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# *Hobbes, Prudence, and Basic Rights*

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## I

The Right of Nature . . . is the Liberty each man hath, to use his own power, as he will himselfe, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing anything, which in his Judgement, and Reason, hee shall conceive to be the aptest means thereto.

Hobbes, *Leviathan*

Among classical liberal political philosophers with a commitment to basic human rights, Hobbes's position is probably the most anomalous and contentious. Admittedly, Hobbes affirms some of the customary tenets concerning these rights. For example, possessing a unique nature—being human—suffices for the ascription of basic rights to persons. Hobbes's "right of nature" belongs to persons independent of any specific (say contractual) relationships they may bear to others either within or without the confines (legal or otherwise) of a particular government or society.<sup>1</sup> Further, Hobbes's right of nature is an inalienable right in the sense in which no person can be obligated to act or be subjected to actions threatening his own well-being even if that person has agreed to social arrangements which might demand the contrary. And finally, these rights are of such high moral rank that their possession morally entitles persons to act contrary to at least some powers which governments routinely exercise. In fact, Hobbes's basic right of nature can be interpreted as establishing the limits of an individual's obligations to even a legitimately constituted authority. But this much is standard fare for most liberals, and Hobbes's position on basic rights is special because of commitments other than these.

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While the right of nature is a right to all and anything, men may (indeed, Hobbes believes it rationally prudent to do so) willfully choose to impose duties towards others upon themselves. But the point of a person's choosing to transfer or renounce aspects of the basic right to all and everything is always "some Good to himself," (Hobbes, 1968, 192) and *even if* one has contracted with others for a sovereign, it remains that ". . . there are some Rights, which no man can be understood by *any* words . . . to have abandoned or transferred . . . because he cannot be understood to ayme thereby, at any Good to himselfe." (Hobbes, 1968, 192)<sup>2</sup> No one is required to do that which is contrary to one's basic right of nature, then, even if obligations to others might entail doing so. Thus the right of nature is the *basic* moral right not simply because its possession is prior to any particular set of socioinstitutional relationships, though this is implied, but because on prudential moral criteria, the right of nature takes precedence over all other obligation-incurring relationships in which persons may find themselves.

On Hobbes's first moral precept, the "Fundamental Law of Nature," when one can not reasonably hope that peace between persons will be maintained, individuals ". . . may seek, and use, all helps, and advantages of Warre." (Hobbes, 1968, 190) And here Hobbes is *not* merely offering casual advice. He is affirming that persons are *morally* justified—they are properly exercising their right of nature—in refusing to make or adhere to contracts or remain in a unity with others whenever such activities would prove faulty on the (for Hobbes) moral criterion of rational prudence.<sup>3</sup>

Thus persons do not possess basic rights because or as a result of individual restraint exercised within a system of persons engaged in mutual restraint. Nor are any individual's basic rights constrained, ultimately, by such considerations. Even though adhering to self-imposed duties may constitute the necessary physical or material forbearances whereby the basic rights of all are exercised effectively, and even though a commodious civil society which rationally prudent persons ought to establish depends upon adherence to duties towards others; still, for Hobbes, duties towards others are neither the logical nor the moral consequences of basic rights.

Basic rights are profoundly individualistic on this account. They carve out a sphere of personal activities with respect to which any basic right-holder is morally justified in ignoring the claims, even the morally justified claims, of others. Basic rights delineate, without qualification, a morally shielded realm of personal security. The possession of one's basic rights does not necessarily correlate with either constraints on the part of the rights holder or obligations on anyone else's part because on some occasions such constraints or

forbearances may prove inconsistent with that morally shielded realm enjoyed by an individual right-holder. Thus, for example, given that preserving one's life is a basic right, even if the cost of exercising this right involved the torture and killing of others, there would be little question but that on the Hobbist account one is morally permitted to save oneself.<sup>4</sup>

When compared with alternative, contemporary conceptions of basic rights, Hobbes's view will be regarded as morally unacceptable. In fact, it is currently tempting to say that Hobbes's expression "right of nature" constitutes a misuse of the language of rights since, as some now maintain, basic rights, as a species of moral rights, imply moral justifications for restricting the activities of others. Such justified restrictions are, in turn, commonly believed to imply moral obligations, if not to actively contribute, at least to forbear when the basic rights of others are exercised.<sup>5</sup> Thus if persons possess at least some basic rights, whatever these may end up being, there must be others who endure some obligations or duties with respect to these rights. But if no one necessarily endures any sort of moral obligations whatsoever with respect to the exercise of those powers judged necessary for one's self-interest, as Hobbes apparently believes, there can be no reason for thinking the exercise of those powers qualifies as something to which there is a basic right. Hence it can be charged that Hobbes's view confuses powers persons are able and want to exercise in their own interest with powers persons are morally permitted, by virtue of possessing a basic right, to exercise to that as well as other ends. Hobbes's conception of basic rights thus seems hopelessly idiosyncratic and irretrievably at odds with the minimal moral work any adequate conception of basic rights can be correctly expected to accomplish. Hobbes's talk of a "right of nature," then, ends up being both conceptually incoherent and morally inadequate.<sup>6</sup>

But Hobbes's conception of basic rights can not be discarded so off-handedly. For remember that basic rights are possessed by persons prior to and independent of any willful transactions into which they might enter.<sup>7</sup> But if obligations and duties are incurred or acquired only as a result of consensual relationships between or among persons (as Hobbes believes [Hobbes, 1968, 268]), or because of the demands of some favored moral theory of basic rights, then the denial of an invariable correlativity of basic rights and duties or obligations cannot be rejected in the absence of a defense of a specific moral theory of basic rights showing that such rights always correlate with duties or obligations. What distinguishes Hobbes's conception of basic rights just is that while it holds such rights to exist "by nature", it denies that obligations and duties also exist

“by nature”. Thus it would seem that one cannot simply *say* that a conception of basic rights whereby such rights are not coeval with obligations or duties is both idiosyncratic and morally inadequate without begging the question against Hobbes. Such a contention ignores flagrantly Hobbes’s insight that whatever else might be said about obligations or duties, they do not come out of thin medieval air.

## II

The importance of reconsidering Hobbes’s conception of basic rights resides in acknowledging the challenge it poses for certain allegedly non-controversial, pretheoretical commitments regarding the nature of these rights. Of particular importance here are two traditional, yet different, commitments regarding the correlativity of basic rights and duties. The first of these commitments—the doctrine of logical correlativity—affirms that basic rights have the logical structure of legal claim-rights.<sup>8</sup> On this view, to possess a basic right *means* that others possess duties or obligations with respect to that right. Hence, “Right and duty are different names for the same normative relation, according to the point of view from which it is regarded.” (Benn and Peters, 1959, 89) If the doctrine of logical correlativity applies to basic rights, the substantive moral adequacy of Hobbes’s position is unimportant; the position is morally unacceptable quite simply because it is logically incoherent. Thus if this doctrine of correlativity is true, no moral argument need even be raised to reject Hobbes’s position.

The second commitment is the doctrine of moral correlativity. This widely maintained position affirms that basic rights, as a species of moral rights, constitute sufficient moral (though not necessarily logical) grounds for duties and obligations.<sup>9</sup> Thus while the relationship between basic rights and duties may not be a logical relationship, basic rights are morally sufficient grounds for duties or obligations. As a moral matter of fact, when a person possesses a basic right, some other, if not all other, persons have duties or obligations with respect to that right. On the doctrine of moral correlativity, then, the possession of a basic right by some person constitutes sufficient moral grounds for restricting the activities of others such that those knowingly and willfully acting contrary to these restrictions act immorally for a specifiable moral reason. If the moral doctrine of correlativity is true, then Hobbes’s position on correlativity is to be rejected on substantive moral grounds.

The relevant question here is whether either doctrine of correlativity can be sustained in the face of Hobbes’s challenge. Sections A and B below deal with this question as it applies to each doctrine, respectively.

A. Applied to basic rights, the doctrine of logical correlativity holds that all propositions ascribing a specific basic right, *br*, to a particular person, *P*, are equivalent to propositions ascribing a specific duty, *d*, to other particular persons, *Q*. . . *Z*, such that for all *br*'s and all *d*'s, *br* correlates with *d*. Thus propositions of the form "P possesses *br*." are logically equivalent to propositions of the form "Q. . . *Z* each possess (respective or shared) *D*'s (*d*<sub>1</sub>. . . *d*<sub>*n*</sub>) with respect to (*P*'s) *br*." One cannot affirm or deny instances of the former form of proposition without simultaneously affirming or denying, respectively, instances of the latter form.

Persons may find the doctrine of logical correlativity compelling because on many occasions what might and can be meant by claiming that a particular person has a basic right is that other particular persons have corresponding duties and vice versa. Persons do use such propositions more or less interchangeably in those contexts where, for purposes of relevance or emphasis, it would make sense to do so. For example, one might say, "Susan and Sally have a duty (or duties) to forbear when John exercises his basic right of self-defense.", under circumstances where the forbearances of these women and no other person are required for the exercise of John's right. And the above proposition appears interchangeable with the proposition, "John has the basic right of self-defense.", when assuming a context of utterance where the forbearances of only these specific women are required by the exercise of John's right. But that this is a misleading appearance and that the propositions are not logically interchangeable is evidenced by the fact that one can ask why Susan and Sally have duties correlative to John's right and *not* mean, "Why Susan and Sally and not others as well?" Here the "why" inquiry can be a request for moral information (as opposed to a request for information regarding the context of utterance) which will not be satisfied by a mere enumeration of all persons, in all possible contexts, who have duties to forbear when and if John exercises his right. That one can meaningfully ask for a moral reason as to why the logically possible proposition containing such an enumeration of persons, circumstances and duties is implied by "John has the basic right of self-defense." undercuts the logical doctrine of correlativity.

Persons may have duties to act or forbear with respect to what is necessary for the exercise of another's basic right for reasons other than the fact of the latter person's having this right. And probably no reason other than that duties and obligations may have a variety of foundations is needed to deny the doctrine of logical correlativity. (Frankena, 1955, sect. 1) Notice the doctrine is not false because a person may have a duty to forbear for moral reasons in addition

to the purported logical fact that such a duty always correlates with another's basic right. Rather, the point is that in the absence of moral information regarding the duty in question, one cannot tell whether the relevant rights-propositions and duties-propositions are equivalent because one cannot tell whether or not the duty in question is morally grounded in some particular right. Again, that this kind of information can be meaningfully requested suffices to reject the doctrine of logical correlativity.

Hobbes makes no logical or conceptual error, then, in claiming that basic rights are rights absent correlative duties to others. And given that the relationship between basic rights and duties is not that of a logical correlation, the question of correlativity *per se* is thrown open to moral dispute. Thus if Hobbes is wrong, it is because, and *this* is what needs to be argued, his moral theory of basic rights is inadequate.<sup>10</sup>

B. As with the doctrine of logical correlativity, the doctrine of moral correlativity cannot be asserted without defense. For as has been correctly argued, the truth of claims such as "P has a right against Q," does not explain or justify claims such as "Q has a duty to P." (Montague, 1980)<sup>11</sup> The mere acknowledgment that John has a basic right to defend himself against an unwarranted attack does not explain or justify why Susan or some other person has a duty (here, to forbear) when John exercises that right. If the doctrine of moral correlativity need be heeded, and Hobbes's position rejected, there must be moral reasons showing the moral doctrine to be true.

Now it is open to Hobbes, in maintaining a consistent commitment to the view that morally correct behavior is nothing more than rationally prudent behavior, to affirm that basic rights *might* correlate with obligations or duties on the part of others.<sup>12</sup> Individuals' interests can synchronize in a way such that certain acts which one person has a basic right to perform will, if allowed to be performed by another whose forbearance is necessary for the act's success, serve the interests of both relevant parties. Thus while no one possesses a moral obligation with respect to another's basic right in the absence of his (the former's) interests being served, the exercise of basic rights *might*, in fact, imply an obligation to restrict one's activities in deference to the basic rights of another when it so happens that in restricting one's own activities because of the exercise of another's basic right, one's self-interest is served. But this means that only on the contingency that the forbearances and compliances necessary for the effective exercise of someone's basic rights serve the interests of all parties affected would a particular person's basic right correlate with duties or obligations on the part of all those persons

involved. And given that only under such circumstances would basic rights correlate with duties or obligations, basic rights cannot be sufficient moral conditions for duties and obligations. If the correlation of rights and duties is a matter of luck, the doctrine of moral correlativity, applied universally, is false.<sup>13</sup> And while the heart of Hobbes's political philosophy consists in encouraging agreements where mutual good fortune is likely to result, obligations will correlate with basic rights only when an individual's interests are likely to be served and *not* as a strict moral implication of the possession of basic rights.

One might respond that if denying that basic rights are morally correlative with obligations or duties entails appeals to utterly implausible prudential moral theories, then the commitment to the doctrine of moral correlativity of basic rights and duties remains, for any and all important purposes, unscathed. One need not, the argument might go, hedge or modify one's intuitions on the nature of basic rights because such commitments are inconsistent with a false ethical theory. But this maneuver fails or, more accurately, it fails if intended as a defense of the doctrine of the moral correlativity of basic rights and duties. For in the absence of moral reasons showing the contrary, simply affirming the doctrine of moral correlativity begs the question against Hobbes's position.

But even if this retort is found unconvincing, Hobbes can still be defended by showing that the doctrine of moral correlativity is true only when qualified in a way which makes it irrelevant to basic rights. The strategy here involves calling into question the common, yet oftentimes unexamined commitment that the nature or structure of basic rights can be assumed, pretheoretically, to conform to the structure of claim-rights. For while the doctrine of moral correlativity may be admitted as a plausible hypothesis when applied to claim-rights, it is significantly less plausible when applied to rights of other sorts. And critically here, there are good reasons for believing that Hobbes conceived of basic rights as structurally different from claim-rights.<sup>14</sup>

Hobbes uses "right," when referring to *a* right, in two senses. First, possessing a right indicates a moral entitlement to something, in which case "right" is a kind of moral shorthand for the legitimate moral expectations of a person, P, with respect to a specific thing, x, *given* another person's duties to P regarding x. (Warrender, 1957, 18-9)<sup>15</sup> On this sense, rights are claim-rights, and the doctrine of moral correlativity is apparently affirmed. However, in the second and theoretically central sense, Hobbes uses "right" to ". . . [specify] . . . something that the individual cannot be obliged to renounce." (Warrender, 1957, 19) In this latter sense, a person's having a right

amounts to the morally justified liberty of doing whatever that person chooses so long as that same person bears neither duties nor obligations to the contrary. Hobbes's "right of nature" is a right in this latter sense. (Warrender, 1957, 20) Thus, to invoke one's right of nature is *not* to call upon another to do his duty to you. P's right of nature expressed with respect to some activity, *aing*, or thing, *x*, then, implies that P is not obligated—that *P* has no duty—to refrain from *aing* or to give-up *x*; but still, no other person bears any duty correlative to P regarding either *aing* or *x*. Hence it is consistent with Hobbes's position on basic rights that P has the right to life which another person, Q, may have the duty to disregard (and, for example, kill P) and there would be neither a logical nor a moral conflict between P's right and Q's duty.

On this reading of Hobbes, basic rights are to be identified as freedoms from obligations, where "freedom from" functions as a morally exempting condition. Thus, since for Hobbes persons can never be obligated to do that which, in their judgment, endangers the preservation of their own lives, when P invokes his basic right and refuses to do or permit something clearly jeopardizing his life, this refusal is exempted from moral reprobation even if P has incurred a duty to others to obey a legitimate authority who may (rightfully) order P to endanger his own life. Accordingly, the general structure of claims involving a right in this second sense is as follows:

- (1) For all normal persons, absent any duties someone, P, knowingly and willfully incurs, P is morally permitted to do or acquire anything.

But when this idea of a right is applied to a basic right, its structure changes radically to:

- (2) For all normal persons, someone, P, is morally permitted to do or acquire anything which P cannot be obligated to renounce, even if, in so doing or acquiring, P acts contrary to duties knowingly and willfully incurred.

While the structure of Hobbes's right of nature is similar to that of a Hohfeldian liberty; that is, (2) is similar to (1), there is a critical difference. One possesses a Hohfeldian liberty [or a right as captured by (1)] to do or have something in the absence of some rule, the application of which proscribes the relevant doing or having. (Hohfeld, 1919, 38-49) Thus, for all normal persons, absent any obligations to the contrary, a person, P, is permitted to do or acquire anything. For example, in the absence of laws prohibiting duels to the death, one has the "liberty-right" to participate in a

duel to the death. However, liberty-rights presuppose constraints quite different from rights such as Hobbes's right of nature. For liberty-rights occur only within the confines of a system of rules of differing orders and as such there can never be liberty-rights contrary to some of those rules. Liberty-rights—liberties—are, in a critical sense, second order rights. Their existence and rightful exercise depend on rules providing persons those protections adequate for the enjoyment of liberty-rights. Persons have liberty-rights, then, only given a system of rules including primary or first order rules which assure some measures of security and safety to individuals.<sup>16</sup> But Hobbes's right of nature is not constrained by such considerations since it can be invoked to override *any* obligation to the contrary.

Hobbes's full conception of a basic right cannot be captured by (1), then, because on Hobbes's view, a basic right enjoys moral power sufficient to override all duties one may have incurred or be subject to and thus any rights others may enjoy. The degree of moral power Hobbes allocates to basic rights is appreciated only by appeal to (2) where it becomes clear both that such a right is indeed a moral entity utterly independent of any interpersonal relationships or any system of rules, legal or otherwise, and that basic rights morally supervene such relationships and rules. A right of nature is a right "each man hath" and which each man can exercise absolutely irrespective of other human beings or human institutions.<sup>17</sup>

Perhaps nowhere is Hobbes's individualism more manifest than here. Persons are conceived as dwelling within a morally impregnable bubble, the size of which can be, *by right*, determined, ultimately, only on the self-interested judgments of the person who dwells within. Persons can (in fact, Hobbes thought should) lay down rights—shrink their bubbles—so as to insure security and peace; but no one can be obligated to renounce the right of controlling the size of his bubble should things go awry. And, of course, no one can be obligated to burst their own bubble or to abandon their bubble-enveloped selves to others, as would occur with imprisonment.<sup>18</sup>

Returning to the doctrine of the moral correlativity of rights and duties, it now seems open to Hobbes to accept the doctrine, both formally and materially, so long as it is qualified and applied only to rights with the structure of claim-rights; that is, those rights and duties provided for by Hobbes in his Third Law of Nature. (Hobbes, 1968, 201-2) Thus in the absence of an argument showing that all *bona fide* rights (particularly basic rights) must have the structure of claim rights, the limited range of the doctrine of moral correlativity makes the truth of the doctrine irrelevant as a criticism of Hobbes's view on basic rights.

## III

If ascribing basic rights to persons serves any moral purpose at all, it is because claims based on these rights can function as reasons relevant to moral evaluations of persons' behavior. The essentially egoistic foundations of Hobbes's right of nature permit only prudential reasons to serve in those moral evaluations (whether positive or negative) resulting from appeals to basic rights. Yet without understanding the precise way in which the self-interest of different individuals are factored into prudential judgments, it is by no means clear how Hobbes can ascribe basic rights to "each man." If, for example, the only person whose self-interest is morally relevant in moral evaluations is oneself, i.e., if Hobbes's moral view is, in fact, personal egoism, then Hobbes's *unqualified* ascription of basic rights to each and every man makes little sense.<sup>19</sup> If basic rights can serve as moral grounds for one's being morally justified in acting (or abstaining from action), then, on personal egoism, persons other than oneself would have basic rights only on the condition that one's own self-interest is served thereby. But since Hobbes ascribes basic rights to each man without the qualification that such a condition must be fulfilled, his position is inconsistent with a personal egoist interpretation of rational prudence.

Two points are important here. First, the above remarks hold true even with respect to the consistently insecure condition of the state of nature. For while Hobbes plainly states that persons can have moral obligations in that quasi-imaginary condition, he does *not* claim that persons other than oneself have obligations only because one's own interests will be served as a consequence.<sup>20</sup> In the state of nature, persons are not obligated, as they are in civil society, to adhere *as a general rule* to obligations to others—the unpredictability of behavior and the instability of life in the state of nature render general rules imprudent. But this does not mean that obligations are morally meaningless in the state of nature or that Hobbes denies the existence of obligations which are irrelevant to one's own interests. Thus claiming that Hobbes's position on basic rights is inconsistent with personal egoism causes no logical difficulties for Hobbes's overall views on moral obligation.

Second, the person-relative character of moral justification under personal egoism does permit each and every person, *respectively*, to lay claim to basic rights for themselves. And, as was noted in IIB above, persons other than oneself can have *some* rights when and if this results in the promotion of one's own self-interest. But on this view persons other than oneself cannot, consistently, have *basic* rights because such rights, *ex hypothesi*, can be exercised by another even when such an exercise is inconsistent with one's own self-

interest. Thus if Hobbes is to identify morality with prudence *and* maintain the position that basic rights are to be ascribed to all persons, his moral commitment to rational prudence must treat individuals' interests in a way other than does personal egoism.

Prudential moral theories can factor the self-interest of different individuals into moral evaluations without resorting to personal egoism. Impersonal egoism, for example, does not require that all moral evaluations be made solely by appeal to the self-interest of one and only one specific individual; i.e., oneself.<sup>21</sup> Here the moral rightness or wrongness of an act, *x*, can be determined by appeal to whether *x* is in one's self-interest only when determining when *x* is right, as it were, for oneself. But when determining whether *x* is right or wrong for others, *Q* . . . *Z*, it is the self-interest of *Q* . . . *Z*, respectively, which makes *x* right or wrong for *Q* . . . *Z*, respectively. On this view, persons other than oneself can lay claim to rights even though one's own interests may not be furthered thereby and, consistent with Hobbes's position, one need have no duty correlative with such rights.<sup>22</sup> Perhaps, then, Hobbes can explain how all men have basic rights and still identify morality with rationally prudent behavior, just so long as this kind of rationally prudent behavior entails impersonal egoism.

However, if impersonal egoism is true, a set of compossible rights; i.e., a set of basic rights each member of which can be consistently ascribed to *all* persons, could be comprised of only those rights which, while in the self-interest of all respective individuals to possess, are not, when exercised, contrary to what is necessary or required for the self-interest of any particular individual. For if this were false and rights with respect to certain activities and things were claimed and exercised by some persons with the direct result being contrary to what is required for the self-interest of another or others, then only the former persons could have these particular rights and thus these particular rights could not be members of a set of basic rights mutually held by all. With respect to a set of basic rights granted to all persons, then, rational prudence would disallow membership in this set to any putative basic right the exercise of which would be contrary to what is required for the self-interest of some particular individual. Thus again, the only basic rights persons mutually possess—the only set that can be ascribed to “each man”—are those to whatever is required for the self-interest of each person given that the exercise of these rights by any individual is not contrary to what is required for the self-interest of another.

While this allows that rational prudence is logically compatible with persons having some rights, the inventory of the rights which

could serve as rights held by all persons would be so paltry and their exercise so constrained that they could never qualify as Hobbesian basic rights. For remember, Hobbes's basic rights can, when circumstances demand, be exercised with respect to all and everything, even if such exercises of these rights are inconsistent with what is required for the self-interest of others. Thus the extent of activities and things over which these rights might well range makes it impossible that basic rights could be limited to the rights permitted by rational prudence.

Only a personal egoist interpretation of rational prudence provides basic rights sufficiently numerous and sufficiently powerful to suit Hobbes's purposes. But since this interpretation is incompatible with ascribing basic rights of this quantity and power to all persons, only an impersonal egoist interpretation remains as a possible foundation for a set of mutually possessed basic rights. But a rational prudence which factors an individual's self-interest into moral evaluations as required by impersonal egoism is incapable of generating basic rights of the number and strength Hobbes requires. Therefore, in the absence of but another way of understanding rational prudence, Hobbes's moral commitments are inconsistent with his commitment to basic rights.

#### IV

Hobbes's failure to establish a system of morally powerful, mutually held basic rights on grounds of rational prudence is instructive. For, as will be argued below, an examination of why this failure occurs reveals information relevant to identifying two indispensable constraints for any acceptable theory of basic rights. The first of these constraints pertains to the moral context presupposed by coherent rights claims; the second, to the nature and degree of correlativity of rights and duties appropriate to a system of basic rights.

Recall that interpretation of the ethics of rational prudence differ depending on how they factor the self-interest of different individuals into moral evaluations of various actions and practices. But such interpretations share the constraint common to all prudential moral theories, viz., that ultimately all moral evaluations are person-relative. Thus while a person, P, might agree that the self-interest of another, Q, can determine whether a moral evaluation is positive or negative, this is theoretically permissible only when P's self-interest is essentially unaffected by the self-interest of Q, or where the moral evaluation in question is a moral evaluation only *for* Q; i.e., only Q is morally bound by this evaluation. For if this were not the case and the self-interest of persons other than oneself could determine what is morally right or wrong without the possibility of one's self-interest

overriding such considerations, then the moral theory presupposed could not, strictly speaking, be a prudential moral theory.

When applied to prudential considerations of moral rights, basic or otherwise, a person's moral compliance is demanded by the rights of others—that is, the rights of another can be factored into person-relative evaluations—only when such compliance is required for one's self-interest. It is not surprising, then, that when impersonal egoist interpretations of rational prudence allow rights to be ascribed to persons other than oneself, these rights are restricted to only those liberties regarding activities and things about which one need (on the sole criterion of one's self-interest) have no moral concern whatsoever. But it is here that rational prudence exhibits the theoretical incapacity which renders it incapable of serving as an ethical theory upon which any significant moral rights claims can be based. That theoretical incapacity consists in the inability to identify precisely the sorts of interpersonal moral conflicts arising from both actual and potential conflicts of different persons' self-interests as providing the context in which moral claims need be distinguished as the *rights* claims of particular individuals.

This point is elucidated by recalling that since, on prudential grounds, all rights claims are self-interested claims which play a role in moral evaluation only for respective individuals given their respective self-interest, one has a moral reason to comply with the moral claims of others only if such claims are required for or consistent with one's self-interest. But then notice that no moral point is served, on prudential criteria, in treating these moral claims as *rights* claims of others since, *ex hypothesi*, one already has moral claim to whatever is in one's self-interest. That is to say, for all persons, if it is in one person, P's, self-interest to do or have something, then P is morally justified (P has a "right") to bring about that state of affairs *whether or not* Q has a justified moral claim (Q has a "right") with respect to that state of affairs. But since this applies to Q as well as to P, it is quite irrelevant to P's or Q's (or anyone's) being morally justified in doing or having something that anyone has a "right" with respect to that doing or having. Thus given the person-relative, self-interested character of morally justified claims generally, the "rights" claims acknowledged degenerate into morally indistinguishable claims of persons' respective self-interest. This being true, there is neither sense nor purpose in isolating some moral claims (no matter what person makes these claims) and giving them the special status of rights claims. And it is important to notice that this applies to one's own "rights" as well as to those of others. So there is no moral point served in the ascription of moral rights to anyone, including oneself.

On this argument, appeals to Hobbesian basic rights, conceived as moral entities of unequalled moral power, are morally pointless in resolving questions arising in those contexts in which rights claims are meaningfully pressed; that is, appeals to rights are morally pointless in resolving questions of which particular person's self-interest is to prevail where the interests of different individuals conflict. On the Hobbesian view, the very fact that one has a basic right to do or have something constitutes sufficient moral justification for one's doing or having that something. Hence there is neither ambiguity nor conflict as to what one is morally permitted to do or have even if other persons have "rights" the exercise of which are inconsistent with one's self-interest. But then any person's having basic rights suffices, morally, to deny that a moral conflict which can be resolved by appeals to such rights exists. Paradoxically enough, at precisely those moments when it would make sense for a person possessing a basic right to press that right, there is no moral point served in his or her doing so.

If appeals to basic rights are to serve a meaningful moral purpose, then, as the discussion above suggests, such appeals must have interpersonal moral significance. However, as the failure of a prudential theory of basic rights shows, this interpersonal moral significance cannot be coherently limited to only those contexts where the self-interests of persons do not conflict. Nor can the basic rights of individuals coherently serve as moral reasons for acting or abstaining from action on a person-relative model of moral justification. Thus it becomes reasonable to hypothesize the following constraints on any acceptable moral theory of basic rights:

- (1) Any theory of basic rights must acknowledge that certain interpersonal conflicts of interests are moral conflicts which can be adequately resolved only by objective moral criteria other than self-interest.

This constraint is intentionally vague on two points. It does not specify which conflicts of interpersonal interests are those with respect to which basic rights claims are relevant. Nor does it specify the specific sorts of moral criteria which best serve to resolve such conflicts. A constraint on a theory of basic rights cannot answer these substantive moral questions, but a theory of basic rights must do so.

- (2) A theory of basic rights must provide moral grounds adequate to establish *prima facie* obligations of persons to accede to the rights claims of others.

This constraint can be termed the doctrine of the minimal moral correlativity of basic rights and duties. While it does not imply logically that for every basic right a person possesses all other per-

sons endure a specific or shared duty or obligation to that specific right, constraint (2) acknowledges that basic rights enjoy sufficient moral power to serve as moral reasons for persons to tailor their activities in deference to the basic rights of others. Here too there is intentional vagueness both as to the extent to which persons must accede to the basic rights of others and as to whether all persons are equally obligated to the same degree of accedence or compliance with these rights. But again, these substantive questions are answerable only by a complete, acceptable theory of basic rights, a theory which, as we now see, Hobbes could not offer.

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## NOTES

<sup>1</sup>Hobbes states that "Right, consisteth in liberty to do, or to forbear." (Hobbes, 1968, 189) While Hobbes speaks of a single "right of nature," he allows that this right can be exercised in a variety of distinguishable ways. Thus it is consistent with Hobbes's view to

say that reference to this single right is elliptical for reference to a set of basic, natural rights.

Several persons read earlier versions of this paper and offered criticisms which, no doubt, were more powerful than I realized. I am particularly grateful to Richard K. Matthews and Jeffrie G. Murphy for extensive comments and suggestions.

<sup>2</sup>Emphasis added. Hobbes consistently affirms this prudential foundation for the inalienability of the basic right of nature. "For the right men have by Nature to protect themselves, when none else can protect them, can by no contract be relinquished." (Hobbes, 1968, 272)

Whether Hobbes's moral commitments, especially his account of obligation, are those of rational prudence has been a matter of continuing controversy in Hobbes scholarship. A. E. Taylor (Taylor, 1938) denies this view, but see Stuart M. Brown, Jr. (Brown, 1959) and Thomas Nagel (Nagel, 1959). David P. Gauthier's argument that for Hobbes morality *is* prudence (Gauthier, 1969, Chapter II) is, I believe, decisive on this issue. As readers familiar with his book will be aware, Gauthier's influence on various arguments of this paper is significant.

<sup>3</sup>Following David Gauthier (Gauthier, 1979, 550), Daniel Farrell claims that for Hobbes persons do not "... have any moral rights in the state of nature, since he holds that in the state of nature there is no right and wrong." (Farrell, 1984, 313, fn. 3) For various reasons, I believe Gauthier and Farrell are wrong to read Hobbes as denying that the right of nature is a moral right. First, I believe the most reasonable way to interpret Hobbes's first and second laws of nature is as providing that *if* men cannot accept and abide by general rules affording mutually self-interested results, then each individual is *morally* permitted (because morality is, in the last analysis, a matter of prudence and self-interest) to exercise his right to all and everything. And this is not, as Gauthier and Farrell claim, because where there is no right or wrong (i.e., in the state of nature) there is no wrong and thus all is permissible, though not necessarily morally right. For even though Hobbes denies that talk of justice and injustice are applicable to the state of nature (Hobbes, 1968, 202), he never, to my knowledge, states the same of morally correct as opposed to incorrect behavior. Nor does Hobbes limit exercise of the right of nature to the state of nature.

Second, Gauthier argues that "... the right of nature is not in itself a moral conception" because in the natural condition, the right of nature can permit and justify any and all behavior "... in the absence of all obligation or duty." (Gauthier, 1979, 550) Because such a permission fully justifies ignoring duties and obligations towards others and thus undermines "all moral constraint," Gauthier denies the moral status of the right of nature. But this argument assumes the truth of what should be at issue (and is at issue in this paper), namely whether or not Hobbes held that the modern conception of morality where rights correlate with duties (and which Hobbes affirms *is* the appropriate conception of morality *in* civil society) is the *only* coherent conception of morality. The error in Gauthier's view, then, resides in reading back into Hobbes the modern view that the only coherent conception of morality and rights is the full modern conception.

<sup>4</sup>Hobbes claims that in the natural, pre-political condition of man, "... every man has a Right to every thing; even to one another's body." (Hobbes, 1968, 190)

<sup>5</sup>There is substantial contemporary agreement that most moral rights correlate with obligations, if not to comply, at least to forbear. Thus H.L.A. Hart (Hart, 1979, 20-23) affirms rights/obligation correlativity with respect to both "Special" and "General" rights. Joel Feinberg enumerates the kinds of cases where rights/obligation correlativity occurs. (Feinberg, 1966)

<sup>6</sup>This could easily be seen as an implication of subjecting Hobbes's "right of nature" to some contemporary analysis of rights. For example, it is, perhaps, the heart of Feinberg's "claim" analysis of rights that if rights are a kind of claim, the expression of which is intelligible only if responded to with some measure of respect, then something which fails to engender at least some moral (or legal) response on the part of others can not qualify as a rights claim at all. (Feinberg, 1970, sect. 2)

<sup>7</sup>While I use the expression "basic rights" throughout, primarily to emphasize that such rights have a basic moral standing, the phrase "human rights" is often used synonymously with "basic rights." See Richard Wasserstrom's general characterization of basic or human rights. (Wasserstrom, 1973, 49-50)

<sup>8</sup>It is, of course, Hohfeld's discussion of those legal rights correlative with duties which gives rise to the expression "claim-right." (Hohfeld, 1919, 36-38) That rights and duties can be logically correlated is noted by Feinberg (Feinberg, 1973, 58, 62; Feinberg, 1970, 249-50). I do not want to suggest here that Feinberg holds that basic or human rights logically correlate with duties.

<sup>9</sup>The moral correlativity of basic rights and duties has been argued to be significantly more complex than traditionally maintained. See Henry Shue. (Shue, 1980, 51-64)

<sup>10</sup>Cf. Gauthier's (Gauthier, 1969, 28-35) important discussion of the difference in Hobbes between "formal" and "material" definitions of moral concepts and the relevance of this distinction to Hobbes's formal definition of the right of nature.

<sup>11</sup>A similar point is made by Alan Gewirth. (Gewirth, 1971)

<sup>12</sup>More will be said about whether and just how this position can be sustained by differing egoistic interpretations of rational prudence in section III, below.

<sup>13</sup>David Lyons (Lyons, 1970, 46-7) has called into question the view that certain "active rights" (which are, I believe, often seen as instantiations of basic rights) correlate morally with duties or obligations.

<sup>14</sup>See Panichas, 1985, for an account of basic rights which offers a defense of the view that basic rights are structurally different from claim rights.

<sup>15</sup>What follows is influenced by Warrender's insightful commentary on Hobbes's views on rights, duties and obligations. A similar, but brief set of comments can be found in D. D. Raphael. (Raphael, 1977, 52-3)

<sup>16</sup>Relevant here is Hart, 1961, Chapters V and IX.

<sup>17</sup>Thus Raphael's argument that Hobbes's right of nature is a "right to do" in the sense of a freedom to act however one pleases so long as there are no duties or obligations to refrain from such an act is mistaken. (Raphael, 1977, 52-3) For while this reading squares with Hobbes's commitment that the right of nature implies no obligations on the part of others (obligations being incurred by persons ". . . from some Act of his own. . ." [Hobbes, 1968, 268]), it is incompatible with Hobbes's commitment that the right of nature is *the* basic right in the sense in which it has moral precedence over obligations willfully incurred. Because Hobbes's right of nature can take moral precedence over all obligations and duties, this right cannot be *the* basic right and still be a mere liberty.

<sup>18</sup>While Hobbes claims the Sovereign has the right to inflict capital punishment on persons (Hobbes, 1968, 235), he denies that individuals, even when guilty, are obligated to incriminate themselves or submit to such punishment. (Hobbes, 1968, 269-70)

<sup>19</sup>Eric Mack (Mack, 1973, 8) characterizes personal egoism, when applied to all persons, as follows:

For any x and any y, if x and y are persons. . . , then

- (a) If x is judging about himself, then x is to use this criterion: x ought to do s if s is in x's overall self-interest; and
- (b) If x is a spectator judging about someone else, y, then x is to use this criterion; y ought to do s if s is in x's overall self-interest.

<sup>20</sup>Cf. Farrell. (Farrell, 1984, 303-5) It is surprising that Farrell agrees with Gauthier (see note 3, above) regarding the alleged lack of moral right and wrong in the state of nature. For if morality is identified with rational prudence and issues of whether or not certain kinds of conduct (e.g., adhering to contracts) are prudential do arise in the state of nature (Farrell draws attention to passages in which Hobbes admits there to be binding contracts and obligations in the state of nature) it would follow that there is morally right as opposed to morally wrong behavior in the state of nature.

<sup>21</sup>Cf. William Baumer. (Baumer, 1967) But Mack's characterization of impersonal egoism, in contrast with personal egoism, is most useful. (Mack, 1973, 8-9)

<sup>22</sup>However, one could have an obligation to forbear or comply with the rights of another if it were rationally prudent for one to do so; but in the absence of this, nothing *requires* the obligation. It is important to notice here that although one's self-interest is not *furthered* by the rights of others, this is not inconsistent, on an impersonal egoist's account, with one's ascribing rights to others. But others cannot have rights ascribed to them by oneself if it is inconsistent with one's self-interest to do so.