for now, subject to some questions and qualifications that I will raise in §42.
13. Feinberg subsumes "obligations" under "duties." Brandt (1959), we will recall, chooses the opposite strategem. Several of the "duties" which both Feinberg and I believe to be correlated to rights, I would prefer to call "obligations." However, since it is the *uncorrelated* duties that concern us, this divergence of nomenclature need not detain us here.
14. Note the considerable divergence between Feinberg's account of the etymology of the word "duty," and that of Brandt, discussed earlier. (§6, above)
15. Among the most prominent accounts in Western philosophy of duties based upon general moral principles are those of the Stoics and of Immanuel Kant. Thus, in the *Meditations* of Marcus Aurelius, we find: "The true life [lies] . . . in doing that which is the quest of man's nature. How then shall a man do this? By having axioms as the source of his impulses and actions. What axioms? On the nature of Good and Evil, showing that nothing is for a man's good save what makes him just, temperate, manly, free. . . ." (Book VIII, 1)

In the *Metaphysics of Morals*, Kant writes: "Duty is the necessity of acting from respect for the law . . . . It is only what is connected with my will as a principle, by no means as an effect. . . . Now an action done from duty must wholly exclude the influence of inclination, and with it every object of the will, so that nothing remains which can determine the will except objectively the law, and subjectively pure respect for this practical law." (§I-16)

The concept of *duty* is fundamental to both Stoic and Kantian moral philosophy; yet, in both cases, the notion of *rights* is virtually absent.

16. There is one crucial exception to the rule that duties (in the "extended sense") based upon moral principles might be uncorrelated. In Rawls's system, the so-called "natural duties" are *necessarily* correlated with rights. However, this correlation follows from the normative precepts of his theory, and not from the neutral (meta-ethical) conceptions of duties and rights that we have generally been developing and discussing in this chapter. I will have more to say about this in Chapter V (§29).

17. The law of contraposition, we recall, states: (a)  $(p \rightarrow q) \equiv (\sim q \rightarrow \sim p)$

This is the logical form of the assertion that duties (p) entail rights (q). Negating both sides of the tautology: (b)  $\sim(p \rightarrow q) \equiv \sim(\sim q + \sim p)$ .

This is the logical form of our *denial* that duties entail rights. Applying this formula (b) to the case at hand, we get: if it is not the case that duties of the present entail rights of posterity, then it is not the case that, if posterity lacks rights, our generation has no duties towards it.

18. By "right function" Pletcher means a right in the abstract; i.e., with no identifiable individual right-holder in mind. (EP).