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Source: *Law and Philosophy*, Dec., 1985, Vol. 4, No. 3 (Dec., 1985), pp. 343-375

Published by: Springer

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GEORGE E. PANICHAS

THE STRUCTURE OF BASIC HUMAN RIGHTS

ABSTRACT. This paper offers a theory of the structure of basic human rights which is both compatible with and clarificatory of the traditional conception of such rights. A central contention of the theory is that basic rights are structurally different from other kinds of moral rights, such as "special rights," because of differences both in the way in which basic rights have content and the model on which basic rights are correlative with duties. This contention is exploited to develop and defend the central thesis of the theory, namely that basic human rights are bundles of mutually held "active" rights enjoyed by persons in virtue of the specifiable moral relationships they bear to each other.

1.

Certainly since Locke and probably since William of Ockham, basic rights have been understood in terms of propositions prescribing correct conduct.[1] These propositions, when woven together, yield the classic conception of basic rights, a conception whose various aspects have become fairly familiar. Traditionally, basic rights are ascribed to persons, usually rational, adult human beings, because they possess some morally significant trait *other* than having entered willfully into a specifiable, rule-governed relationship. Basic rights, then, do not presuppose the existence of specific promises or contracts, nor do they depend, logically, on membership in a civil society. In fact, basic rights are often held to be presocietal or, perhaps more accurately, *a*societal, *not*

[1] Cf. Martin P. Golding, 'The Concept of Rights: A Historical Sketch,' ***Bioethics and Human Rights***, ed. Elsie L. Bandman and Bertram Bandman (Boston: Little, Brown and Co., 1978), pp. 46–49. Time necessary for the preparation of this paper was made possible by a grant from the Committee for Advanced Study and Research of Lafayette College. I am grateful for this support.

Law and Philosophy 4 (1985) 343–375. 0167–5249/85.10.
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because persons have basic rights in a condition temporally prior to the existence of any form of social life, but because society, even civil society, is not the source, though it may be the guarantor, of basic rights. In addition, since whatever significant trait is necessary for the ascription of basic rights is assumed to be possessed by virtually all ordinary adult human beings, basic rights are usually ascribed to all persons. Basic rights are thereby the equal rights of humankind because, in part, human beings share the relevant, morally significant traits.

Further, and related, basic rights, often derived by appeals to various moral theories, are understood to have quite specific moral consequences. At minimum, their possession implies being morally permitted to act in certain ways or to receive certain benefits or advantages. At maximum, their possession implies being morally justified in actively obtaining such benefits and advantages.[2] That basic human rights have an irrevocable connection to morality also contributes to the notion that they are asocietal, for the demands of morality do not depend in any way on the existence of any specific form of society, even though morality may demand that society, especially civil society, be of a certain form. And this supports the idea that basic rights entail basic duties. For if having a basic right implies, at least, being morally permitted to act in a certain way or to acquire some benefit or advantage, it also implies that others are either not morally allowed to interfere, in which case they have the negative duty of forbearance, or that they must accede to the exercise of basic rights, in which case they have the positive duty of compliance. Basic rights are correlative with basic duties, it would seem,

[2] Unless one views basic rights simply in terms of doing and receiving only that which happens to be available to persons at certain times and in certain places (for example, by limiting basic rights to what a person might do or receive given the constraints of his economic class), then one must take seriously the idea that basic rights can imply being justified in actively obtaining that which particular socioeconomic circumstances may deny persons.

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because basic rights are a species of moral rights which constrain the behavior of all members of the moral community.

The relationship between basic rights and morality augments an egalitarian view of basic rights. If, *ceteris paribus*, all persons equally deserve (in the moral sense) the liberty to perform certain actions or to receive certain benefits or advantages, then they are equally permitted, morally, to assert their basic rights. The point is simply that in the absence of relevant moral reasons to the contrary, all persons have equal moral claims to act and receive; each is equal in this sense. But also they have such claims equally, that is, without countervailing moral considerations, the basic rights of one person have no greater moral strength than the basic rights of another. Some persons' basic rights may be enforced while others' basic rights are not, but this does not deny either that the latter group has basic rights or that their rights are of a lessened moral significance.

Finally, basic rights are understood to enjoy sufficient moral power to justify, though not necessarily to require, the use of force, even coercive force, against those whose actions, or inactions, violate basic rights. This final condition affords the view that basic rights have an essentially political character functioning as the *species differentia* of basic rights. Locke maintained that an individual may use force in the exercise of natural rights and that, in the absence of a civil authority, that person may punish those who do not honor such rights. Further, and radically, Locke held that a person may demand that government exercise force so as to preserve and protect basic rights.[3] Deficiencies in the willingness or ability of a government to exercise force on the basis of such demands can be sufficient grounds to call the legitimacy of a government into question. The basic rights of human beings have moral precedence over governments and, if a choice between the

[3] John Locke, *Two Treatises of Government*, ed. Peter Laslett (New York: The New American Library, Inc.), pp. 312, 398–99.

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two is forced, governments may be justifiably overturned.[4]

Rehearsing this fairly well-known story in this way emphasizes the role which morality generally, and moral rights specifically play in the traditional conception of basic human rights. And with emphasis placed on this role, the following statement, S_1, seems relatively noncontroversial:

> An average or ordinary adult human being, P, has basic human rights only when P has certain moral rights which P's government is morally required to protect and defend, with coercive force if necessary.

S_1 offers criteria necessary for the use or application of the traditional conception of basic rights. But S_1 is notable for what it avoids saying. For example, the issue of precisely what set of characteristics or properties P must possess to qualify as a basic rights holder is sidestepped on the hopefully allowable assumption that whatever constitutes this set, an average or ordinary person is in possession of it. More will be said on this topic below. Further, S_1 says nothing about whether any nonhuman beings can qualify as basic rights holders. While recent philosophical literature displays a profound concern with this issue, no answer to that question will be offered here. But more important for purposes to follow, S_1 is neutral, as it should be, on a variety of substantive concerns, for example, whether and in what sense basic rights are, as the inferences sketched above suggest, equal among persons and correlative with certain moral duties. A statement like S_1 can neither answer these questions nor affirm whether basic rights exist and, if they exist, what qualities they enjoy. Such tasks can be performed only by theories of rights, an abundance of which is current.[5]

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[4] This is the case, of course, on the assumption that governments can be made compatible with basic human rights in the first place. It has been the aim of some factions of recent political thought to show that traditional liberalism has overestimated this compatibility. Cf. Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974).

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This paper is directed to an issue which is logically antecedent to the question of which, if any, theory of basic human rights is correct even though it has, I believe, a direct bearing on that question. The concern here is to investigate and clarify the logical structure of basic human rights by examining and explicating the relationship of these rights to other kinds of rights and their attending duties.

2.

Logical difficulties arise when basic rights are analyzed and ascribed in virtue of the fact that persons possess certain nonrelational attributes. Being rational, capable of choice or susceptible to happiness and harm may well bear some relevance to one's qualifying as a basic rights holder, but the mere possession of such traits is insufficient both for ascribing basic rights to human beings and for explaining precisely how such rights are to be understood. So long as basic rights are conceived as having moral import – of entailing quite specific proscriptions regarding human behavior – the possession of nonrelational, evaluatively neutral attributes is logically inadequate to account for the nature and implications of basic rights. Nor does it help to stipulate, as some have implicitly,

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[5] A sampling of recent developments is the following: Joel Feinberg, 'The Nature and Value of Rights,' *Journal of Value Inquiry* 4 (1970): 243–57; David Lyons, 'Rights, Claims and Beneficiaries,' *American Philosophical Quarterly* 6 (1969): 173–85; H. L. A. Hart, 'Are There Any Natural Rights,' *The Philosophical Review* 64 (1955): 175–91; Richard Wasserstrom, 'Rights, Human Rights, and Racial Discrimination,' *The Journal of Philosophy* 61 (1964): 628–41. All of the above are reprinted in *Rights*, ed. David Lyons (Belmont, California: Wadsworth Publishing Co., Inc.). All subsequent page references to the above articles are to the *Rights* volume. Also important are: Joel Feinberg, 'Duties, Rights and Claims,' *American Philosophical Quarterly* 3 (1966): 137–44 and 'Voluntary Euthanasia and the Inalienable Right to Life,' *Philosophy and Public Affairs* 7 (1978): 93–123; H. J. McCloskey, 'Rights,' *Philosophical Quarterly* 15 (1965): 113–27; Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977).

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that nonrelational attributes of the above sort, as definitive of human nature, are, as a consequence, equally definitive of the nature and implications of basic human rights. As has been argued, given the vagaries and ambiguities to which human nature claims are fatally susceptible, such stipulations amount to tautologies: they define and delineate human rights by appealing to human nature only to define and delineate human nature by appealing to human rights.[6]

The point can be sharpened by exploiting a Kantian insight regarding human virtue. Kant believed that persons enjoy diverse and oftentimes divergent capacities to recognize and achieve certain ends normally considered desirable. Yet he denied that the mere possession of these varied capacities, be they physical or psychological, is sufficient to show whether or not one deserves such ends or, if they are deserved, how one ought to proceed in acquiring them.[7] One man's natural capacity to run and think more quickly than others does not imply that he has a moral right, a right with respect to which others have duties, to be the first out of a burning theatre. Thus if basic rights are something worth having in the sense in which they constitute or facilitate desirable ends such as liberties or benefits, then the mere possession of attributes of the sort mentioned above tells us precious little about why we possess basic rights and what possessing them amounts to.

The concern at this juncture, however, is *not* to refute or beg central questions against certain naturalistic theories of basic rights, such as beneficiary theories, which attempt to ascribe and explain basic rights on a criterion of whether persons, deserving or not, generally stand to benefit, under certain circumstances, from the

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[6] Margaret Macdonald, 'Natural Rights,' in *Human Rights*, ed. A. I. Melden (Belmont, California: Wadsworth Publishing Co., Inc., 1970).

[7] Immanuel Kant, *Fundamental Principles of the Metaphysics of Morals*, trans. Thomas K. Abbott (New York: The Bobbs-Merrill Co., Inc., 1949), p. 11. Cp. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), pp. 504–512.

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performance of certain types of acts.[8] Nor is the intention here to plead a special case for a deontological theory which would ascribe certain basic rights only to those who meet certain desert-confirming criteria, such as autonomous control over one's effective will.[9] Rather, by insisting that the nature and implications of basic rights cannot be ascertained by simple appeal to certain nonrelational traits of persons, I want to make plausible a particular hypothesis. This hypothesis holds that a coherent, minimal account of the structure of basic human rights entails that all who have such rights do so only if they participate in a specifiable, complex moral relationship where basic rights are correlative with basic duties. This hypothesis does not hold that the idea of basic human rights is exhaustive of morality *per se*, nor does it say that all moral theories, on risk of incoherence, must explicitly designate a system of basic human rights. What the hypothesis does insist upon, however, is that the nature of basic human rights, *unlike* the nature of other kinds of rights, depends on persons enjoying a specific kind of moral role – a role which is enjoyed by all basic rights holders. Basic rights, on this hypothesis, function so as to link morally all those in such roles and, in doing so, establish the context of human participation required for the ascription of basic rights to human beings.

2*A*. One course which can be followed in consideration of the above hypothesis is an examination of the relationship between basic human rights and other kinds of moral rights, for example, what H. L. A. Hart calls special rights.[10] A reason for following this course is: If the above hypothesis is true, then basic human

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[8] The modern version of beneficiary accounts of rights begins with Bentham. Cf. H. L. A. Hart, 'Bentham,' *British Academy Proceedings* 48 (1962): 297–320; and 'Bentham on Legal Rights' in *Rights*, ed. Lyons.

[9] "Effective will" is used here in the sense employed by Harry Frankfurt in 'Freedom of the Will and the Concept of a Person,' *Journal of Philosophy* 68 (1971): 5–20.

[10] Hart, 'Are There Any Natural Rights,' pp. 20–22.

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rights should be, in some important way, distinguishable from other kinds of moral rights, the possession of which is not ordinarily held to effect all (or any) others who happen to possess similar types of such rights. For example, from the fact that Penelope has a moral right to that which Daphne has promised, it does not follow that persons other than Daphne, even those who have made promises to others, bear any moral relationship to Penelope whatsoever. Thus, if, as the hypothesis claims, basic human rights enjoy a special status among moral rights in that the possession of basic rights links morally all basic rights holders via a system of rights and correlative duties, then basic rights should be different from other moral rights which do not have this characteristic.

Recall that on S_1, P's having a basic right implies that "P has certain moral rights. . . ." This implication can be (and has been) interpreted to mean that P's basic rights are moral rights in the straightforward sense in which, for example, spaniels are dogs. Any basic rights, br, then, is a moral right and the set of basic rights, $br_1 \ldots br_n$, comprises a subset of moral rights where any br, say br_2, the basic right of association, shares any characteristic or collection of characteristics necessary for something's being a moral right. Yet, it is usually maintained, basic rights are distinguishable from other kinds of moral rights and thus do not exhaust the set of rights referred to as moral rights.

On this conception, what is generally true of moral rights is true, *a fortiori*, of basic rights, though not necessarily vice versa. Assume, as is normally done, that one such general truth is that if P has any kind of moral right, then, *ordinarily*, P is morally permitted to exercise that right. It would follow, if basic rights are moral rights in the above sense, that since it would be incoherent to say that P has a moral right, the exercise of which is, under all possible circumstances, wrong; it would be equally incoherent to say that P has a *basic* right which is, under all possible circumstances, wrong to exercise.[11] Of course this does not mean that P *must* exercise either his basic right or his moral right, or that he must always have the wherewithall to do either or both. These

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points are widely agreed to apply to moral rights and are fairly noncontroversial. However, given this general truth about moral rights, one would expect that the implications of its sometimes being wrong to exercise a basic right would be the same as the implications of its being sometimes wrong to exercise other kinds of moral rights. But, as shall now be argued, this is not the case and as a result a tentative criterion for distinguishing basic rights from other moral rights emerges.

Consider a situation where P has a moral right to exact payment on a debt. Q has agreed to pay P for P's performance of certain services which P has performed to Q's satisfaction. P has a right to be paid and, normally, to be paid immediately. Now barring a situation where, for example, P simply does not feel like collecting what Q owes him and thus does not bother to do so, P may still be morally proscribed from collecting the debt. For example, Q, through no fault of his own, may have become sufficiently impoverished so that P's receiving the funds owed would result in the starvation of Q and, to make the case extreme, Q's family. Further, it is logically possible that Q's dire poverty could endure for P's lifetime. Clearly, P has the moral right to collect, but it could be wrong for P ever to do so.

Reasonable persons can disagree as to precisely why it would be wrong for P to exercise his right in such cases. It might be held, for example, that moral rights such as these are derivative from utilitarian considerations which, though generally encouraging that a right to collect a debt be exercised, would allow that under some extraordinary circumstances, in the name of the general good, such a right ought not be exercised. Or, it might be argued, P ought not exercise his right because in doing so P would be acting contrary to certain fundamental duties towards humanity. Thus while it might be maintained that Q owes P the funds at issue, P's moral duties are ranked so that even if he wishes to have the

[11] It is being assumed throughout this essay that persons can and do have rights, the exercise of which can be morally wrong under *some* circumstances. Cf. Jeremy Waldron, 'A Right to Do Wrong,' *Ethics* 92 (1981): 21–39.

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money owed him, duty demands he not collect.[12] What is worth noticing here, though, is that in either case it is the exercise of P's specific moral right to collect what Q owes P which is at issue. Nothing said about the wrongfulness of P's exercising this specific right applies to the exercise of P's or any other person's similar rights to collect debts except, of course, in cases which happen to be morally analagous. The content-specific nature of such moral rights lays open their exercise to moral disapprobation.[13] However, as shall now be seen, matters differ in the case of basic rights.

Assume P possesses the basic right of free speech. Given that such a right can be exercised in ways involving more than public expressions of pleasantries, P's basic right to free speech allows that in speaking publicly, undesirable consequences may result. Analagous to the case of special moral rights above, P has a basic right to free speech even though some exercises of that right may be wrongful and such that P is morally responsible for them. If, for example, P publicly reveals true, though defamatory information about a person's past with no relevance or purpose other than harming or embarrassing that person, P may be morally culpable for a wrongful act.[14] We might ordinarily say, in this case, that P's exercise of his basic right to free speech is wrongful and as such it is morally incumbent upon P (and others) not to exercise the right in this way. However, this way of speaking is misleading for it gives the impression that because we can correctly speak of the wrongful exercise of both kinds of rights in the same way, the rights are thus of precisely the same nature, that is, they share the same logical structure. But it becomes evident that this is false

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[12] Cf. W. D. Ross, *The Right and the Good* (Oxford: The Clarendon Press, 1930), Chapter 2.

[13] What is meant by "content-specific" here will be explained in section 2B. below.

[14] For a relevant discussion and example, see Joel Feinberg, 'Limits to the Free Expression of Opinion,' in *Philosophy of Law*, second edition, ed. Joel Feinberg and Hyman Gross (Belmont, California: Wadsworth Publishing Co., Inc.), pp. 193–195.

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when we note that it is not P's basic right to free speech, *in general,* which ought not be exercised, but rather P's basic right to speak freely *so as to* communicate information regarding a particular person under specific circumstances which ought not be exercised. Observe that no parallel remark is even coherent in the case of P's moral right to collect the debt owed him by Q. It simply makes no sense to distinguish P's moral right to collect what Q owes P, *in general*, from P's exercise of his right to collect what Q owes P *so as to* collect what Q owes P. Notice the concern here is not that of how to determine whether a particular exercise of a specific right is morally permissible. One might well argue that permissible exercises of any right can be distinguished from impermissible exercises by appeal to consequentialist criteria. The point is rather that unlike other moral rights, moral questions concerning the permissible exercise of a basic right cannot even arise until the basic right is instantiated in a specific way; that is, only when the basic right is made content-specific can one begin to ask if it is permissible to exercise the right under certain circumstances. And this indicates that while we might speak of the wrongful exercise of basic rights as we would of the wrongful exercise of other rights, basic rights have a logical structure unlike that of other moral rights.

It might be responded here that P's right to collect what Q owes P is a particular instantiation of a general right to exact payments on debts. Thus, it might be argued, perhaps on some version of rule utilitarianism, the cases noted above are, in fact, analagous for just as it can be wrong for P to exercise the basic right of free speech it can also be wrong for P to exercise the general moral right to exact payment on debts. But this response involves the category mistake of treating two logically different types of names as if they were equivalent. If the phrase "general right" here means anything at all, it does so by functioning distributively, that is, as a name grouping discrete individual transactions of a certain type (paradigmatically, where one individual owes another something because of a relationship into which both parties entered freely). Thus the term "general right" here is like the term "German

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automobiles" in the sentence "Dan's Mercedes and Ed's Porsche are German automobiles", and not like the term "American League" in the sentence "The American League is more competitive than it used to be." Hence the retort fails and we are left with a good reason for believing that there is a logical difference between basic human rights and other moral rights – a logical difference related to the differing ways in which such rights, respectively, have content.

2*B*. To this point, I have been using as the example of moral rights what Hart calls "special rights." I have referred to these rights as "content-specific" for two reasons. First, following Hart and others, in the case of such rights "...the identity of the parties concerned is vital – only *this* person ... has the moral justification for determining how the ... [other person] ... shall act."[15] Second, that aspect of the content of the right, in the case of promising, for example, *what* has been promised, is specified and indispensible to the right even if, as Hart insists, it is not the consequences of the promise's being kept, that is, whether fulfilling the promise results in something good or bad, which serves as the final justification of the right.[16] When a right of this sort is incurred, then, it is a right held by a specific individual (or group of individuals) "to some action";[17] it is the designated person (or persons) and the particular action with respect to which the right exists which constitute the content of the right. Thus a right is content-specific when a particular person (or persons) and a particular act (or set of acts) are explicitly named (or described), constitutive elements of the right. Even if one holds an alternative theory of moral rights of this sort, for

[15] Hart, 'Are There Any Natural Rights,' p. 20.
[16] Hart's aim here, an aim not lost on critics, is to defend what might be called a "freedom-based" theory of rights. On this theory, rights exist "... just because of the voluntary transaction between parties ...," that is, rights are ultimately a matter of "... the distribution of freedom of choice" (p. 20).
[17] Ibid.

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example the "qualified beneficiary theory" offered by David Lyons, where rights are accounted for in terms of intended benefits accrued by persons because of the performance of particular actions; it remains that the right is content-specific when it specifies a particular benefit which results from "behaving towards him in a certain way."[18]

Now it has been maintained that basic human rights as well as other moral rights can be wrong to exercise, but that before one can consider whether it is wrong to exercise a basic right, that right must first be made content-specific. Further, it has been suggested that this constitutes a tentative criterion in accord with which the structure of basic rights is distinguishable from that of other moral rights. What will now be argued is that this difference in structure occurs because special moral rights and basic human rights differ in the way in which each, respectively, correlates with duties. What will be contended here is that the key to understanding the logically different structures of these different types of moral rights is to be found by examining the logically different ways in which they correlate with duties.

(i) The model most commonly used to show that moral rights correlate precisely with moral duties exploits the idea of mutual transactions, either stated or assumed, between informed, consenting individuals. Typically, then, if one person makes an agreement with another, for example to exchange commodities for cash, the former has the right to the cash, the latter the duty to pay. The matter may be more complex depending on the context and details of the agreement. For example, the party with the duty to pay may have a right to the commodities and the party with the right to the cash, a duty to deliver the commodities by a certain time. Nevertheless, as a result of participating in a transaction of this type, rights and duties are incurred and incurred simultaneously. If either were to be denied, "P does not

[18] Lyons, 'Rights, Claimants and Beneficiaries,' p. 63. See also David Lyons, 'The Correlativity of Rights and Duties,' Noûs 4 (1970): 46–47.

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have the right (or duty)," the other would be denied as a consequence, "Q does not have the duty (or right)." For now, it makes no difference what theory is used to explain why rights and duties result from such a relationship between persons; it matters only that such a relationship or similar relationships are prerequisite to the strict right/duty correlation, that is, where the right and the duty are mutually entailing.

Objections have been raised to the view that all rights and duties are correlative in this way. And such objections are important here. For if basic rights are to be distinguished from other sorts of rights on a criterion of duty correlativity, then it is important to become clear about whether and just how different sorts of rights correlate with duties. David Lyons has argued that certain moral rights, which he calls "active" rights do *not* conform to the aforementioned pattern.[19] An active right, for example, the right to speak publicly, is a "right to do," and is akin to what legal theorists, especially Hohfeld, term "immunities."[20] If we assume that a person, P, has an active right to speak publicly, it does *not* follow, according to Lyons, that any other specific person, Q, R, or S, has a duty which correlates to P's right in *precisely* the way in which duties are normally believed to correlate with special rights, that is, where if the particular duty does not exist, the specific right does not exist. Rather, as in the law, P's having, for example, the constitutionally protected right to free speech does *not* imply that Q, R, or S, who are legislators, have a correlative duty (either individually or collectively) with respect to P's right to speak publicly. The legislators, qua legislators, endure the "disability" of not passing laws which restrict the exercise of active rights such as P's, but such a disability, on Lyon's view, is not a duty which correlates strictly with P's constitutional right to free speech. That is to say, it does not correlate in the sense in which if the legislator did not have such a duty, P would not have the right.

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19 'The Correlativity of Rights and Duties,' ibid., section II.

20 Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions* (New Haven: Yale University Press, 1919), pp. 35, 60–64.

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For imagine, as Lyons does, that the first amendment is repealed but that Congress happens *not* to pass legislation restricting a citizen's speech. Citizens retain a right to speak publicly (that is, they are at liberty to do so, they enjoy a Hohfeldian privilege), but this does not imply a particular correlative duty on the part of legislators or, for that matter, any one else. Thus if we affirm, as it seems we must, that P has the specific right to speak publicly, we are not committed, logically, to affirm that anyone else has a particular duty with respect to *that* right; i.e., a duty without which that specific right would not exist. In such cases, then, active rights do not seem to correlate with duties.

The point here is both more obvious and directly relevant to the concerns here when we consider commonplace active rights assertions, coherent even in the absence of legal provisions. Men and women claim they have a right to dress as they please, to eat in the restaurant of their choice, to listen to rock and roll and to star on Broadway. And, it is often believed that while such active rights may appear trivial, should they be arbitrarily denied, basic rights would be, *ipso facto*, either endangered or denied.[21] Yet surely such "rights to" correlate with no one's duty in the strict, content-specific sense noted above. Thus again, unless it is denied that such active rights claims are genuine rights claims, not all rights correlate strictly with duties.

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[21] Richard Wasserstrom is correct in claiming "... that the things to which one is entitled as a matter of right are not usually trivial or insignificant. The objects of rights are things that matter." ('Rights, Human Rights and Racial Discrimination,' p. 48.) Oftentimes, however, the significance of a right, particularly an active right, is apparent only when such a right is denied or violated. Thus while it may seem that the right to dress as one pleases is trivial, when it is asked how denying such a right, as a matter of policy, could be defended, the implications with respect to individual liberties can be enormous. An apparently trivial active right, then, can be important because of the consequences of its being denied. It is, perhaps, for this reason that philosophers (Cf. Hart's discussion of "General Rights," 'Are There Any Natural Rights,' p. 23) often treat active rights as negative rights; that is, as rights which are "asserted defensively."

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Lyons is aware that a stock response to this line of argument consists in an appeal to an aggregate duty – what is often called the duty to forbear. It can be argued that while no specific person has the particular duty which correlates with P's right to star on Broadway, all persons share a duty to forbear when P exercises this (or any other) active right. Thus strict right/duty correlativity endures because P's active rights are implied by the aggregate duty of others to forbear when P exercises his right. But Lyons dismisses this response because the shared duty to forbear "...does not entail that ... [a person] ... has any *particular* right to do anything... ."[22] It might *seem* that P's right to star on Broadway is implied by an aggregate duty of others to, at minimum, forbear, or, at maximum, comply with the exercise of P's right. But as in the case of a constitutionally protected right of free speech, P's particular right to act in ways perceived necessary to achieve stardom is *not* implied by any particular duty on the part of others. The contrary seems to be the case only because of *other* moral obligations which prohibit persons from interfering with P's acts: we are not permitted, morally, to forcibly prevent P from seeing his agent or to kidnap P so as to prevent him from trying out for parts in plays. We have no right, generally, to interfere with a person's activities when such activities are permissible. But these obligations do not correlate, specifically, with P's active right. A general moral obligation to let persons live as they choose is not equivalent to a particular person's moral duty to forbear or comply with P's right to seek stardom. Additionally, even if P had no such right, others could well be required on other moral grounds to forbear with respect to P's acts. For some morally critical reason or other, P may have vowed never to seek stardom and P may have no moral right to do so; but it cannot be inferred from this that anyone has any kind of right to interfere should P seek stardom. Thus there can be duties to forbear even when P performs an act which he has no right to perform. Active rights

[22] 'The Correlativity of Rights and Duties,' p. 52, emphasis added.

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do not always correlate with duties in the strict sense, then, for here we have clear cases where duties to forbear do not imply a right to act.

Lyons' arguments here deny the strict right/duty correlativity by appeals to cases where (a) persons have a specific active right and yet there are no particular correlative duties, and (b) persons have duties to allow a person to perform an act where this person has no right to perform that act. Thus, in the case of (a), active rights are shown not to be sufficient conditions of duties, and in (b) duties are shown not to be sufficient conditions of active rights. Since the strict right/duty correlation entails that rights are sufficient conditions for duties and vice versa and, in the case of active moral rights, this appears not to be the case, it follows that strict right/duty correlativity is not a characteristic of all moral rights, especially certain active rights.

There are numerous difficulties with Lyons' arguments. For example, critics have pointed out that even though persons may have myriad duties or obligations prohibiting them from interfering with a person's activities (such duties or obligations not correlating, specifically, with the right to engage in those activities), still it does not follow that they have no particular duty which correlates with the specific right of a person to engage in that activity.[23] In the same spirit, it can be added that it does not follow from person's having no duty on *some* moral grounds to interfere with an act which another person has no right to perform that they are not obligated on *any* moral grounds to interfere, in a morally appropriate way, with the act.[24] But these objections,

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[23] Cf. Marcus G. Singer and David Braybrooke, 'Abstracts of Comments,' *Noûs* **4**, (1970): 56–57.

[24] It may well be true that one is morally obliged *not* to perform certain actions (such as kidnapping a person) so as to prevent a person from doing that which he has no right to do. But the reason for this may well be that the costs, in terms of other rights of that person, would be too high to justify a particular kind of interference. It is worth noting, though, that this does *not* mean that one has a duty to forbear with respect to doing what may well be morally appropriate to prevent a person from doing what he has no right to

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while showing Lyons' arguments to be invalid, do not show his conclusion to be false, that is, they do not establish a plausible case for right/duty correlativity in the case of active rights. However, if, as many hold, active rights are instantiations of basic rights, that is, that the possession of basic rights implies the possession of active rights, then it is important to show why and how active rights differ from content-specific, special rights while maintaining that active rights correlate, though in a quite different way, with duties. For if this cannot be shown, then the hypothesis presented earlier which holds that persons possess basic rights only if they participate in relationships where they are linked morally via a system of correlative rights and duties becomes quite implausible.

(ii) Positions, such as that of Lyons, which deny or minimize the significance of right/duty correlativity in the case of active rights frequently rely too heavily on an individualistic, promisory or contractarian model of rights especially suited to or, perhaps more accurately, fashioned from legal decision-making. Rights and duties on such a model are insular; they are what Hohfeld calls "paucital" rights or "rights *in personem*."[25] Such rights unite isolated individuals who bear no meaningful, right/duty relationships to each other apart from those to which they actively consent. Such individuals are united, then, via a mechanism whereby one individual (or set of individuals) has claims against other specific individuals who, in turn, have duties only to those who possess the relevant, duty-confirming rights. For example, in the absence of some sort of agreement which establishes a right/duty

do. Consider the example of P's seeking stardom when he has no right to do so. While one must forbear from kidnapping P so as to prevent him from achieving stardom, it is certainly plausible to claim that one has an obligation to inform P's agent and prospective directors that P lacks the requisite right. Thus it is by no means clear that simply because we have duties to forbear with respect to *some* acts which would allow P to do that which he has no right to do that we must forbear with respect to other acts which might prevent P from doing that which P has no right to do.

[25] Hohfeld, p. 72, *et passim*.

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relationship between Penelope and Daphne, it is ordinarily assumed, on this individualistic model, that any moral relationship between Penelope and Daphne is not a right/duty relationship. Generally, on the individualistic model, in the absence of a paucital, right/duty relationship, no right/duty relationships between persons are assumed to exist.

As noted above, such a model serves as the paradigm of content-specific special rights because it facilitates clarity and precision – the agreements from which rights and duties arise usually specify both the individuals and the activities which are constitutive elements of both the right and the duty. Decisions and adjudications are thus relatively uncomplicated by any nonconsensual relationships persons may bear to each other. Little more by way of clarity and precision could be expected, then, and both legal and philosophical purposes are often well-served as a result. Small wonder, then, in cases where (recall Lyons) we find a particular, often named individual possessing a right with *no* corresponding, named individual possessing *that* particular duty which specifies (by name) both the relevant right-holder and (precisely) what he has a right to, we feel compelled to believe that something is amiss for right/duty correlativity.

Our suspicions would render more fruitful results, though, if they were directed at the model of rights which requires such specificity in the first place. What shall be argued here is that liberties, correctly identified as instantiations of basic rights and termed "active" rights or "rights to do," do in fact correlate with duties. However, it will be contended that they do so on a different model of rights. Thus the strategy to be used here to show how basic rights correlate with duties (in a way in which special moral rights do not) consists in the construction of an alternative model of active right/duty correlativity. This model will then be used to explicate crucial structural features of basic rights.

(iii) The following model of active right/duty correlativity is constructed by appeal to insights of Hart and Hohfeld. Hart points out that special rights, while often resulting from specific transactions, such as promises between individuals, can also result

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because of the "mutuality of restrictions" imposed upon persons involved in various rule-governed practices.[26] Imagine a cooperative venture of mutual restrictions where a group of persons are involved in the production of goods and services necessary for their enjoyment of a decent life. Imagine also that such a venture involves roles, defined by certain rights and duties, in which persons participating in the venture perform and of which they are, generally, aware. And, finally, imagine that persons can move from role to role, that is, that while at any given moment a specific person may be performing a specific, role-determined, thus right-permitted task, no one person is necessarily relegated to performing only that task which they have a right to perform. The model appropriate to these sorts of circumstances is one where individuals have certain rights in virtue of and while performing their various roles. The rights of persons here are held against other persons generally, though *not* aggregately; that is, they are what Hohfeld calls "multital" rights or "rights in rem."[27] But what it means for rights to be held "against other persons generally" in this context is vague and in need of explanation so that the model becomes clearer.

Consider a person, P, who, in virtue of and while serving as personnel officer for the venture, has the right to make final decisions regarding promotions. Now P does *not* have that right because of

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[26] 'Are There Any Natural Rights,' p. 21. It is worth noting here that for Hart rights resulting from mutual restrictions are to be distinguished from those resulting from consent or promises. Hart says "... when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to similar submission from those who have benefited by their submission." (Ibid.) Cp. Rawls, *A Theory of Justice*, pp. 111–114 and 342–350.

[27] Hohfeld, p. 72, *et passim*. Hohfeld states "A multital right, or claim (right *in rem*), is always *one* of a large *class* of *fundamentally similar* yet separate rights, actual and potential, residing in a *single* person (or single group of persons) but availing *respectively* against persons constituting a very large and indefinite class of persons." Ibid. Emphasis in the original, footnotes omitted.

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any *particular* duty on the part of another individual, Q, when and insofar as Q is thought of independent of his (Q's) own role in the overall venture. But, further, Q, a person whose task is to advertise the venture's products, for example, has no particular duty which names P and P's promotion decisions in such a way that the duty strictly implies that P (and no one else) has this right. *Pace* Lyons, however, this does not mean that Q, *in his role*, has no specifiable duty to adhere to the decisions P makes as a consequence of P's acting in his role as personnel officer. At that time when P exercises his role-determined right and insofar as it is necessary for Q to forbear or comply with P's promotion decisions so that they are efficacious, Q has a duty correlating with P's right as do all others (R ... Z) who happen to be in roles effected by and effecting the success of P's role-sanctioned decisions. If this were not true, then one of the following would be implied: (a) P has exceeded his role by exercising prerogatives which do not have the status of a right given the particular role P enjoys. Being in a given role entails the possession of only those specific rights delineated by that role. Persons may enjoy a variety of roles and they may do so simultaneously; but one role entails one and only one set of rights. Q ... Z have no duties to comply with P's extra-role decisions unless, of course, these rights are held by P in virtue of some other, simultaneously held role. (b) P is *not*, in fact, the relevant role-holder, that is, P is not the personnel officer. Again, and obviously, Q ... Z have no duties to comply with P's decisions if P does not occupy the relevant rights-confirming role. Or, (c) the role which P purportedly holds does not exist. If, *systematically*, no one (including those "promoted") forbears or complies with P's promotion decisions, and if (a) and (b) are not the case, then it would follow that however promotions are made, it is not via the role of a personnel officer.[28] Needless to say, no one has duties to

[28] Cases (a) and (b) are to be distinguished from those where Q and others may have no respect for P as personnel officer. For while persons may not adhere to or comply with P's decisions because, for example, they believe P is incompetent, it does not follow (unless there are explicit provisions

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adhere to decisions exercized under such circumstances. On this model, then, Q ... Z have no duties in precisely those cases where P has no rights and vice versa.

Persons step into a right/duty relationship, on this model, when and only when they assume and act within the confines of their respective, rule-governed institutional roles. And since it is possible that other persons may, on other occasions, step into (or out of) these same roles, the rights and duties of specific persons are not and cannot be content-specific in the sense in which special rights are; that is, they cannot designate, *a priori*, the specific person who is the holder of a specific right or a particular duty.

Here the active rights and correlative duties which persons possess can be understood as multital rights and multital duties respectively. Some of the details relevant to understanding active rights as multital rights appear in the following account:

> Any person, P, has a multital right if, and only if,
> (a) P occupies a role, delineated by a set of rules which specify and permit or require activities constitutive of the role, in some rule-governed institution.

Rules establishing the role may specify that the person who occupies the role have certain traits or qualifications, for example, age, size, gender, educational qualifications, experience in similar roles, etc. But the rules do *not* specify a particular person, Mr. Jones, as the role's occupant. The content of the rights attached to the role are thus distinguishable from the particular persons who happen to occupy the role at a certain time. This distinguishes multital rights from paucital, special moral rights. But it does so without abandoning right/duty correlativity.

> (b) The activities permitted or required by the rules constitutive of the role P occupies correlate with duties

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allowing this) that they have no duties to comply with what P, in his role, does. P's competence is one thing, the integrity of his role – the rights and duties it establishes – can be quite another.

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> of forbearance or compliance on the part of any and all other persons, Q ... Z, only when:
> (i) Q ... Z occupy roles in the same, rule-governed institution in which P occupies his role,
> (ii) the forbearance or compliance of Q ... Z with P's role-determined activities is a specified or assumed feature of the roles occupied by Q ... Z,[29] and
> (iii) the forbearance or compliance of Q ... Z is a necessary condition for the success of P's role-determined activities.[30]

The duties correlative with multital rights are attached to persons only when and insofar as they occupy certain roles in a rule-governed institution. Such a duty, then, is a particular person's duty only when and if that person occupies the role to which the duty is attached. Thus the content of such a duty is distinguishable from the particular person who happens to occupy a particular role at a certain time. Again, an important feature of the multital right account of active rights is that while it plainly allows for a

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[29] Whether Q ... Z have a duty to forbear or a duty to comply is a matter determined by the nature of the relationship Q ... Z bear to P in the institution. And this relationship just is a matter of what Q ... Z's roles specify with respect to P's right. There is a sense, then, in which various roles are in a symbiotic relationship with each other. For example, where P has a right merely to make recommendations regarding various policies for the venture, Q ... Z would have duties to forbear with respect to P's recommendations; they do not, *ipso facto*, have a duty to comply with the recommendations.

[30] The forbearance or compliance of Q ... Z is a necessary, but not sufficient condition because while P's having a right implies that Q ... Z have duties which allow or facilitate (depending on the particular right in question) the right's being effective, it does not imply that P does not have a right simply because the right is inefficacious due to factors beyond Q ... Z's control (for example, where Q ... Z are forcibly prevented from doing their duty). Of course, if *no* person among Q ... Z (where Q ... Z exhaust the population of those participating in the venture) could, because of physical or psychological impossibility, comply with whatever duty P's "right" is correlative with, then P has no right.

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certain type of content-specificity and right/duty correlativity, it does so in a way which does not make reference to particular individuals.

3.

The relevance of interpreting active rights as multital rights was hinted at in the claim that active rights are instantiations of basic rights. That hint will be developed by exploiting the above analysis. The intention here is to sketch a coherent account of the structure of basic rights which both emphasizes the above analysis of active rights and explains, in a logically consistent way, some of the important features of the traditional conception of basic rights.

It is useful to begin by recalling that an important dissimilarity between basic rights and special rights consists in the differing implications of the wrongful exercise of each, respectively. The wrongful exercise of a special right, it will be remembered, simply is a wrongful exercise of *that* content specific right; that is, it is a wrongful exercise by the particular person whose right it is only given special, morally important circumstances. Unless morally analagous circumstances apply, no inferences about the rightful or wrongful exercise, by others, of similar special rights can be drawn. The wrongful exercise of a basic right, however, does not imply that the exercise of the basic right is, *in toto*, wrong; it implies only that the basic right is wrong to exercise when qualified and specified (for example, the exercise of the basic right *so as to* do *x* under conditions *y*). While it can be wrong to exercise a basic right to certain wrongful ends or purposes, especially when this occurs intentionally, it does not follow that the content and meaning of the basic right is exhausted in the process.

This suggests that basic rights enjoy a degree of complexity absent in special rights. What will be argued in section 3A., below, is that the structure of a basic right is the structure of a set or bundle of active rights viewed as multital rights. In section 3B, this proposition will be used in conjunction with certain features of the traditional conception of basic human rights to yield the

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hypothesis presented early on – that all who have basic rights do so only if they participate in a complex moral relationship linking them together via a system of rights and correlative duties. The resulting view is that basic human rights are bundles of mutually held active rights possessed by persons in a specifiable moral relationship with each other.

3*A*. Traditionally affirmed basic rights, such as speech and association, as well as those relative newcomers enumerated in the Universal Declaration of Human Rights, such as free choice of employment, medical care and education,[31] are often understood as liberties to a range of activities, goods or advantages. Now it would make little sense to insist, as we do, that the basic rights of all persons in all countries be honored if that which constitutes this range were *utterly* dependent upon the socioeconomic or personal circumstances of basic rights holders. The fundamental value of basic human rights cannot be denied merely on grounds of the economic or personal exigencies of basic rights holders. Nonetheless, the scope and worth of specific basic rights can be limited depending on whether or not, for example, basic rights holders live in technologically developed, affluent societies affording greater means to effective public speech and a greater latitude in meaningful employment opportunities. An impoverished, third world peasant whose government offers all the means at its disposal to assure unhampered expression enjoys the basic right of free speech as surely as does the president of CBS. However, it should not be inferred from this that both the peasant and the president are in possession of morally equivalent entities.

Similarly, persons happening to have particularly narrow, parochial interests and wants are not, as a logical consequence, in possession of less valuable basic rights than are their fellows whose personal satisfactions depend on the presence of a rich range of environmental and cultural resources. The ascetic's basic rights are

[31] Cf. the *Universal Declaration of Human Rights* in Melden, articles 23, 25, and 26.

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not of diminished value simply because he is an ascetic any more than the epicurean's basic rights are of increased value simply because he is an epicurean. Persons avail themselves of basic rights differently – some exercising them so as to accomplish more than others – but the fundamental moral significance (though not, I believe, the *total* moral significance) of a basic right is unaffected by this phenomenon. Differing social and economic circumstances as well as differing personal dispositions contract and expand the range of activities, goods and advantages available to persons possessing basic rights. As a consequence, many persons are far less free and far less happy than others even though they can all be correctly described as possessing morally valuable basic rights. The possession of protected basic rights is undeniably valuable; but the degree of this value fluctuates with socioeconomic and personal circumstances.

If these intuitions concerning basic rights are true, then it is reasonable to contend that basic rights, by their nature, permit or require unimpeded access to a *set* of activities, goods and advantages, the members of which are variable rather than constant. On this view, that aspect of a basic right's content which designates *what* persons possessing such rights have liberties with respect to varies. And such variations are not necessarily sufficient to deny that a person has the particular basic right in question. This does not mean that there are no limits on such variations or that protected liberties to various goods and advantages can vary from basic right holder to basic right holder without justification. Any minimally adequate theory of basic rights must deal with the questions raised by these concerns. Still, the "with respect to what" element of a basic right's content is variable rather than fixed; indefinite rather than definite. Now since a protected liberty to an activity, good or advantage is usually viewed as a particular "right to do" or active right, and if protected liberties to a variable range of activities, goods or advantages can be viewed as a set or bundle of such rights, it would follow that the variable content of a basic right implies that the basic right is comprised of a set or bundle of active rights. Possessing a particular basic right, then,

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implies that one has a set or bundle of active rights, even though it may not imply that one is always able to exercise these rights to all logically possible ends.[32]

Because the possession of a basic right implies the unimpeded exercise of a set of protected liberties, that is, active rights, with respect to a *variable* set of goods and advantages, no single instantiation of a basic right, that is, no exercise of a single liberty with respect to a single member of this variable set, exhausts a specific basic right. This squares with the view suggested earlier that because the nature of the content of basic rights differs from that of special rights, the logical structure of each, respectively, differs. Recall that with special rights that aspect of the content which specifies what persons have rights and duties with respect to is a constitutive element of the right as are the particular parties possessing the relevant rights and duties. Thus when a special right has been exercised, it is always exercised with respect to *that* to which it is a right. But further, the special right, along with whatever duties are correlative with it, are exhausted as a consequence of its exercise. Once a promise has been properly fulfilled, for example, there are no longer rights or duties with respect to that which was promised.

This is not the case, however, with basic rights. For example, when one exercises the right of free speech so as to communicate dissatisfaction with one's government, it is not a consequence of this activity that the basic right of free speech and the duties which attend it are exhausted. And this is consistent with the fact that when a basic right, unlike a special right, is exercised wrongfully, the speaker's basic right to free speech, *in toto*, has *not* been exercised wrongfully. What occurs in such cases is *a* wrongful exercise of the basic right of free speech, not *the* wrongful exercise of that basic right.

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[32] This view is compatible with the position defended by Ronald Dworkin (*Taking Rights Seriously*, pp. 266–272) that there is no basic right to liberty. While I cannot develop this point here, it is my belief that it is even misleading to speak of basic rights to liberties (of certain types); rather, we should say that basic rights *are* liberties of a certain type.

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The logical structure of basic rights viewed as bundles of multital rights captures this fact because if a person, P, has a set or bundle of a similar active rights, this set comprising the instantiations exhaustive of a particular basic right, then in his role as a basic right holder, P is, at minimum, permitted a set of liberties, one of which is, following the example, to speak publicly. Other persons, Q ... Z, have duties to forbear (or comply) with respect to the exercise of that liberty when and insofar as such forbearances (or compliances) are necessary for P's being heard. If it were denied that persons, Q ... Z, given their roles in the venture, have duties correlative with P's basic right to free speech, this would be sufficient for denying that P's basic right to free speech implies the particular active right in question. Or, if Q ... Z did not fulfil their duties to P, this would be sufficient for affirming that that aspect of P's basic right to free speech comprised by the active right in question has been violated. It would not, however, be sufficient to deny (as is commonly and wrongly done) that P possesses the basic right of free speech *per se* or that P's basic right to free speech has been wholly violated. We often speak as if the interference with an aspect of a person's basic right is tantamount to the violation of the total right. But such utterances are elliptical. They are a shorthand way of saying that a liberty of P's, a liberty apparently among those comprising the basic right to free speech, is being denied as actually constituting part of P's basic right or, that one aspect of P's basic right to free speech has been violated. Thus it remains that basic rights correlate with basic duties and they do so in a way consistent with viewing basic human rights as bundles of active rights.

3*B*. Recall that the multital right analysis of active rights is designed to account for rights and correlative duties within the context of ventures constituted by a system of mutual restrictions. The roles of the venture, here comprised of sets of multital rights and their correlative duties, are populated by persons restricting their activities in accord with the rights and duties definitive of various roles which they hold at various times. When a role is filled,

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that is, when a person qualifies for and steps into a role by acting within its confines, sets or bundles of rights and correlative duties are confirmed in the process. Now if it is to be maintained that the traditional conception of basic human rights can be explicated by employing the model of active rights offered here, it is important to show how roles comprised of sets or bundles of multital rights can be factored into an account which captures the salient features of that conception.

As was emphasized earlier, one such feature is that basic human rights are moral rights held independent of particular agreements or specific circumstances. To show the explanatory usefulness of multital rights with respect to that feature of the traditional conception which holds that basic rights are moral rights entails postulating that the mutual restrictions endured by persons when acting in their various roles are endured on moral grounds. When this postulate is allowed, and if these morally justified restrictions are identified as moral duties to which there are correlative rights (as allowed by the provisions of the account of multital rights), then it follows that the roles at issue (the roles of both duties and rights holders) have a moral justification; that is, they are moral roles. The roles of the venture would be moral roles just because they are constituted of sets or bundles of multital rights which are moral rights with correlative moral duties. Persons who qualify for and populate these roles have a moral status within the venture, a status which must be respected by all others similarly situated if the venture is to retain moral integrity. Now traditionally it has been contended that a crucial function of any government with aspirations to moral legitimacy is the exercise of power, when necessary, to preserve the moral status, here understood in terms of basic human rights, of its citizens. This traditional contention can be incorporated into the view developed here on the claim that a required characteristic of a legitimate government is its ability and willingness to exercise power, when such an exercise is necessary to preserve the moral integrity of the community, so as to preserve and protect the moral status – the basic human rights – of its citizenry. Viewing the roles of the venture as com-

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prised of sets of multital rights is compatible with and explicates the traditional conception, then, when these various sets or bundles of rights and duties are regarded as sets or bundles of moral rights and moral duties which governments ought to preserve and protect.

Thus a person, P, has a basic human right only when P, in his role as a member of a venture of mutual restrictions, possesses sets or bundles of multital rights which are moral rights to which other members of the venture, Q ... Z, have correlative moral duties. P exercises a basic right when he acts in accord with the provisions of his role, and a basic right of P's is violated when the duties correlative to the right are ignored or not fulfilled. Finally, P enjoys the full complement of basic rights only when P enjoys a complex of roles comprised of sets or bundles of multital rights which are moral rights.

That feature of the traditional conception holding that basic human rights are equal rights is compatible with and conforms to the account of the structure of basic rights offered here in the following way. If all persons equally possess the full complement of basic rights, then they all, each and every one, enjoy a complex of roles comprised of whatever sets or bundles of multital rights are included in the full complement. Now since holding any role in the venture implies membership in the overall system of mutual restrictions, it follows that if all persons in the venture possess the full complement of basic rights, then all persons possess (on the multital right model) all those duties correlative with the basic rights possessed by each and every individual member of the venture.[33] Therefore, if "possessing equal basic rights" is taken

[33] It will be noticed here that it is consistent with this account that in virtue of possessing any particular basic right, one accrues duties with respect to whatever rights are held by all other basic rights holders. This may seem counterintuitive unless it is seen as a reason for believing that if there are any basic human rights possessed by persons, then all such rights are possessed by persons; i.e., all such rights are equal rights. For if possessing a basic right implies the accrual of duties with respect to basic rights which one allegedly

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in the usual sense, that is, to mean that each and every basic rights holder, respectively, possesses the same complex of roles comprising basic rights, then all basic rights holders, respectively, enjoy the same complex of duties correlative with those rights.

From this there emerge clear senses in which, first, persons possessing equal basic rights possess them mutually and, second, the overall venture participated in by holders of equal basic rights is a venture of mutual restrictions. Persons possess equal rights mutually in that they all, individually, possess that specific complex of roles constituting the full complement of basic rights. Thus what basic rights holders have in common is their possession of equivalent moral entities. The venture is one of mutual restrictions in that the duties which confirm a complex of roles upon all basic rights holders, individually, correlate with precisely those rights constituting the complex of roles possessed by all individuals enjoying the full complement of basic human rights.[34]

But more important here, if it is assumed that equal basic rights are moral rights accounted for in the way sketched above, then the hypothesis offered early on – that all individuals possessing basic rights do so only if they participate in a complex moral relationship linking them via a system of rights and correlative duties – follows. This is the case, as is probably obvious, because on the multital right analysis of basic rights, the roles occupied by persons in a venture of mutual restrictions are united via a network of crisscrossing rights and correlative crisscrossing duties constitu-

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does not have (and others do), then certain moral restrictions regarding fairness and desert may be violated. For related reasons, it may be true that basic rights enjoy another feature often attributed them; namely, that they are inalienable. Relevant here is Diana T. Meyers, 'The Rationale for Inalienable Rights in Moral Systems,' *Social Theory and Practice* 7 (1981): 127–43.

[34] Though I shall not be able to argue this point here, it seems plausible to hypothesize that a complete set of basic human rights is a system where all basic rights holders possess rights which are possible to possess only if it is possible for all others in the system to possess those same rights. Relevant here is Hillel Steiner, 'The Structure of a Set of Compossible Rights,' *The Journal of Philosophy* 74 (1977): 767–75.

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tive of those roles and necessary to the integrity of the venture. Thus, with an eye to those features of the traditional conception noted above, if basic human rights are understood, at minimum, as a complex of equal moral rights, then persons have basic human rights only if they participate in a venture which links each and every one of them via a system of moral rights and correlative duties.

4.

Understanding the structure of basic human rights is prefatory to a detailed theoretical account of their content and interrelationships. Thus determining that the possession of a full complement of basic human rights implies the possession of a complex of sets or bundles of multital rights is patently insufficient for answering those questions which only a complete moral theory of basic human rights is capable of answering. Nonetheless, a firm grasp of the structure of basic human rights yields a perspective from which various fundamental problems confronting a complete moral theory of basic rights can be examined.

For example, on the account given here, while the structure of a basic right is seen as the structure of a set or bundle of active rights, it remains an open question as to which liberties should comprise those sets delineating particular basic rights. The problems which can and do arise here are not always merely verbal issues; that is, for example, they are not simply a matter of whether persons involved in civil disobedience are more accurately described as exercising their basic right of free association or their basic right of free expression or some other basic right. Rather the problems here are ones pertaining to which liberties that *might* be included in one set or bundle of active rights or other *ought* to be thus included. In this way, the problems at issue are properly interpreted as substantive moral problems the solutions to which are not to be found in, for example, careful analyses of legal precedents.

Viewing basic human rights in the way argued for here allows

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various liberties to be regarded independently of other apparently similar liberties along with which they may be included so as to comprise a particular basic human right. On this conception, then, any particular liberty may be viewed in isolation of similar liberties so as to answer questions, for example, of which liberties ought to prevail when the liberties of persons conflict; that is, of which liberties, if any, are to be ranked more highly than others so as to constitute what might count as the indispensible core of a particular basic right. As might have been noticed already, many traditional questions regarding basic rights, for example, whether the basic right of free association takes precedence over that of free speech or of equal treatment before the law, can be recast if the structure of basic human rights is in fact as has been argued.

Such questions, for example, might be recast in terms of potentially conflicting liberties which may or may not be constituent members of a set of similar liberties which comprises one or another particular basic right. Thus, to follow the example, where once a problem of conflicts between basic rights was seen to entail that one or other of the rights in question would be wholly sacrified if the other were to prevail, now the issue might be seen in terms of conflicting liberties which compete as candidates for inclusion in one or another particular basic right where all basic rights are understood as members of that complex constituting the full complement of basic human rights. The precise nature of that complex which comprises the full complement of basic rights may well be ascertained only when these recast questions concerning particular basic rights are properly answered. The hope, of course, is that in being recast, such problems will be more readily – and correctly – solved by an acceptable general theory of basic human rights.

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